

# UN HUMAN RIGHTS COMMITTEE

**PARTICIPATION IN THE REPORTING PROCESS**  
Guidelines For Non-Governmental Organisations (NGOs)

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Feedback and comments to improve the guidelines are welcome.

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**Reference Documents:**

*“Civil and Political Rights: The Human Rights Committee”*  
(2005) – Office of the High Commissioner for Human Rights  
<http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>

*“Working with the United Nations Human Rights Programme: A Handbook for Civil Society”* (2008) Chapter IV - Human Rights Treaty Bodies, Office of the High Commissioner for Human Rights  
<http://www.ohchr.org/Documents/Publications/NgoHandbook/ngo-handbook4.pdf>

*“How to follow up on UN human rights recommendations: A Practical Guide for Civil Society”* (2014) - Office of the United Nations High Commissioner for Human Rights  
<http://www.ohchr.org/Documents/AboutUs/CivilSociety/HowtoFollowUNHRRecommendations.pdf>

*“The Treaty Bodies – Bringing Human Rights Home”*  
DVD (2010) – Office of the High Commissioner for Human Rights and Association for the Prevention of Torture (APT)

## ACRONYMS AND ABBREVIATIONS USED IN THIS DOCUMENT:

**CCPR Centre:** the Centre for Civil and Political Rights

**CRTF:** Country Report Task Force. A group of between four and six Committee members, including the Country Rapporteur, responsible for preparing the List of Issues and following a State through the review process

**HR Committee (or the Committee):** the UN Human Rights Committee. The abbreviation HR Committee is used to avoid confusion with the Human Rights Council, which is often abbreviated to HRC

**ICCPR (or Covenant):** the International Covenant on Civil and Political Rights

**NGO:** Non-Governmental Organisation

**NHRI:** National Human Rights Institutions

**OHCHR (or the Secretariat):** the Office of the High Commissioner for Human Rights. In the context of these guidelines reference to the OHCHR or to the Secretariat refers to the Human Rights Committee Secretariat, which is the part of the OHCHR that organises the HR Committee sessions

**OP1:** The First Optional Protocol to the ICCPR, which establishes an Individual Communications Procedure

**OP2:** The Second Optional Protocol to the ICCPR, which aims at the abolition of the death penalty

## FOREWORD

I welcome the publication of this edition of the Guidelines on the NGO Reporting Procedure. These are now widely recognized as an essential tool for civil society in its efforts to strengthen its cooperation with the Human Rights Committee. This edition, completely updated, incorporates the latest developments within the Committee in regard to the States reporting procedures and recent issues raised under each ICCPR provisions. It also showcases many civil society good practices compiled by the Centre for Civil and Political Rights.

These Guidelines allow NGOs to benefit from the expertise acquired by the Centre regarding the review process. The Guidelines include practical information and a brief analysis of the provisions of the ICCPR, which will undoubtedly facilitate NGO interaction together with the Human Rights Committee.

Through its observations and analysis, civil society has a fundamental role to play in assessing how States Parties implement the ICCPR. NGOs represent a crucial link between national concerns and international mechanisms in providing the Human Rights Committee with the required information during the examination of States parties' reports. They are also important partners when it comes to the implementation of the Concluding Observations, whether through advocacy with the authorities, or under their own monitoring activities.

The implementation of the Concluding Observations is one of the key priorities of the Centre for Civil and Political Rights. This is reflected in these Guidelines which include the latest developments in the follow-up procedure.

As we are on the verge of celebrating the 50th anniversary of the adoption of the ICCPR, it is my sincere hope that these Guidelines will strengthen and reinforce the fundamental role of human rights defenders with the Human Rights Committee.

**Fabian Salvioli**

Chairperson of the Human Rights Committee

# STAGES AND DOCUMENTS OF THE REPORTING PROCESS

## 1) State Report

The State Report is the foundation of the review. In the Initial Report the State should provide information on the implementation of each provision of the ICCPR. In subsequent (periodic) reports the State should include information on the measures taken to implement the Committee's previous Concluding Observations, as well as on progress and developments since the previous report.

## 2) List of Issues (LOI)

The List of Issues is a series of questions prepared by the CRTF and sent to the State at least one session before the review. This list highlights issues of concern to the Committee, which will be discussed during the review.

## 3) Simplified Reporting Procedure (List of Issues Prior to Reporting (LOIPR))

The Simplified Reporting Procedure is an optional reporting procedure in which the Committee prepares a List of Issues before receiving the State report (called List of Issues Prior to Reporting (LOIPR)). The Committee considers the State parties' written replies in lieu of a periodic report (a so-called "focused report based on replies to a list of issues").

## 4) State Replies to the List of Issues (Written Replies)

The State is not obliged to reply to the List of Issues in advance of the session, but in practice most do. The State replies are presented to the Committee at the beginning of the review and are the starting point for the interactive dialogue between the Committee and the State under review.

## 5) Review (or examination of the State Report)

The Committee meets with State representatives for around six hours during which the State presents the answers to the List of Issues and responds to the Committee's questions. These sessions are public, and available on live webcast at [www.treatybodywebcast.org](http://www.treatybodywebcast.org)

## **6) Concluding Observations**

At the end of the session during which the review took place the Committee adopts Concluding Observations. This document highlights the Committee's concerns and makes recommendations to the State on improving the implementation of the ICCPR as well as noting positive developments. The Concluding Observations also set the deadline for the next State report as well as the recommendations selected for the follow-up procedure.

## **7) Summary Record**

A document produced by the OHCHR containing a summary of the dialogue between the State representatives and the Committee.

## **8) Follow-up report**

One year after the review the State is asked to send a Follow-up report detailing the measures taken to implement a limited number of recommendations in the Concluding Observations, identified for their urgency and potential for progress within the one year timeframe. NGOs, NHRIs and other relevant actors may also contribute to the follow-up procedure by submitting information on the implementation of these recommendations.

## **9) Report of the Special Rapporteur for follow-up to Concluding Observations**

Based on the follow-up contributions from the State and civil society actors, the Committee Special Rapporteur for follow-up assesses the level of implementation of the priority recommendations. The Rapporteur suggests grades on the level of compliance, and he/she may request further information or request further action from the State.

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# PART I: THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE HUMAN RIGHTS COMMITTEE

## A) THE ICCPR AND THE OPTIONAL PROTOCOLS

### 1. THE ICCPR

The International Covenant on Civil and Political Rights was adopted by the General Assembly of the United Nations on 16 December 1966 and entered into force after ratification by the thirty-fifth State, on 23 March 1976. As of September 2015, a total of 118 States are parties to the Covenant. An up-to-date list of the States Parties can be found on the UN Treaty Collection database.<sup>1</sup>

**The Covenant comprises 53 articles and is divided into six parts:**

#### *i) Part I - Right to self-determination*

**Article 1** which forms Part I, guarantees the right of self-determination. This differs from the other rights in the Covenant in that it is, explicitly, a right exercised by “peoples” rather than by individuals.

#### *ii) Part II - Scope of the Covenant*

Part II sets out the scope of the Covenant and the obligations of the State in relation to the Covenant.

**Article 2** provides that a State Party must respect and ensure, to all persons within its jurisdiction, the rights recognised in the Covenant and provide effective remedies to persons whose rights under the Covenant are violated. States should also ensure that these rights are incorporated into domestic law.

**Article 3** sets out the equality of men and women in relation to the rights guaranteed by 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 exceptional situations (such as a state of emergency). However, the measures taken must be “strictly required by the exigencies of the situation.” Certain rights may not be derogated from under any circumstances, namely: Articles 6 (right to life), 7 (prohibition of torture), 8 paragraphs 1 and 2 (prohibition of slavery), 11 (prohibition of imprisonment for inability to fulfil a contractual obligation), 15 (prohibition of retroactive criminal proceedings), 16 (recognition as a person before the law) and 18 (freedom of thought, conscience and religion).

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<sup>1</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

**Article 5** is a savings clause that prohibits the use of the Covenant by the State or any group or individual to justify limiting or destroying the rights of others. It specifies that a State Party whose domestic law provides greater protections than the provisions of the Covenant may not use the Covenant as an excuse to lower national standards.

### **iii) Part III - Substantive Individual Rights and Fundamental Freedoms**

Part III contains all the substantive individual rights and fundamental freedoms guaranteed by the Covenant.

**Articles 6 to 11** are the 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 by States Parties who have not abolished it. Beside the general protection of life (article 6), specific prohibitions are set out concerning torture and unauthorized medical experimentation (article 7) and slavery and forced labour (article 8). The rights of persons deprived of their liberty, usually by arrest, and in detention are also covered (article 10).

**Articles 12 and 13** cover movement into, out of, and within a State, and contain particular rules on the expulsion of non-nationals.

**Articles 14 to 16** address the treatment of a person subject to a judicial procedure. Article 14 guarantees the right to a fair trial in both criminal and civil cases. It sets out the right to equality before courts and to fair adjudication of claims heard before courts and tribunals. It also lists additional protections applicable to criminal trials. Article 15 prohibits retroactive 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 without unjustified interference, including the right to privacy (article 17), freedom of thought, conscience and religion (article 18) and freedom of opinion and expression (article 19). Article 20 prohibits advocacy for war or of national, racial or religious hatred. Article 21 guarantees the right to peaceful assembly and article 22 freedom of association, including in trade unions.

**Articles 23 and 24** recognize the particular role of the family unit and address issues around marriage and the rights of children.

**Article 25** deals with the right to vote and to be elected through genuine periodic elections by universal suffrage in a secret ballot as well as the rights to take part in public affairs and to have equal access to public service positions.

**Article 26** sets out the rights to equality before the law and to equal protection of the law, as well as a wide guarantee of non-discrimination.

**Article 27** 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 and language.

#### **iv) Parts IV, V and VI – the Committee’s establishment and functions and other technical matters**

Part IV contains articles 28 to 45 which set up the Committee and sets out its functions and procedures (see Part I, section B, on the Human Rights Committee, p.4).

Part V contains articles 46 and 47 which include saving provisions with respect to the United Nations Charter and, linking with article 1, to the inherent right of peoples to freely enjoy and utilize their natural wealth and resources.

Part VI contains articles 48 to 53 which include the standard treaty provisions dealing with the mechanics of becoming a party, notification and amendments.

## **2. THE FIRST OPTIONAL PROTOCOL**

The First Optional Protocol authorises the Committee to receive complaints (Individual Communications) from individuals alleging that their rights under the ICCPR have been violated. As of September 2015, it has been ratified by 115 States. For an up-to-date overview of States parties, please consult the UN Treaty Collection<sup>2</sup>.

Communications may only be submitted against a State that has ratified the First Optional Protocol and after domestic remedies have been exhausted. If the Committee finds that a State Party has failed to fulfil its obligations under the ICCPR, it will require that the violation be remedied and ask the State Party to provide follow-up information in this regard.

The CCPR Centre database<sup>3</sup> provides summaries of most of the individual complaints received by the HR Committee. It is fully searchable by country, ICCPR provision, keywords, and decision year. The CCPR Centre also produces regular updates<sup>4</sup> on Human Rights Committee decisions on individual complaints.

The Human Rights Committee’s decisions and its follow-up activities are made public and included in the Committee’s Annual Report to the General Assembly<sup>5</sup>.

## **3. THE SECOND OPTIONAL PROTOCOL**

The Second Optional Protocol aims for the abolition of the death penalty. Under article 1, no one within the jurisdiction of a State Party to the Protocol may be executed. However, under article 2, States are permitted to enter a reservation allowing the application of the death penalty in time of war for serious crimes of a military nature committed during wartime. As of September 2015 this Optional Protocol has been ratified by 81 States. For an up-to-date overview of States parties, see the UN Treaty Collection<sup>6</sup>.

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<sup>2</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-5&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en),

<sup>3</sup> [http://ccprcentre.org/database\\_decisions/](http://ccprcentre.org/database_decisions/)

<sup>4</sup> To sign up for updates see [www.ccprcentre.org](http://www.ccprcentre.org)

<sup>5</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=27](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=27)

<sup>6</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en)

## **B) THE HUMAN RIGHTS COMMITTEE**

### **1. MEMBERSHIP**

The Human Rights Committee was established by article 28 of the ICCPR. Its functions are outlined in Part IV of the Covenant. Its role is to monitor and supervise the implementation by States Parties of their obligations under the ICCPR.

The Human Rights Committee is composed of 18 members, often called 'Experts'. Members "shall be persons of high moral character and recognized competence in the field of human rights" (article 28). Each member is nominated by his or her State Party, and is elected by the States Parties in a secret ballot. Each member serves a four year term, and may be re-elected if he or she is re-nominated. States Parties should ensure that there is an "equitable geographical distribution" of Human Rights Committee members (article 31). A member serves in his or her personal capacity, not as a representative of his or her State.

### **2. SESSIONS**

The Human Rights Committee meets three times a year in Geneva (usually in March, July and October). Each session usually lasts for three weeks.

Each session of the Committee is preceded by a one-week meeting of the Committee's Working Group. The function of the Working Group has evolved over the years and is currently devoted mainly to handling, as an initial chamber, decisions on the admissibility and/or merits of individual communications submitted under the First Optional Protocol to the Covenant. The Working Group may also discuss its own and the Committee's working methods with regards to individual communications and may bring proposed changes to the attention of the Committee's during regular sessions.

### **3. FUNCTIONS OF THE HUMAN RIGHTS COMMITTEE**

The HR Committee performs its function of supervising and monitoring the implementation of the ICCPR in four ways:

#### ***i) Reviewing State reports (See Part II (p.7))***

#### ***ii) Considering Individual Communications***

Under the First Optional Protocol the Committee can receive Individual Communications from any individual under the jurisdiction of a State that is party to the First Optional Protocol who claims that his or her rights under the Covenant have been violated by the State Party.

To be admissible the communication must:

- Be submitted by the individual whose rights have been violated or with the written consent of the individual. In exceptional cases where the individual is unable to give consent this requirement may be waived. The communication cannot be anonymous.
- Show that domestic remedies have been exhausted.

- Not be under consideration by another international investigation or settlement procedure.

The Committee considers Individual Communications in closed session, but its Views (decisions) and the outcome of the follow-up procedure are public<sup>7</sup>.

Detailed information on the process and how to use it is available on the OHCHR website<sup>8</sup>.

### iii) Issuing General Comments

Article 40 establishes the possibility of producing General Comments. By the end of 2014 the Committee had issued 35 General Comments<sup>9</sup>. These clarify the scope and meaning of various articles and the obligations of States Parties. All the General Comments can be found on the OHCHR website<sup>10</sup>.

#### List of General Comments

No	Subject	Date
<b>35</b>	Article 9 (Liberty and Security of Person) [Replaced General Comment 8]	<b>2014</b>
<b>34</b>	Article 19 (Freedoms of Opinion and Expression) [Replaced General Comment 10]	<b>2011</b>
<b>33</b>	Obligations of States Parties under the Optional Protocol	<b>2008</b>
<b>32</b>	Right to equality before courts and tribunals and to a fair trial [Replaced General Comment 13]	<b>2007</b>
<b>31</b>	The nature of the general legal obligation imposed on States Parties [Replaced General Comment 3]	<b>2004</b>
<b>30</b>	Reporting obligations of States Parties under Article 40 [Replaced General Comment 1]	<b>2002</b>
<b>29</b>	Article 4 (Derogations during a State of Emergency) [Replaced General Comment 5]	<b>2001</b>
<b>28</b>	Article 3 (The Equality of Rights between Men and Women) [Replaced General Comment 4]	<b>2000</b>
<b>27</b>	Article 12 (Freedom of Movement)	<b>1999</b>
<b>26</b>	Continuity of Obligations	<b>1997</b>
<b>25</b>	Article 25 (Participation in Public Affairs and the Right to Vote)	<b>1996</b>
<b>24</b>	Reservations to the Covenant or the Optional Protocols or Declarations under Article 41 of the Covenant	<b>1994</b>
<b>23</b>	Article 27 (Rights of Minorities)	<b>1994</b>

<sup>7</sup> See for instance the follow-up to individual communications of the 113th session [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/113/3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/113/3&Lang=en)

<sup>8</sup> <http://www2.ohchr.org/english/bodies/petitions/index.htm#communications> and <http://www2.ohchr.org/english/bodies/petitions/individual.htm>

<sup>9</sup> In 2015 the Committee was working on a 36th General Comment dealing with Article 6 (Right to life). <http://www2.ohchr.org/english/bodies/petitions/individual.htm>

<sup>10</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11)

<b>22</b>	Article 18 (Freedom of Thought, Conscience or Religion)	<b>1993</b>
<b>21</b>	Article 10 (Humane Treatment of Persons Deprived of their Liberty) [Replaced General Comment 9]	<b>1992</b>
<b>20</b>	Article 7 (Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment) [Replaced General Comment 7]	<b>1992</b>
<b>19</b>	Article 23 (The Family)	<b>1990</b>
<b>18</b>	Non-Discrimination	<b>1989</b>
<b>17</b>	Article 24 (Rights of the Child)	<b>1989</b>
<b>16</b>	Article 17 (Right to Privacy)	<b>1988</b>
<b>15</b>	The Position of Aliens under the Covenant	<b>1986</b>
<b>14</b>	Article 6 (Nuclear Weapons and the Right to Life)	<b>1984</b>
<b>13</b>	Article 14 (Administration of Justice) [Replaced by General Comment 32]	<b>1984</b>
<b>12</b>	Article 1 (Right to Self-Determination)	<b>1984</b>
<b>11</b>	Article 20 (Prohibition of Propaganda for War and Inciting National, Racial, or Religious Hatred)	<b>1983</b>
<b>10</b>	Article 19 (Freedom of Opinion)	<b>1983</b>
<b>9</b>	Article 10 (Humane Treatment of Persons Deprived of their Liberty) [Replaced by General Comment 21]	<b>1982</b>
<b>8</b>	Article 9 (Right to Liberty and Security of Persons) [Replaced by General Comment 35]	<b>1982</b>
<b>7</b>	Article 7 (Prohibition of Torture or Cruel, Inhuman, or Degrading Treatment or Punishment) [Replaced by General Comment 20]	<b>1982</b>
<b>6</b>	Article 6 (Right to Life)	<b>1982</b>
<b>5</b>	Article 4 (Derogations) [Replaced by General Comment 29]	<b>1981</b>
<b>4</b>	Article 3 (Equal Enjoyment of Civil and Political Rights by Men and Women) [Replaced by General Comment 28]	<b>1981</b>
<b>3</b>	Article 2 (Implementation at the National Level) [Replaced by General Comment 31]	<b>1981</b>
<b>2</b>	Reporting Guidelines	<b>1981</b>
<b>1</b>	Reporting Obligations [Replaced by General Comment 30]	<b>1981</b>

#### **iv) Considering Inter-State Complaints**

Under article 41 of the ICCPR a State Party may submit a communication to the Committee alleging that another State Party is not fulfilling its obligations under the Covenant. This provision is applicable only when both States Parties have specifically recognized the competence of the Committee in this respect. To date, however, no Inter-State complaint has been submitted to the Committee.



## PART II: THE REPORTING PROCESS AND THE ROLE OF NGOS

A State Party to the ICCPR should submit an initial report one year after the Covenant comes into force for that State (three months after ratification). Thereafter, the State Party must submit periodic reports at intervals specified by the HR Committee, usually every three, four, five or six years (article 40). The date for the next report is given in the Concluding Observations. Additionally, the Committee's Annual Report includes a list of States Parties and the date at which the next report of each is due.

The State Party report should detail the measures adopted to give effect to the rights guaranteed by the Covenant and the progress made in ensuring the enjoyment of those rights. The initial report should comprehensively cover all substantive articles of the Covenant, including information on the State's constitutional and legal framework and the legal and practical measures taken to implement the Covenant. The subsequent (periodic) reports are usually shorter and should focus on the Committee's previous Concluding Observations and significant developments since the previous report.

**The reporting cycle can be divided into three specific phases:**

PHASE 1: ADOPTION OF LOI OR LOIPR

PHASE 2: REVIEW OF THE STATE REPORT AND ADOPTION OF THE CONCLUDING OBSERVATIONS

PHASE 3: IMPLEMENTATION AND FOLLOW-UP

**Phase 1:** The Committee adopts a List of Issues (LOI) or a List of Issues Prior to Reporting (LOIPR). NGOs have the opportunity to submit written contributions both before the adoption of the LOI or LOIPR (to provide suggestions on their content) and after their adoption (to provide information in response to the issues raised). Phase 1 activities normally take place in the year preceding the review of a State party.

**Phase 2:** The HR Committee examines the State report in a public session in Geneva through a dialogue with representatives of the State Party. NGO representatives may attend the public session and brief the Committee members both at formal and informal private meetings. Phase 2 activities take place during the review.

**Phase 3:** The Committee follows up on the implementation of recommendations issued to the State party. NGOs may carry out follow-up activities in their countries, such as awareness raising and advocacy campaigns.

NGOs can also submit written contributions to the HR Committee on the measures taken by the State to implement the Committee's recommendations. Phase 3 activities normally take place within a year after the review.

NGOs can engage in the reporting process before, during and after the review of their country. This part of the guidelines describes in more detail the three phases and how can NGOs participate in each phase.

## A) PHASE 1: BEFORE THE REVIEW

### 1. ADOPTION OF THE LIST OF ISSUES

Once a State submits its report, the Committee assigns a group of between four and six members known as a Country Report Task Force (CRTF) to consider the report. Among the CRTF, one member is designated the “country rapporteur”, whose main responsibility is to follow the report through the reporting process. The names of the Committee members on the CRTF and of the country rapporteur are confidential.

Shortly after the submission of the State report, a timetable for the adoption of the LOI as well as the review of the State report will be decided and announced on the website of the Human Rights Committee. The Committee Secretariat announces which States are scheduled for review at least nine months before the session at which the List of Issues will be adopted, so that there is enough time for NGOs to prepare and submit reports.

With the assistance of the Committee Secretariat, the CRTF draws up a List of Issues. The List of Issues is a series of questions for the State (up to 25-30 questions), which aims to identify the most crucial issues relating to the implementation of the ICCPR. It is sent to the State Party at least two sessions in advance of the session at which the State report will be examined.

#### **What Happens if a State Party Fails to Submit a Report?**

Some States have been chronically late in submitting their reports (initial or periodic). This has meant that their implementation of the ICCPR has not been examined by the Committee for many years (and some States which have failed to submit their initial reports have never been examined). In 2001, the Committee decided to start examining the implementation of the ICCPR in States that have failed to submit a report for a considerable period.

Under this procedure, the Committee notifies the State of their intention and gives them a chance to submit the overdue report. If the State still does not submit the report the Committee drafts a List of Issues and then sets a date for the review and invites the State to send a delegation. The review is then held in a public meeting and the Committee adopts its Concluding Observations at the end of the session in accordance with usual proceedings.

## 2. STATE REPLIES TO THE LIST OF ISSUES

The State is requested to provide written answers to the List of Issues. Most do so in advance, but others only at the beginning of the Committee's public examination (review) of the report. During the review these answers are presented to the Committee and form the starting point for dialogue with the State representatives. Written replies are usually sent in one of the Committee's working languages and most of them are translated into one or two other working languages. Late submissions are not translated.

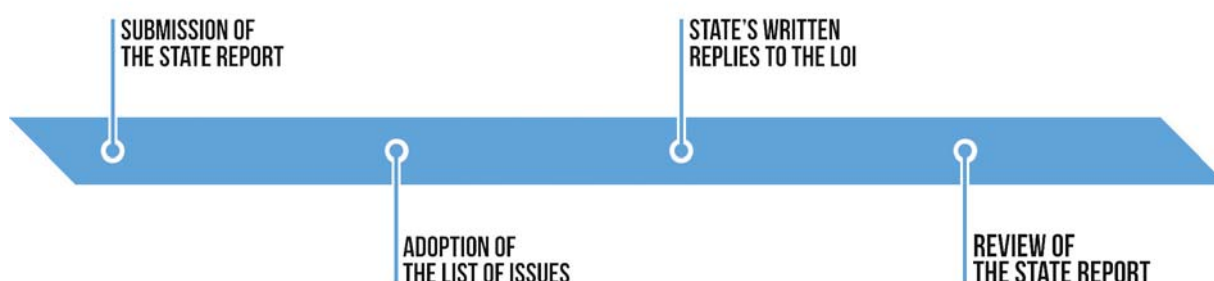
## 3. THE "SIMPLIFIED REPORTING PROCEDURE"

In November 2010 the HR Committee began implementing an alternative reporting process for periodic reports: the Simplified Reporting Procedure which includes the List of Issues Prior to Reporting (LOIPR). It is optional for the States to decide whether they want to use this procedure, although it is not available for initial reports. In November 2015, the Committee appointed a working group to review the new procedure and assess its practicability, effectiveness and ability to improve the examination of the human rights situation in the State parties<sup>11</sup>.

In this optional process the Committee prepares a List of Issues before receiving the State report. The LOIPR is based on the Committee's previous Concluding Observations and other available information, including UN documents and NGO reports. The LOIPR is then sent to the concerned State who is given at least one year to reply to the LOIPR. The State's "focused report" will be reviewed as a priority by the Committee, within 12 months of their submission. It will be examined in an interactive dialogue between the Committee and the State representatives as usual.

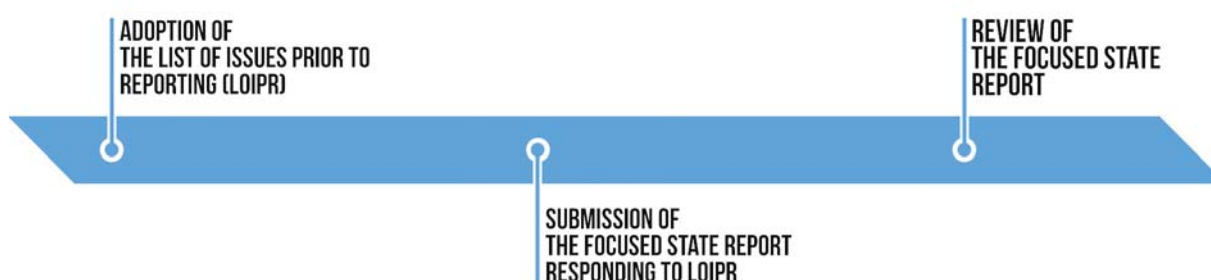
In this procedure the focused report by the State replaces both the State report and the replies to the List of Issues in the standard reporting procedure. This should help to reduce the burden of reporting for the State and so encourage the timely submission of reports.

### Timelines of Phase 1: before the review



<sup>11</sup> See "Focused reports based on replies to lists of issues prior to reporting (LOIPR): Implementation of the new optional reporting procedure (LOIPR procedure)", UN Doc. CCPR/C/99/4.

## In case of simplified reporting procedure (List of Issues Prior to Reporting)



### 4. POSSIBILITIES FOR NGO ENGAGEMENT IN PHASE 1

In order to undertake a complete and effective review of the implementation of the ICCPR in the State Party the HR Committee routinely seeks information from other stakeholders, particularly NGOs, to complement the information contained in the State Party report. This additional information should provide an independent assessment of the implementation of the Covenant. It should not repeat the information provided in the State report but complement, correct, expand or corroborate it.

If it is to carry out its monitoring role the HR Committee needs information on all the provisions of the Covenant. NGO information is, therefore, particularly welcome when the State report does not cover all the provisions of the ICCPR, is superficial and lacking adequate documentation, or is biased.

The reporting process may also provide a good opportunity for NGOs to assess the human rights situation at the national level and identify particular problems and priorities in the implementation of the rights enshrined in the ICCPR. The process can provide an opportunity and structure for meetings with the authorities and facilitate discussions at the national level on implementing the ICCPR.

There are several opportunities for NGOs to engage with the Committee before the review of a State report, mainly by providing written information to the Committee. Effective NGO engagement is crucial to maximise the impact and success of the review process. Information provided by NGOs helps the Committee to obtain a more complete picture of the human rights situation in the State under review.

The main way for NGOs to engage with the Committee is by providing written information in the form of a report, sometimes called “alternative” or “shadow” reports. Once a State report is submitted and its review is scheduled by the Committee, NGOs are invited to submit their reports before the deadline indicated by the Committee. The Committee receives NGO reports for:

- the adoption of Lol or LOIPR
- the review of the State report

Submitting NGO reports in the early stages of the reporting process is strongly recommended. NGOs may ask the Secretariat of the HR Committee or the Centre for a list of the countries that will be reviewed in forthcoming sessions. A list is also available at the OHCHR and CCPR Centre websites.<sup>12</sup>

The Committee seeks information that deals with all the different areas covered by the ICCPR. It is especially interested in receiving information on those issues that the State report does not cover in sufficient detail. NGOs may also provide information on areas of concern which are not addressed by the State Report as long as they fall within the scope of the Covenant.

### **i) NGO reports for LOI**

The List of Issues provides the structural basis for the entire review of the State report. It is, therefore, especially important that NGOs submit information before the List of Issues is drafted. NGO reports submitted at this stage will help to ensure that key points are not left out of the List of Issues and so ignored during the review.

Usually, the List of Issues is adopted two sessions before the examination of the State report. For example, the List of Issues for States examined at the October session in a given year will usually be adopted at the March session in the same year. The Country Report Task Force with the support of the OHCHR starts drafting LOI between six to eight weeks before the session at which it is scheduled to be adopted. NGO information should be available for the CRTF before the start of the drafting process of the LOI.

NGOs wishing to provide information for LOI are requested to submit their reports roughly 10 to 12 weeks before the start of the session during which the relevant LOI is scheduled to be adopted. The specific deadline is set by the Committee and indicated in the information note prepared by the Committee Secretariat for each session. The information note is published on the website of the Committee on the page of each session and on the CCPR Centre's website.<sup>13</sup>

### **ii) NGO reports for LOIPR**

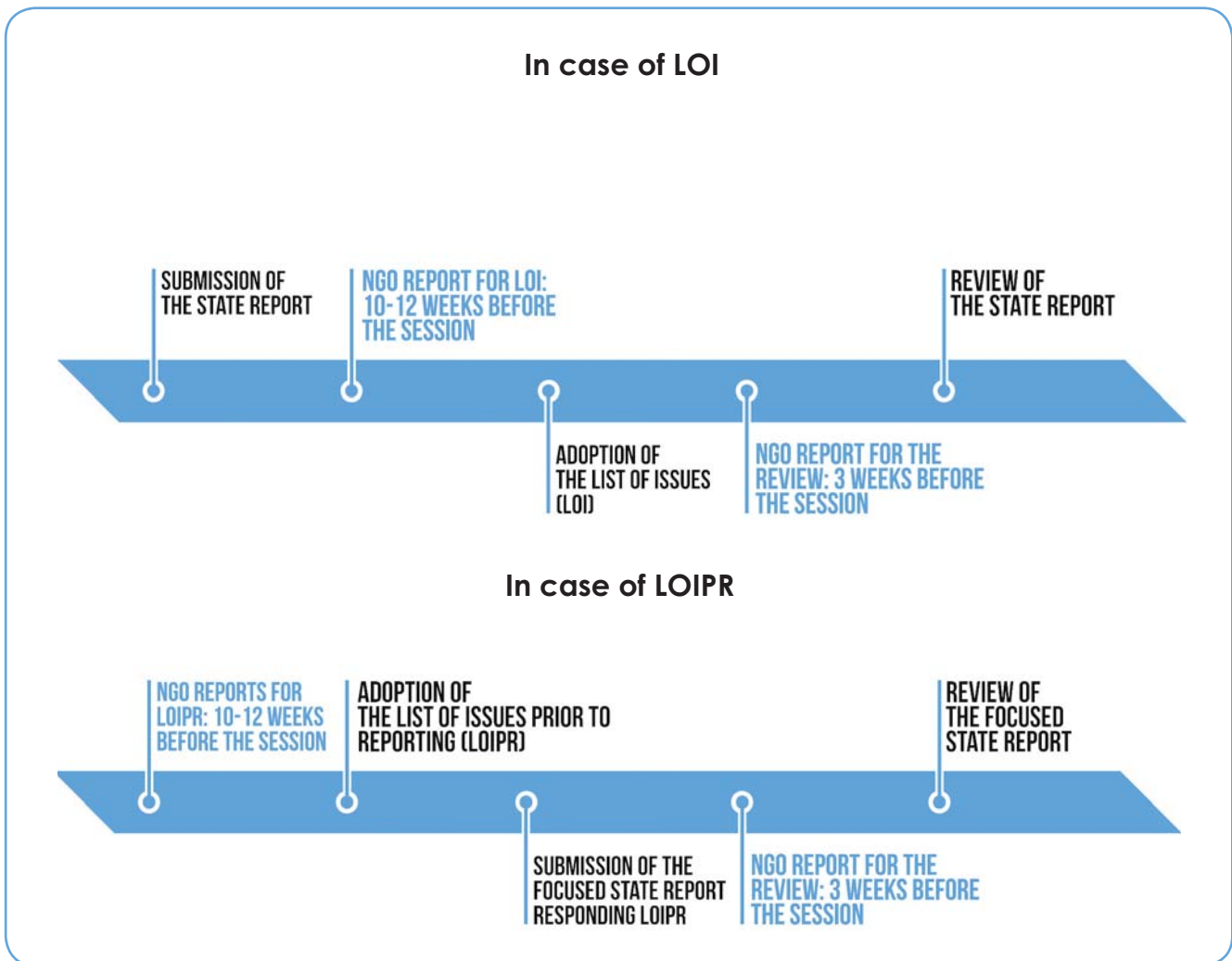
The List of Issues Prior to Reporting (LOIPR) not only forms the basis of the Committee's review process like the LOI, but also sets out the focus of the following State report. It is therefore particularly important that NGOs provide comprehensive information before the adoption of the LOIPR, so that all the primary concerns are addressed.

Similarly to the LOI process, a specific deadline is set for the submission of NGO reports for the LOIPR - usually 10 to 12 weeks prior to the session at which the LOIPR is scheduled to be adopted. The deadline is indicated in the information note prepared by the Committee Secretariat for each session.

<sup>12</sup> [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR)

<sup>13</sup> [www.ccprcentre.org](http://www.ccprcentre.org)

## Deadlines for NGO reports before the review



### iii) NGO reports for the review (after the adoption of LOI or LOIPR)

NGOs can submit their reports after the adoption of the LOI or LOIPR. At this point, the information sent to the Committee should ideally focus on the issues addressed in the LOI or LOIPR e.g. by providing replies to the questions raised therein. Concerns which are not addressed in the List of Issues may also be raised by NGOs with a view to getting them appropriately addressed during the dialogue with the State.

NGO reports at this stage should be submitted no later than three weeks before the start of the session during which the State report will be examined. A specific deadline is set by the Committee Secretariat for the submission of NGO reports at each session.



## **B) PHASE 2: THE REVIEW**

### **1. EXAMINATION OF STATE REPORT**

The State report is examined by the HR Committee in a public session in Geneva through a dialogue with representatives of the State Party. During this dialogue, the Committee will seek clarifications and explanations from State representatives on the content of the report and written replies to the Lol.

It usually takes two half-day meetings to review a State report. The examination begins with a presentation by the State delegation. This is followed by a dialogue based on the issues included in the List of Issues that are clustered according to the division of work within the CRTF. It is the CRTF that leads the discussion, followed by additional questions from other members. Specific attention is often given to the questions that have not been fully answered in the responses to the List of Issues.

### **2. ADOPTION OF CONCLUDING OBSERVATIONS**

At the end of the dialogue, the President of the Committee concludes the meeting by identifying key difficulties, which will usually be included in the Concluding Observations. These are adopted by the HR Committee in a closed meeting and are transmitted to the relevant State Party. Concluding Observations are made public at the end of the session and are available on the OHCHR and CCPR websites<sup>14</sup>.

Concluding Observations are divided into three parts: introduction; positive developments and subjects of concern and recommendations. The final paragraph gives the date by which the next report should be submitted to the Committee. The final paragraph also identifies a limited number of recommendations selected for the follow-up procedure and requests that the State submits information on the measures taken to implement the selected recommendations within one year of the review.

### **3. POSSIBILITIES OF NGO ENGAGEMENT IN PHASE 2**

NGOs may attend the Committee sessions as observers, although they may not speak during the review of States. Attendance is not limited to NGOs with ECOSOC accreditation, but is open to all interested individuals, as long as they apply to the Secretariat for accreditation. Accreditation can be requested online at the CSO-Net<sup>15</sup>. Information on the deadlines for accreditation requests can be found in the NGO Information Note published on the Committee's website for each session or at CCPR Centre's website.

<sup>14</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=8&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=8&DocTypeID=5) and <http://www.ccprcentre.org>

<sup>15</sup> <http://csonet.org>

There are two possibilities for NGOs wishing to address the Committee during the session.

### **Formal NGO Briefings**

NGOs and civil society representatives have the opportunity to address the Committee on subjects of concern related to any State being reviewed at that session during the official NGO briefing. This meeting usually takes place on the first two Mondays of the session between 11.00 and 13.00. It is chaired by the Committee's President and is a closed session, which means that only Committee members and NGOs are allowed to attend and participate. The meeting is conducted in the Committee's working languages (English, French and Spanish) and interpretation between these languages is provided.

The President invites the NGOs to deliver brief statements and afterwards, time is allocated for Committee members to ask questions and for NGOs to reply. When there is not enough time for the replies, NGOs can reply during the informal briefings (see below).

To participate in the formal briefing, NGOs need to contact in advance the Committee Secretariat and CCPR Centre in order to be included in the list of speakers. Only NGOs that have submitted written reports are allowed to participate at the briefing. If national NGOs wish to address the Committee but are unable to travel to Geneva, the CCPR Centre can address the Committee on their behalf.

### **Informal NGO Briefings**

CCPR Centre also organises informal meetings between NGOs and the Committee for each State under review. These informal meetings are usually scheduled over lunchtime and last 50 minutes. They are not held in the Committee room and no interpretation is provided.

These briefings are facilitated by a staff member of CCPR Centre. All the interested NGOs are welcome to participate. The Committee members ask questions to the NGOs and seek clarification on issues mentioned in the NGO reports or other concerns the Committee may have.

Although not all Committee members attend these meetings, they are a unique opportunity for NGOs to raise their concerns and to highlight the key points raised in the NGO reports submitted to the Committee.

It is advisable that all participating NGOs coordinate among themselves to agree on three to five priority concerns per country to be suggested to the Committee members for the follow-up procedure (see more about the follow-up procedure below).



## Coordination among NGOs: the Canadian example

Over the years the benefits of close coordination and collaboration among groups and activists contributing to UN reviews of Canada have become abundantly clear. Most obviously, it assists the UN body or expert carrying out the review when they can hear collectively, in an organised fashion, about key human rights concerns in the country. It facilitates easier engagement with the Canadian government leading up to and during the review. Additionally, it maximizes the opportunities for media and other public coverage of our concerns and of the outcome of the review. We also learn from each other as we work together and improve our own research and advocacy.

The challenge is to find the right balance between maintaining and promoting briefs and concerns individually on the one hand while also preparing joint statements and making joint presentations. The key to finding this balance is advanced preparation, inclusiveness and good communication.

It is important to note that the coordination does not end in Geneva. We have continued with the commitment to working collectively by ensuring that there was a joint media statement responding to the Concluding Observations, in addition to the various press releases issued by individual organisations.

At the end of the day this is not about competing with each other for attention; it is about working closely together to make sure we are strategic, effective and push ahead with the human rights reforms that concern us all.

**Alex Neve**

**Secretary General – Amnesty International Canada**

### **Additional Information Provided by NGOs during the Session**

Attendance at the session at which the State report is reviewed by the Committee is very important. Not only does this enable the NGOs to monitor what the State says and to ensure that it is accurately reflected after the session and to lobby for the implementation of any commitments, but it also creates the possibility of reacting to the information provided. If necessary, NGOs should be ready to provide short written submissions to the Committee members when assertions made by State representatives seem to be irrelevant or inaccurate. Although NGOs are not allowed to take the floor in the plenary session, Committee members can be approached and lobbied during the breaks or at the end of the meetings or before the meeting starts the following day. NGOs should not hesitate to suggest additional questions or clarifications that the Committee might find helpful to ask the State representatives.

## C) PHASE 3: FOLLOW-UP AFTER THE REVIEW

### 1. THE COMMITTEE'S FOLLOW UP PROCEDURE

The follow-up procedure was initiated by the Human Rights Committee in 2001. The procedure was modified in October 2013 in order to improve the monitoring role of the Committee CCPR/C/108/2<sup>16</sup>). The Committee identifies between 2 to 4 recommendations, which require priority attention by the State party (follow-up recommendations). In this context the Committee asks the State Party to provide information within a year of the review on the measures it has taken to implement the recommendations. The recommendations are selected because the Committee considers them a particular priority and susceptible to some improvement within a year.

The HR Committee designates a Special Rapporteur and a Deputy Special Rapporteur for follow-up to Concluding Observations. They assess the follow-up information submitted by the States and make recommendations to the Committee on any further steps that may be appropriate. Based on this follow-up information, the Rapporteur proposes grades to reflect the level of compliance by the State with the follow-up recommendations.

### 2. METHODOLOGY TO MONITOR THE IMPLEMENTATION OF FOLLOW-UP RECOMMENDATIONS

The methodology to monitor the implementation of the follow-up recommendations adopted by the HR Committee with the support of the CCPR Centre constitutes an innovative method to assess the level of compliance with follow-up recommendations. It is based on a range of grades from A to E which provide a clear overview of the Committee's assessment:

#### Assessment of replies

##### Reply/action satisfactory

**A** Reply largely satisfactory

##### Reply/action partially satisfactory

**B1** Substantive action taken, but additional information required

**B2** Initial action taken, but additional information and measures required<sup>17</sup>

##### Reply/action not satisfactory

**C1** Reply received but actions taken do not implement the recommendation

**C2** Reply received but not relevant to the recommendation

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<sup>16</sup> <http://www.ccprcentre.org/doc/2015/03/G1347689.pdf>

<sup>17</sup> The procedure CCPR/C/108/2 only mentions "Initial action taken, but additional information required". However, the reports of the Committee's Rapporteur on follow up refer to B2 in the following terms: "Initial action taken, but additional information and measures required"

### **No cooperation with the Committee**

- D1** No reply to one or more of the follow-up recommendations or part of a follow-up recommendation
- D2** No reply received after reminder(s)

### **The measures taken are contrary to the recommendations of the Committee**

- E** The reply indicates that the measures taken go against the recommendations of the Committee

With the support of the Secretariat of the Committee, the Special Rapporteur reviews the State follow-up reports and additional related materials, such as NGOs follow-up reports. He or she assesses the measures taken by the State and suggests categories for each follow-up recommendation. This proposal is discussed in a plenary session held in public. The Rapporteur subsequently communicates the findings along with comments and requests for further action or additional information to the State. The report of the follow-up Rapporteur is also made public and integrated in the Annual Report of the HR Committee.

The follow-up procedure may include several rounds of assessment based on additional requests from the HR Committee. If a State fails to submit its follow up report, the Committee sends reminders. The grade D1 (no report submitted within the deadline) or D2 (no report submitted after more than one reminder) will be given to the State Party. In that case, the Follow-up Rapporteur may seek meetings with the State Party (UN Mission in Geneva) to encourage the State to submit its follow-up report.

Civil society organisations can submit reports as part of the follow-up procedure, and they can attend the follow-up reviews in Geneva (see below for more details).

It is important to stress that States parties are requested to give equal attention to all recommendations (and not only those selected for the follow-up procedure).

#### **Angola takes steps to implement the Committee's recommendations**

When Angola was reviewed by the Committee in March 2013, the Committee requested it prioritise the adoption of a decree on free birth registration. The decree was subsequently adopted in September, and the State submitted a follow up report in June 2014. In their March 2014 report, NGOs noted that the decree had been adopted, although more efforts were required to implement the other priority recommendations.

When it reviewed Angola's follow-up in October 2014, the Committee noted that the recommendation had been implemented and it adopted the highest grade: A. The follow up procedure continued for other recommendations, but it was terminated for the free birth registration recommendation.

### 3. DISCONTINUATION OF THE FOLLOW-UP

Based on the suggestion of the Rapporteur on follow-up, the Committee may decide to put an end to the follow-up procedure. There are several circumstances where this may occur including:

- The recommendation(s) have been implemented (grade A).
- The LOIPR is due to be adopted within six months after the follow-up review.
- The deadline for the next periodic report is within the six months following the adoption of the follow-up progress report of the Special Rapporteur.
- After the third round of assessment (i.e. after the State party's third substantive reply).
- The Committee may decide at any time that the issues which remain pending after a follow-up review should be adjourned for consideration in the following LOIPR or LOI.

### 4. POSSIBILITIES OF NGO ENGAGEMENT IN PHASE 3

Although the primary duty for the implementation of Concluding Observations falls on governments, experience has shown that NGOs should play a role, as their involvement can make a significant difference in the implementation of recommendations.

#### ***i) Disseminating the Concluding Observations***

The Committee systematically requests States to widely disseminate the Concluding Observations at the national level, and to translate them into national languages. In reality, most States take very minimal dissemination steps. Civil society can play a vital role to bridge the dissemination gap. Effective dissemination strategies may include, inter alia:

#### **Making the Concluding Observations available in national languages**

In countries where the national language is not a UN language, one of the first steps to ensure proper dissemination is to translate the Concluding Observations. NGOs can translate the Concluding Observations themselves where appropriate.

Over recent years, national NGOs have translated Committee Concluding Observations into national languages in Burundi, Indonesia, Nepal, Paraguay, Philippines and Rwanda

#### **Sharing the Concluding Observations with relevant bodies**

The range of professional bodies and institutions who can or should play a role in the implementation of the Committee's recommendations is potentially wide. It normally includes an array of Ministries and government agencies, Parliaments and dedicated parliamentary committees, NHRIs and Ombudsman, Standing National Reporting and Coordination Mechanisms (SNRCMs), law enforcement agencies, including their supervisory bodies and professional unions, judges & prosecutors, bar associations, press and national media, academics and human rights institutes/think tanks, UN agencies, foreign embassies and international donors. NGOs can therefore assist in ensuring that the relevant institutions have received copies of the Concluding Observations.

## Media outreach

Outreach is a fundamental and essential part of NGO advocacy in the follow-up phase. Without suitable dissemination, the Committee recommendations fail to reach decision makers and rights holders.

Once the Committee recommendations are public, national NGOs should widely disseminate them to the national media, and offer to provide explanations and comments. Press conferences, as well as interviews with human rights defenders and other relevant actors, should be organised. Twitter, Facebook and other social media are a key source of news. Links to the recommendations in the UN and national languages may be tweeted along with pictures of the review or illustrative pictures.

### ii) Engaging with national bodies

#### SNRCM in Mauritania

During a follow-up visit to Mauritania in August 2014, the CCPR Centre and a member of the HR Committee were able to brief the members of the newly created Mauritanian SNRCM, which was chaired by the office of the Prime Minister. Although this was one of the first times that the SNRCM had met, it was an important opportunity to disseminate the Committee's Concluding Observations and to discuss the implementation of recommendations

### Standing National Reporting and Coordination Mechanisms

National Coordination Mechanisms are essential to disseminate the Concluding Observations, plan for the implementation of recommendations and assign tasks and deadlines to relevant institutions. The UN and the OHCHR particularly often play an important role<sup>181</sup> in supporting the establishment and functioning of SNRCMs. In countries with permanent or ad-hoc coordination mechanisms, NGOs should seek to engage with these bodies and learn what measures are being taken by these bodies to implement the recommendations.

### National Human Rights Institutions or Ombudsman

NHRIs and Ombudsman are often mandated to follow and contribute to the implementation of treaty body recommendations. They can act as facilitators of dialogues with national authorities and the UN. NHRIs often have a presence in the field which can be an asset in the implementation of recommendations. NGOs can also play a role in encouraging NHRIs to participate in the work of treaty bodies, notably by encouraging the NHRI to submit follow-up reports.

### iii) Inviting Committee members for follow-up visits

It was eye opening for me to be able to meet with an array of relevant decision makers. This sort of interaction is not possible during sessions of the Committee in Geneva.

**Margo Waterval, HR Committee member, during a follow up visit to Nepal, November 2014**

18 <http://www.ccprcentre.org/doc/2015/05/national-tracking-systems-for-HR-recos-CCPR-Centre-May-2015.pdf>

UN treaty bodies have emphasized the relevance and value of follow-up visits on various occasions. Inviting HR Committee members to undertake follow-up visits provides a unique opportunity to raise the profile of the recommendations at the national level. It also enables a direct interaction between members of the Committee and a larger range of government representatives and policy makers at the national level. During follow-up visits, Committee members are normally able to engage with a much broader range of actors than those present in Geneva during the review. The CCPR Centre has undertaken a number of follow-up visits in cooperation with national NGO partners in countries from all regions over the period 2010-2015. Committee members can be invited by national or international NGOs to visit a country. However, visits in this context are made in their individual capacity and such visits do not constitute official Human Rights Committee follow-up visits. Such visits may be organised with different objectives and at different stages of the follow-up phase:

**Dissemination and awareness raising visits (short term):** Committee members may be invited between 3 to 9 months following the review in order to meet with relevant stakeholders and discuss plans for the implementation of recommendations.

**Assessment visits (medium term):** Committee members may be invited between 9 to 15 months following the review, which coincides with the moment at which the State under review should provide the Committee with a follow-up report on the implementation of priority recommendations. These visits may provide an opportunity to assess the level of compliance with these 2 to 4 recommendations. Visits can also be undertaken at a later stage in order to encourage States that have failed to submit their follow-up reports.

#### **iv) Action plan for the implementation of recommendations**

One of the best ways to keep recommendations on the national agenda is to gather together as large a group of relevant actors as possible and discuss the implementation of recommendations as a collective endeavour. NGOs can initiate processes to prepare such action plans, which should involve all relevant actors. Action plans should address in detail specific objectives related to the recommendations, planned activities, expected results, responsible actors, timelines, resources and monitoring and evaluation plans (including indicators when relevant).

#### **Follow up visit in Malawi**

During the Committee's review of Malawi in July 2014 the issue of arrests of individuals for same-sex relationships was raised. Following the review, the government announced immediate steps to halt arrests of persons for same sex relationships. This directly related to the concern raised by the Committee during the review. In September, Committee member Ms Majodina was invited by the CCPR Centre and its national partners, the Centre for Human Rights & Rehabilitation and the Centre for the Development of People, to a follow-up visit in Malawi.



## Integrated monitoring of human rights recommendations in Paraguay

The Paraguayan government has established an online platform to gather recommendations from treaty bodies, Special Procedures and the UPR as well as from the Inter-American human rights system ("Recommendation Monitoring System" - SIMORE). The platform clusters recommendations in a fully searchable database. It also facilitates the gathering of information on follow-up, which subsequently helps in the production of periodic reports to treaty bodies.

### **v) Reporting back to the HR Committee and cross-referencing in reports to other treaty bodies and in the UPR process**

The value and relevance of engaging with a range of human rights bodies to foster synergies and ensure mutual reinforcement is regularly emphasized by treaty bodies.

#### **Reports to the HR Committee**

NGOs have an active role to play in the follow-up procedure. The Committee considers information provided mainly by two sources for the follow-up: the government and NGOs. Other actors such as NHRIs or UN agencies are also welcome to contribute. NGO follow up reports are essential to provide first hand and updated information on the implementation of follow-up recommendations during the one-year period following the review.

The objectives and content of an NGO follow-up report will vary depending on whether the State has submitted their own follow-up report or if not. If a State has not submitted a report, NGO reports will provide a vital source of information to the Committee. The submission of an NGO report should be complemented with targeted advocacy to encourage the State to submit their own report.

If the State has submitted a report, the NGO report should make references to the State report where appropriate. NGOs should provide comments on the information provided by the State and provide additional information as needed.

Follow-up reports should be sent electronically to the Secretariat: [ccpr@ohchr.org](mailto:ccpr@ohchr.org)

#### **UN Treaty Bodies and UPR process**

Making references to follow-up recommendations in reports to other treaty bodies and the UPR will not only raise the profile and relevance of the HR Committee recommendations but also strengthen the coherence of the follow-up mechanism and facilitate coordinated and integrated implementation processes. NGOs may also want to make reference to recommendations made by other treaty bodies and during the UPR in their own follow-up submissions to the HR Committee.

## PART III: GUIDELINES FOR NGO WRITTEN SUBMISSIONS TO THE HUMAN RIGHTS COMMITTEE

### A) GENERAL CONSIDERATIONS

To ensure that the Committee members have a full picture of the implementation of the ICCPR in the State, NGO information should ideally review and analyse how far the national laws, policies and other measures comply with the ICCPR. Specific attention should be paid to gaps between the laws and their implementation

The HR Committee usually prefers comprehensive reports covering all the provisions of the ICCPR to reports on a specific thematic area. NGOs, particularly specialized NGOs, often prefer to submit shorter thematic reports focusing on specific issues in their area of expertise and the related provisions of the ICCPR.

NGOs are strongly encouraged to work in coalition to draft their reports. NGO coalition reports are usually taken very seriously by the HR Committee as they represent the views of multiple actors from civil society and, as such, it is more difficult for State delegations to dismiss the evidence they provide.

In addition, working in a coalition allows NGOs to coordinate their work and to avoid duplication. NGOs can also share the workload (research and drafting) as well as the related costs. Coalitions of NGOs are usually in a better position to produce comprehensive reports covering all the provisions of the ICCPR.

There is no limitation on the length of the report, although a length of 30 to 40 pages is advised for a comprehensive report. NGOs should bear in mind that the Committee members are often very busy and have a large number of documents to read, so clarity and conciseness are much appreciated. Where relevant, reference can be made to other reports produced by the NGO which provide more detail or evidence on a particular issue instead of including a long explanation in the report.

For all reports (comprehensive or thematic, individual or coalition), it is generally recommended that NGO reports contain the elements listed below and are structured in accordance with the articles of ICCPR (either article by article or in clusters of articles).

It can also be very useful to include an executive summary (2 or 3 pages) at the beginning of the report, highlighting the main issues raised and the most important conclusions and recommendations.



NGO reports should be submitted in one (or more) of the HR Committee's working languages (English, French and Spanish). No editing work or translation into other UN working languages is done by the Secretariat. If possible it is therefore best to submit NGO information in all three working languages. Alternatively, NGOs can submit their information in one of the working languages and prepare executive summaries in the other two languages.

## **B) STRUCTURE AND CONTENT OF THE NGO REPORTS**

### **1. INTRODUCTION**

The introduction should include a presentation of the NGOs involved (including contact details), as well as methodological information on how the information was collected. The introduction may also include information about the general context, such as historical context, specific situations (e.g. armed conflict, socio-economic context, etc.), and the situation concerning human rights defenders. However this background information should not be too extensive or duplicate information provided in the State report.

### **2. SUBSTANTIVE PART (IMPLEMENTATION OF ICCPR ARTICLES AND/OR RELATED ISSUES)**

This should be the main part of the NGO reports and should provide substantive and objective information on how the ICCPR is implemented and the kind of issues that the country is facing. In general, it is useful to provide information on: domestic legislation and how it is implemented; measures taken by the State to implement ICCPR; and cases or incidents which demonstrate the authorities' failure to implement the ICCPR.

Any case law referenced should be up-to-date and indicate the stage of the judicial proceedings and information should, as much as possible, specify sources. NGOs should try to ensure that the credibility of the information cannot be called into question.

In the NGO reports submitted for the review of State report (after the adoption of LOI or LOIPR), it is most effective to provide replies to questions and information on the issues addressed in the LOI or LOIPR. In this case, it can be helpful to structure reports in accordance with the LOI or LOIPR.

### 3. CONCLUSIONS AND SUGGESTED RECOMMENDATIONS / QUESTIONS

NGO reports may include a conclusion. When drafting a report for LOI or LOIPR, NGOs may suggest questions to be included in the List of Issues. When drafting a report for the review, NGOs may suggest recommendations to be issued to the State by the Committee. Recommendations should be concrete, realistic, and action oriented. It is useful to suggest practical and realistic solutions and, where appropriate, time frames for their implementation and the specific body that should be responsible for implementation.

#### Joint NGO reports from Cambodia

For Cambodia's second periodic report, NGOs built a coalition and partnerships and submitted several joint reports for the adoption of the LOI as well as for the main review. Some reports focused on particular issues of concern, while the joint report of larger group of NGOs covered more comprehensively different issues and articles of the ICCPR.

### 4. POSSIBLE REFERENCES

In order to ensure the objectiveness, effectiveness, clarity and credibility of NGO reports in general, references should be made to the sources of information, documents, legislation, policies and other relevant information including research projects and their findings. Such reference will also help NGOs avoid duplication of information and make reports more concise. Among others, the following references are of importance and should be included where possible:

- **State report**

The Government has a duty to make their reports widely available to civil society, and NGOs are entitled to ask for a copy of the document. If NGOs have difficulties obtaining a copy of the State Report, it can be found on the OHCHR or CCPR websites.<sup>19</sup>

References to the State Report are very important, particularly if the report merely consists of a description of the legislation in place to protect human rights, or if NGOs consider that it lacks information or if information provided is biased. NGOs should not duplicate the information in the State Report, but comment on the information or provide complementary facts. Direct references to the State Report should include the paragraph number in the State report, allowing the Committee to quickly and easily identify the specific points upon which the NGOs are commenting. The paragraph number should be used rather than the page numbers as page numbers can change in different language versions whereas paragraph numbers remain the same.

<sup>19</sup> [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR)  
<http://www.ccprcentre.org/select-country/>

- **HR Committee's previous Concluding Observations**

The Concluding Observations adopted by the HR Committee after the examination of the previous State Report should also be taken into account by NGOs. It is important to assess if any progress has been made by the authorities with regard to the previous Concluding Observations. The State is also asked to include information on the implementation of the previous Concluding Observations in their report, but this is often not done in sufficient detail. When NGOs consider that no improvement has been made with regard to the recommendations, it should be clearly stated. Particular attention should be given to the Concluding Observations selected for the follow-up procedure.

It may also be useful to consult the summary records of the discussions that took place during the consideration of the previous report by the Committee as well as the written replies or comments (if any) provided by the State in response to the previous recommendations of the Committee. Both of these as well as the Concluding Observations are available on the OHCHR website as well as on the CCPR website.

- **LOI or LOIPR and State written replies thereto if available**

If NGOs draft their reports after the List of Issues has been adopted, references to the questions included in that list should be integrated in the report. Clear reference should be made to the List of Issues, indicating the question to which the NGOs are replying. If the State has provided Written Replies, reference should also be made to these documents. Replies to the questions raised in the List of Issues will be very useful to the HR Committee in conducting the dialogue with the State representatives as these replies can be directly compared with the information provided by the State and will suggest additional questions the Committee might raise on the selected issues. If there are important issues that are not included in the List of Issues, the NGOs should also raise this in their reports.

- **Recommendations of other Treaty Bodies, UPR and relevant UN bodies**

Similar to the case of the previous recommendations of the HR Committee, those of other Treaty Bodies, recommendations made in the UPR, Special Rapporteurs findings and other UN bodies can be referred to if they are of particular importance.

## **C. WHEN TO SUBMIT A NGO REPORT?**

As indicated in Part II, section A (page. 8), particular deadlines are set for the submission of NGO reports at each session, depending on which State reports are being reviewed and LOI/LOIPR are being adopted. The deadlines and detailed modalities on the submission of NGO reports are stated in the information note prepared by the Committee Secretariat for each session, which can be found on the Committee's website at the designated page for each session<sup>20</sup>.

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<sup>20</sup> To go to the page designated for specific session, please click the session number concerned from: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR)

## NGO report for LOI / LOIPR

NGO reports for the adoption of the List of Issues should be submitted before the HR Committee starts drafting the List of Issues. In practice this means that NGO information should be submitted at least ten weeks before the session at which the List of Issues will be adopted (a specific deadline will be set by the Secretariat for each session). Usually, NGOs are requested to submit their reports in electronic form by the indicated deadline, and to send 7 hard copies shortly afterwards.

## NGO report for the review of the State report

NGO reports for the review of the State report (dialogue between the State representatives and the HR Committee) should be submitted at least three weeks before the beginning of the session at which the review is scheduled to take place (a specific deadline will be set by the Secretariat for each session). Usually, NGOs are requested to submit their reports electronically and provide 7 hard copies by the indicated deadline.

### Indicative schedules for NGO reporting

	Deadline for NGO reports for LOI	Drafting of LOI by the Committee	Adoption of LOI by the Committee	Deadline for NGO reports for the review	Review of the State Report by the Committee
State reports scheduled to be reviewed at March session	April (at least 10 weeks before Committee's July session)	May	July (at Committee's July session)	February (3 weeks before Committee's March session)	March
State reports scheduled to be reviewed at July session	July (at least 10 weeks before Committee's October session)	August	October (at Committee's October session)	June (3 weeks before Committee's July session)	July
State reports scheduled to be reviewed at October session	December (at least 10 weeks before Committee's March session)	January	March (at Committee's March session)	September (3 weeks before Committee's October session)	October

The table above gives a rough indication of when NGOs should submit reports. Currently, there is usually a gap of one session between the adoption of the List of Issues and the review (e.g. for a state scheduled to be reviewed in March, the List of Issues will normally be adopted in July of the previous year<sup>21</sup>). State reports are considered in the order in which they are received by the Secretariat. This can lead to delays in reviewing a report if there is a backlog of reports awaiting consideration.

<sup>21</sup> HR Committee holds its sessions 3 times a year, in general in March, July and October.

## D. WHERE TO SEND A NGO REPORT?

NGO reports should be sent by post to:

**Kate Fox**

Secretary of the Human Rights Committee  
Human Rights Council and Treaty Bodies Division  
Office of the High Commissioner for Human Rights  
UNOG-OHCHR  
CH-1211 Geneva 10  
Switzerland

Electronic copy should be sent to:

**Kate Fox**

Secretary of the Human Rights Committee  
kfox@ohchr.org

**Sindu Thodiyil**

Human Rights Committee Administrative Assistant  
sthodiyil@ohchr.org

## E. CONFIDENTIALITY OF NGO REPORTS

Usually, NGO information submitted to the HR Committee is made public and posted on the OHCHR website. This means that the reports are also available to the States Parties. This should be borne in mind especially for NGOs coming from countries where civil society cannot work freely and is harassed by the authorities.

Under exceptional circumstances, the information sent by NGOs may be kept confidential and not posted on the OHCHR website. However if the State Party learns that such information has been submitted to the HR Committee and requests a copy, the Secretariat is not in a position to refuse the request.

NGOs should state clearly at the time of submission whether or not they wish their reports to be posted on the OHCHR website.

## PART IV: OVERVIEW OF THE SUBSTANTIVE PROVISIONS OF THE ICCPR AND RELATED ISSUES RAISED BY THE HR COMMITTEE

This section presents the substantive provisions of the ICCPR and the Committee's jurisprudence on these issues as shown in the reporting process and explored in the General Comments. Under each provision, the main issues raised by the HR Committee in relation to that article are indicated. The aim of this section is to give an overview of the different aspects of each provision, and the way they are addressed by the HR Committee. Information about each of these issues is therefore welcome in NGO reports, although not all aspects may be relevant in every State.

### 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.

This article is rarely addressed by the HR Committee and only in the context of specific situations where self-determination is already under discussion. When the issues concern indigenous peoples, it is sometimes linked to article 27 (rights of minorities).

#### Issues addressed under this article include:

- Legislation (including draft legislation) on the right of non-self-governing territories to secede.
- Organisation of referenda on self-governance or secession in non-self-governing territories
- Self-governance agreements with indigenous peoples
- Indigenous land rights, and consultation with indigenous peoples on the use of tribal land (article 27)
- Representation of indigenous peoples in government (articles 25 and 27)
- The State's relationship and agreements with indigenous peoples (article 27)

**General Comment 12** explains in greater detail what the HR Committee considers to be the State's obligations, including reporting obligations, under article 1. It highlights that States should report in detail on this provision and notes the positive obligation under paragraph 3 to promote the realisation of the right of self-determination.

**General Comment 11** (article 20 - prohibition of propaganda for war and advocacy of national, racial or religious hatred) is careful to clarify that the prohibitions in article 20 do not prohibit advocacy of the right of peoples to self-determination.

**General Comment 25** (article 25 - participation in public affairs and the right to vote) indicates the connection with article 25 as it provides for individual participation in public affairs which is necessary for the exercise of the rights to “freely determine their political status and to enjoy the right to choose the form of their constitution or government” required by article 1.

**General Comment 23** (article 27 - rights of minorities) notes that while articles 1 and 27 overlap with regard to the right to culture and way of life, particularly of indigenous peoples, they differ in that article 1 is explicitly a right of ‘peoples’ whereas article 27 is concerned with the rights of individuals belonging to a minority.

It is also important to note that the rights guaranteed by article 1 (because they are ascribed to peoples) cannot be grounds for a complaint under the first Optional Protocol, whereas the related (individual) rights in articles 25 and 27 are admissible under the individual communications procedure.

## **Article 2 (Non-Discrimination, Constitutional and Legal Framework within which the Covenant is Implemented, 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 paragraph 1 is closely linked with articles 3 (equal rights of men and women) and 26 (equality before the law) and these three articles are often mentioned together when dealing with discrimination. The three articles differ slightly in their scope and implications: article 2 only covers the rights guaranteed in the Covenant, but requires positive measures to guarantee these rights as well as respect for them without discrimination; article 3 is limited to discrimination on grounds of gender; and article 26 requires protection against any discrimination (not limited to the rights in the Covenant), but does not include the positive aspects contained in the other two articles. It is therefore important to read these three provisions together.

**General Comment 18** (non-discrimination) lays out the connections and differences between these articles and the references to non-discrimination in other provisions as well as providing the HR Committee's working definition of discrimination (see below). Since discrimination may affect the exercise of all rights these articles are frequently invoked and may be linked with any other article.

Article 2 paragraph 2 mainly deals with measures taken to implement the Covenant at the national level. It addresses the measures taken by the State to ensure the full implementation of the rights recognized in the Covenant, with a particular focus on positive measures. Counter-terrorism legislation is sometimes considered under article 2, paragraph 2 and article 4 (derogations) as the complexity of the issues and scope of some counter-terrorism laws have an impact on the exercise of a number of rights and affect the general conditions for implementing the Covenant. States may also be asked about counter-terrorism measures under other articles, particularly articles 9 (prohibition of arbitrary detention), 10 (conditions in detention) and 14 (judicial guarantees), when the rights in question are affected.

Article 2, paragraph 3 is closely linked to article 14 (right to equality before courts and tribunals and to a fair trial) as the guarantees and procedures provided for in that article are a necessary part of providing effective remedies. This paragraph also provides the grounds for the Committee to address the implementation of individual communications decided under the OP1.

### **Issues addressed under this article include:**

#### **2.1 (Non-discrimination):**

- Implementation of the Covenant throughout the State (including in overseas territories)
- Implementation of the Covenant in areas under the State's jurisdiction when troops or law enforcement personnel are deployed abroad
- Legislation prohibiting discrimination
  - ◊ Practical implementation of non-discrimination legislation
  - ◊ Training of police and law enforcement personnel and judges
- Equal pay for equal work
- Legislation allowing discrimination or exceptions to non-discrimination provisions
- Disproportionate numbers of individuals belonging to ethnic minorities in prisons and jails (articles 9, 10 and 14).
- Equality between members of the national religion (article 18)
- Representation and participation of minorities in public affairs (articles 25 and 27)
- Specific groups mentioned in the context of discrimination include:
  - ◊ Women (article 3)



- ◇ Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) (including the right to legal gender recognition)
- ◇ Ethnic or national minorities (article 27)
- ◇ Indigenous peoples (article 27)
- ◇ Illegal migrants and undocumented immigrants
- ◇ Refugees and asylum seekers
- ◇ Non-citizens/nationals
- ◇ Persons with disabilities
- ◇ Children born out of wedlock

## 2.2 (Constitutional and legal framework within which the Covenant is implemented):

- Reservations and Interpretive Declarations. The HR Committee routinely asks States Parties to review and consider withdrawing any reservations or interpretive declarations
- Incorporation of the Covenant in domestic legislation
- Compatibility of counter-terrorism legislation with the Covenant (articles 4, 9, 10, and 14)
- Compatibility of customary law with the Covenant
- Measures to ensure that new legislation is compatible with the Covenant and to revise incompatible legislation
- Status of the Covenant in domestic legislation (its precedence over domestic legislation, including the Constitution)
- Compatibility of national and regional laws with the Covenant, in particular in a federal context
- Case law on the invocation and use of the Covenant in domestic courts, including customary courts
- Existing or potential restrictions of the rights guaranteed in the Covenant due to a state of emergency or for “public welfare” (article 4)
- The establishment and/or mandate of an independent National Human Rights Institution in accordance with the Paris Principles
- Dissemination of and training on the Covenant
- Implementation of previous Concluding Observations

## 2.3 (Access to Effective Remedies)

- Ratification of the First Optional Protocol to the ICCPR (on Individual Communications)
- Follow-up to the HR Committee's Views on Individual Communications
- Ability of the National Human Rights Institution to investigate individual human rights violations
- Independence of the judiciary (article 14)
- Measures to ensure access to judicial processes for all (articles 14 and 27)
- Measures to enforce judgements (article 14)
- Procedures and cost of judicial remedies (article 14)
- Suspension of sentence for those condemned to death while appeals, including appeals to international mechanisms, are heard (articles 6 and 14)
- War Crimes trials, including cooperation with regional and/or international mechanisms
- Investigation and prosecution of those responsible for, and compensation for victims of, human rights violations during periods of unrest (armed conflict/coup d'état/military dictatorships/etc.), including those perpetrated by non-state actors

- Protection and support for victims and witnesses of human rights violations.
- Compensation for victims of terrorism
- Impunity or amnesty laws covering human rights violations
- Scope of applicability of the Covenant with respect to individuals under a State's jurisdiction but outside its territory.
- Accountability of the armed forces and law enforcement personnel within the State including when deployed abroad
- Legal avenues available in a State Party for victims of human rights abuses arising from companies operating abroad.

**General Comment 31** (the nature of the general legal obligation imposed on States Parties) covers all three paragraphs of article 2 and elaborates the HR Committee's understanding of the obligations of States in implementing the Covenant as well as the relationship between article 2 and the other provisions of the Covenant. In particular it stresses that States must "respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party". It clarifies that power and effective control includes "within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation". This General Comment reiterates the observation in **General Comment 15** (the position of aliens under the Covenant) that, except for specific provisions which explicitly limit the applicability of rights to citizens, the State is obliged to respect and ensure the rights guaranteed under the Covenant to all individuals "regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party".

It also discusses in detail the right to an effective remedy, how this relates to the individual communications procedure established by the First Optional Protocol and how the grant of amnesties or indemnities for violations of human rights negatively impacts, and may violate, this right. Paragraph 58 of **General Comment 32** (right to equality before courts and tribunals and to a fair trial) discusses the relationship between the right to an effective remedy and the right to have a conviction and sentence reviewed by a higher tribunal under article 14, paragraph 5. It establishes that the right to a remedy requires the right to appeal in criminal cases, but that this is not the only element of an effective remedy, which may be invoked independently if the proceedings violate specific rights under the Covenant.

Paragraph 14 of **General Comment 29** (article 4 - derogations during a state of emergency) emphasises that the right to an effective remedy is, in practice, non-derogable since it "constitutes a treaty obligation inherent in the Covenant as a whole. Even if a State Party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State Party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective."

**General Comment 18** (non-discrimination) gives the HR Committee's working definition of discrimination as "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 an equal footing, of all rights and freedoms" and emphasises the positive aspects of the non-discrimination provisions, stating that "the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination" and that the "enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance".

**General Comment 23** (article 27 - rights of minorities) carefully distinguishes between the specific rights of minorities in that article and the non-discrimination provisions. The HR Committee notes that the absence of discrimination on the grounds of ethnicity, language or religion does not mean that there are no ethnic, linguistic or religious minorities.

### Article 3 (Equal Rights of Men and Women)

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 3 is routinely linked with articles 2 (non-discrimination) and 26 (equality before the law) when dealing with discrimination. The three articles differ slightly in their scope and implications: article 2 only covers the rights guaranteed in the Covenant, but requires positive measures to guarantee these rights as well as respect for them without discrimination; article 3 is limited to discrimination on grounds of gender; and article 26 requires protection against any discrimination (not limited to the rights in the Covenant), but does not include the positive aspects of the other two articles.

**General Comment 18** sets out the connections and differences between these articles and their interaction with references to non-discrimination in other provisions as well as giving the HR Committee's working definition of discrimination. Since discrimination may affect the exercise of all rights these articles are frequently invoked and may be linked with any other article.

This article is commonly associated with articles 23 (right to a family) and 24 (rights of the child) for issues around equality in relation to marriage and family life. It is linked with article 7 (prohibition of torture) when dealing with domestic violence and with article 8 (prohibition of slavery) when discussing trafficking.

Issues addressed under this article include:

- Discrimination between men and women in legislation
- Status of women under customary or tribal law
- Steps to eliminate stereotypes which discriminate against women
- Equal pay for equal work
- Legislation on sexual harassment
- Protection and assistance for victims of gender based violence

- Legislation on rape (article 7)
  - ◊ Definition of rape, including marital rape
- Domestic violence (article 7)
  - ◊ Statistics on cases, penalties and compensation
  - ◊ Steps taken to encourage reporting of violence
  - ◊ Training for law enforcement officers not to dismiss this as a private matter
- Support services for victims of domestic violence
- Female Genital Mutilation (article 7)
- Trafficking (article 8)
- Measures to enhance access to justice for women (article 14)
- Discrimination in minimum age for marriage and in marriage arrangements (article 23)
- Unequal rights and privileges within marriage (article 23)
- Equality in divorce/separation arrangements, including on custody of children (article 23)
- Transmission of nationality to children (articles 16 and 24)
- School attendance by girls (article 24)
- Proportion of women in positions of responsibility in all levels of government and in private companies (article 25)
  - ◊ Measures to address the under-representation of women in these positions
  - ◊ Equal opportunities for women and men in the electoral process.

The relationship between article 3 and articles 2, paragraph 2 (non-discrimination) and 26 (equality before the law) is discussed in **General Comment 18** (non-discrimination). This General Comment gives the Committee's working definition of discrimination "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 an equal footing, of all rights and freedoms". The Committee emphasises the State's obligation to take affirmative action where this is necessary to diminish or eliminate conditions which cause or help to perpetuate discrimination.

**General Comment 28** (replacing General Comment 4) deals specifically with article 3. This also stresses the obligation to take "positive measures in all areas so as to achieve the effective and equal empowerment of women" and the need to consider traditional, historical, religious and cultural attitudes which may jeopardise the equality of the sexes. This General Comment goes on to discuss in detail some factors which may affect the enjoyment by women of specific rights guaranteed in the Covenant.

### **Article 4 (Derogations)**

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 is discussed alone or in connection with article 2 (constitutional and legal framework for the implementation of the Covenant) in the context of domestic legislation to guarantee non-derogable rights even in a state of emergency. When addressing States in which a state of emergency has been (or might have been) declared the HR Committee asks more specific questions about the protection of rights and links these questions to the relevant articles.

Counter-terrorism legislation is often mentioned in the context of article 4 when the legislation affects non-derogable rights or when terrorism is treated as an emergency situation and leads to greater restriction on the exercise of rights.

**Issues addressed under this article include:**

- Constitutional or other legal measures to limit potential derogations to those permissible under article 4
- Impact of counter-terrorism legislation on the rights guaranteed under the Covenant, including the definition of terrorism and terrorist acts
- Necessary conditions for declaring a state of emergency
- The process for declaring a state of emergency
- Limits and controls on the powers of the Head of State in an emergency situation
- Occasions on which an emergency has been declared

When a state of emergency has been declared the HR Committee may ask about:

- The scope of any derogations
- Safeguards to protect the rights guaranteed under the Covenant
- Cases where non-derogable (or non-derogated) rights have been violated and the investigation into these violations and punishment of the perpetrators

**General Comment 29** (replacing General Comment 5) elaborates the HR Committee's understanding of the conditions in which a state of emergency may be declared. It stresses that any derogations, and the measures taken following the derogations, have to be justified as strictly required by the exigencies of the situation. This General Comment lists the provisions which the HR Committee considers effectively non-derogable due to the requirements of the non-derogable provisions or to their status as fundamental norms of international law (*jus cogens*). These include: non-discrimination (re-enforced by article 4 paragraph 1); access to judicial or other remedies (article 2, paragraph 3); prohibitions on the taking of hostages, abduction or unacknowledged detention (article 9); that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person (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).

Although not directly relevant, **General Comment 24** (reservations to the Covenant or Optional Protocols or declarations under article 41 of the Covenant) is also of interest, particularly paragraph 10 which considers the legitimacy of reservations to article 4 itself and to the non-derogable provisions of the Covenant.

**General Comment 28** (article 3 - the equality of rights between men and women), paragraphs 6 and 7 note the particular vulnerability of women and stress the need to protect their fundamental rights to the same extent as those of men during a state of emergency.

### **Article 5 (Prohibition of Misuse and Savings Clause)**

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 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.

The HR Committee has not recently asked States about this article in the List of Issues. It is however touched upon in **General Comment 29** (article 4 - derogations during a state of emergency). Paragraph 3 deals with article 5, paragraph 1 and paragraph 9 with article 5, paragraph 2, explaining the impact of this article on derogations from the Covenant under article 4 and the State's continuing obligations during a state of emergency.

### **Article 6 (Right to Life)**

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 judgment 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 eighteen 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.

This article is frequently linked with articles 7 (prohibition of torture) and 9 (prohibition of arbitrary detention), since the same set of circumstances may lead to violations of all these provisions. The same is true of extrajudicial executions which may violate various provisions of the ICCPR, in particular articles 6, 7, 9 and 10 (conditions of detention).

Article 14 (right to equality before courts and tribunals and to a fair trial) is mentioned in the context of the use of the death penalty and the right to appeal a death sentence. Article 26 (equality before the law) is mentioned when an element of discrimination is present.

**Issues addressed under this article include:**

- Death Penalty
  - ◇ Ratification of the Second Optional Protocol to the Covenant on the abolition of the death penalty
  - ◇ Statistics on the number of death sentences (including those issued *in absentia*) disaggregated by age, gender, ethnicity and crime, the number carried out, the method of execution, number of sentences commuted or suspended and the number of convicts awaiting execution
  - ◇ Limitation on the scope of application of the death penalty to the “most serious crimes” (article 14)
  - ◇ Scope of mandatory death sentences
  - ◇ Effective system of appeals, with requests for retrial and pardon having a suspensive effect (article 14)
  - ◇ Legislation on commuting death sentences (article 14)
  - ◇ Application of the death penalty, which should not amount to torture / ill-treatment (article 7)
  - ◇ Possibility of imposing the death penalty for crimes committed when under eighteen years of age (articles 14 and 24)
  - ◇ Authority of customary courts to impose the death penalty (article 14)
- Deportations or returns to countries where the returnee may face the death penalty
- Extrajudicial executions
  - ◇ Investigations and their outcomes, including into deaths during past disturbances



- ◊ Compensation for the families of victims
- ◊ Particular vulnerability of street children (article 24)
- ◊ Practical measures to prevent extrajudicial executions
- Deaths in detention or police custody (article 10)
  - ◊ Investigations into all deaths in custody (including suicides)
  - ◊ Outcome of investigations
- Excessive use of force by law enforcement personnel or armed forces
- Disappearances
  - ◊ Investigations and compensation
- Measures to collect small arms held by the population
- Policing of blood feuds and vendetta violence
- Investigation and prosecution of lynchings of alleged criminals by neighbours or communities.
- Abortions
  - ◊ Exceptions to a prohibition of abortion for medical reasons or when the pregnancy results from rape
  - ◊ Impact of a complete prohibition on the maternal mortality rate
  - ◊ Availability of contraceptives and sex education to combat abortion and infectious disease
- Living conditions of vulnerable groups, including refugees, minorities and internally displaced persons (articles 12 and 27)
- Maternal mortality in rural areas.

In 2015, the Human Rights Committee started to draft a new General Comment (N° 36) on article 6. A first draft was discussed at the 113<sup>th</sup> session of the Committee in March 2015<sup>22</sup>. It is anticipated that this new General Comment will be adopted in 2017.

The current **General Comment on the article 6 (General Comment 6)** stresses that the right to life should not be interpreted too narrowly. It asserts the State's "supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life" (re-iterated in **General Comment 14** which discusses article 6 in the context of nuclear weapons) connecting this with the prohibition of advocacy for war in article 20.

**General Comment 6** repeatedly emphasises the necessity of taking positive measures (for instance to reduce infant mortality and eliminate epidemics).

This General Comment also mentions the need to take specific and effective measures to prevent disappearances (since these are often associated with arbitrary deprivation of life). It highlights the extension of the prohibition of arbitrary deprivation of life to the State's security forces and the safeguards that this necessitates.

With regard to the death penalty, the Committee stresses that the article "refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable". It emphasises that in States which retain the death penalty, its use must be exceptional and restricted to the "most serious crimes" and that all the procedural guarantees contained in national law and the ICCPR must be assured as well as the specific right to seek pardon or commutation of the sentence.

<sup>22</sup> See the Draft prepared by Yuval Shany and Nigel Rodley, Rapporteurs, UN Doc. CCPR/C/GC/R.36/Rev.2. [http://www.ohchr.org/Documents/HRBodies/CCPR/Draft\\_GC\\_115thsession.doc](http://www.ohchr.org/Documents/HRBodies/CCPR/Draft_GC_115thsession.doc)

Paragraph 10 of **General Comment 28** (article 3 - the equality of rights between men and women) notes the importance of including information in State reports on: birth-rate, infant mortality rate (disaggregated by gender), birth and pregnancy related deaths, measures to prevent unwanted pregnancies and to ensure that women do not have to undergo life-threatening clandestine abortions, as well as information on practices violating the right to life for women and the impact of poverty and deprivation.

**General Comment 32** (article 14 - right to equality before the courts and tribunals and to a fair trial) discusses the procedural guarantees in article 14 and notes their particular importance in relation to trials which may result in a death sentence.

### Article 7 (Prohibition of Torture)

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.

This article is closely linked with articles 6 (right to life) and 9 (prohibition of arbitrary detention), since the same set of circumstances may lead to a violation of all these provisions. Articles 9 and 10 (conditions of detention) are connected to this provision because the safeguards they provide are necessary for the effective implementation of the prohibition of torture. Articles 2 (non-discrimination) and 26 (equality before the law) are mentioned when there is an element of discrimination or targeting of one group.

#### Issues addressed under this article include:

- Legislation specifically prohibiting torture
- Availability of rehabilitation and compensation for victims
- Prohibition of the use of statements obtained through torture or ill-treatment in judicial processes (articles 10 and 14)
- Torture or ill-treatment of detainees (article 10)
  - ◇ Statistics on the number of incidents, disaggregated by age, gender, and ethnic origin of the victims and resulting prosecutions and punishment of perpetrators
  - ◇ Independent investigations into all allegations of torture and ill-treatment of detainees
  - ◇ Problems which discourage victims from reporting torture and ill-treatment and measures to address these problems and encourage reporting
  - ◇ Use of solitary confinement for extended periods
  - ◇ Interrogations procedures including the permissible duration of interrogations
  - ◇ Indefinite detention
- Guarantees against deportation to a country where the individual may be exposed to violations of article 7, including by non-state actors
  - ◇ Reliance on diplomatic assurances when returning suspected terrorists to states where torture is alleged to occur
  - ◇ Use of tranquilizers or sedatives during removal or repatriation operations.
- Controls on excessive use of force by law enforcement personnel and armed

forces

- Domestic violence (article 3)
- Legislation
  - ◊ Training so that this is not dismissed as a purely private matter
  - ◊ Measures to encourage reporting of violence
  - ◊ Measures to protect and assist victims of gender based violence (article 3)
- Female Genital Mutilation (article 3)
- Coercive sterilisation (article 3)
- Corporal punishment
- Ill-treatment of elderly people in some long term care homes
- Non-therapeutic experimentation on mentally ill persons or persons with impaired decision making capacity, including minors
- Exceptions to the requirement of informed prior consent for the use of experimental drugs
- Investigation, prosecution and punishment of the perpetrators of lynchings

**General Comment 20** (replacing General Comment 7) stresses that the purpose of this article is “to protect both the dignity and the physical and mental integrity of the individual” and notes that this includes mental suffering as well as physical pain.

The absolute nature of the prohibition of torture is emphasised in several ways: the text of the article itself does not allow any exception to the prohibition of torture and this provision may not be derogated from under any circumstances; that “it is the duty of the State Party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity”; “that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority”; that statements obtained by torture should not be admissible in judicial proceedings; and that the granting of amnesties for acts of torture is generally incompatible with the State’s duty to “investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future”. The right to an effective remedy is also emphasised, a point which is repeated in **General Comment 32** (right to equality before courts and tribunals and to a fair trial).

This General Comment also defends the absence of a definition of torture in the Covenant or General Comment, as the distinctions between permitted and prohibited acts depend on the “nature, purpose and severity of the treatment”.

States are reminded that this article prohibits medical or scientific experimentation without the free consent of the person concerned and notes that special protection is needed for those not capable of giving valid consent and those in any form of detention or imprisonment.

The General Comment also discusses the inclusion of corporal punishment under this article; the implementation of the death penalty; the obligation to “not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement”; the safeguards necessary for the prevention of torture in places of

detention (also discussed in **General Comment 21** (article 10 - humane treatment of persons deprived of their liberty)); and the obligation to inform detainees of their right to a remedy for violations of this article.

Paragraph 11 of **General Comment 28** (article 3 - the equality of rights between men and women) highlights the Committee's opinion that domestic violence, rape, forced abortions, compulsory sterilisation and female genital mutilation can be considered acts of torture and so included under this article.

### Article 8 (Prohibition of Slavery)

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;

(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.

This article is associated with article 24 (rights of the child) when dealing with child labour and with article 3 (equal rights of men and women) when dealing with trafficking. Other articles are mentioned more rarely.

#### Issues addressed under this article include:

- Legislation prohibiting slavery or forced labour
- Trafficking (article 3)
  - ◊ Legislation
  - ◊ Prosecutions, penalties, and compensation for victims
  - ◊ Criminalisation of victims
  - ◊ Identification of victims
  - ◊ Protection and assistance, including rehabilitation, for victims
  - ◊ Targeting of those using the services of trafficked persons as well as the traffickers
  - ◊ Involvement of authorities in trafficking and links between criminal groups involved in trafficking and the State authorities
  - ◊ Training programmes for professionals who are implementing measures to combat trafficking

- Working conditions of domestic labourers
- Measures to ensure women engaged in prostitution are not subjected to contemporary forms of slavery, including debt bondage
- Measures to end the abduction of women and children
  - ◊ Return and reintegration of abducted children (article 24)
- Sexual exploitation and abuse of children (article 24)
- Child labour
  - ◊ Minimum age for employment
- Measures to prevent the recruitment of children into the armed forces
  - ◊ Demobilisation of children recruited by parties to conflicts
- Labour performed by detainees (article 10)
  - ◊ Types of labour permitted and conditions of work
  - ◊ Hiring out of prisoners to private enterprises for labour. Measures to ensure this work is voluntary and that prisoners receive compensation

There is no General Comment dealing specifically with this article. However, paragraph 12 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the obligation to protect women and children, including aliens, from trafficking and contemporary forms of slavery, including domestic service. It may also be worth considering the Concluding Observations of the Committee on the Rights of the Child, particularly on the two Optional Protocols to the CRC on the issue of child labour.

### **Article 9 (Prohibition of Arbitrary Detention)**

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.
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.

This article is commonly linked with articles 10 (conditions of detention), 6 (right to life) and 7 (prohibition of torture) since arbitrary detention is often associated with incommunicado or secret detention and facilitates the perpetration of abuses prohibited by those articles. It is associated with article 14 (right to equality before courts and tribunals and to a fair trial) as those guarantees are necessary for the effective implementation of the remedies mentioned in this article. It may also be linked to articles 12 (freedom of movement), 13 (right to remain in a State) and 26 (equality before the law) when issues around the detention of foreigners, particularly asylum seekers and refugees are discussed.

**Issues addressed under this article include:**

- Legislation prohibiting arbitrary detention and safeguards against arbitrary detention, including by security forces
- Guarantees for suspects under counter-terrorism legislation
- Access to judicial review of the lawfulness of detention
- Case law on granting compensation for unlawful detention
- Independent investigation of detention centres and complaints (article 10)
- Steps taken to inform detainees of their rights (article 10)
- Access to a lawyer (article 10)
- Access to doctors and family (article 10)
- Incommunicado detention
- Disappearances
- National registers of persons detained, including details of where they are held, accessible to relatives and lawyers (article 10)
- Secret places of detention or detention centres not under the jurisdiction of civil prosecution services
- Pre-trial detention (article 14)
  - ◊ Limits on the duration of pre-trial detention and procedures for extending the period
  - ◊ Transfer of suspects from one police station to another to extend the period before they must be brought before a judge
  - ◊ Alternatives to pre-trial detention/police custody
- Limits on the duration of detention without charges, including under counter-terrorism legislation
- Possibility of continued detention after a sentence has been served
- Detention of asylum seekers and irregular migrants
  - ◊ Prompt provision of information on the reasons for detention
  - ◊ Prompt provision of information of rights
  - ◊ Access to legal aid
- Arbitrary arrest and detention of people who are homeless, beggars, people who use drugs, street children and sex workers

**General Comment 35** (article 9 – liberty and security of person) was adopted in 2014. It replaces general comment 8 adopted in 1982. In its **general remarks**, the Committee recalls that Article 9 recognizes and protects both the liberty and security of the person.



Paragraphs 2 to 5 of article 9 set out specific safeguards for the protection of liberty and security of the person. Some of the provisions of article 9 (part of paragraph 2 and the whole of paragraph 3) apply only in connection to criminal charges. But the remainder, in particular the important guarantee laid down in paragraph 4, i.e. the right to review by a court of the legality of detention, apply to all persons deprived of their liberty.

Liberty of the person concerns “freedom from confinement of the body not a general freedom of action”, as well as “more severe restriction of motion within a narrower space than mere interference with liberty of movement under article 12”. Security of the person concerns “freedom from injury to the body and the mind, or bodily and mental integrity”, regardless of whether “the victim is detained or non-detained”. The **second part** of the General Comment deals with the question of arbitrary detention and unlawful detention, noting that the right to liberty is not absolute. However, arrests should not be arbitrary and “must be carried out with respect for the rule of law”. The **third part** of the General Comment refers to “notice of reasons for arrest and any criminal charges”. It recalls that the second paragraph of article 9 “imposes two requirements for the benefit of persons who are deprived of liberty. First, they shall be informed, at the time of arrest, of the reasons for the arrest. Second, they shall be promptly informed of any charges against them.” The **fourth part** deals with “judicial control of detention in connection with criminal charges”, clarifying the requirement set out in the paragraph 3, which applies to persons “arrested or detained on a criminal charge” and those “awaiting trial” on a criminal charge. The Committee notes that this paragraph applies in connection “with ordinary criminal prosecutions, military prosecutions and other special regimes directed at criminal punishment”. The Committee also provides detail on the meaning of a “prompt” presentation before a judge (noting that a delay longer than 48 hours must remain absolutely exceptional). It is also recalled that “detention in custody of persons awaiting trial shall be the exception rather than the rule”. **Parts V and VI** of the General Comments deal with “proceedings for release from unlawful or arbitrary detention” and the “right to compensation for unlawful or arbitrary arrest or detention”. Finally, **the last part** of the General Comment clarifies the relationship between article 9 and other relevant provisions of the Covenant, in particular with **articles 7 and 10, 12, 14 and 24**. It states that “arbitrary detention creates risks of torture and ill-treatment, and several of the procedural guarantees in article 9 serve to reduce the likelihood of such risks. Prolonged incommunicado detention violates article 9 and would generally be regarded as a violation of **article 7**.” Moreover, **article 10** of the Covenant, which addresses conditions of detention for persons deprived of liberty, complements article 9, which primarily addresses the fact of detention.

### **Article 10 (Conditions of Detention)**

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.

This article is frequently grouped with articles 6 (right to life), 7 (prohibition of torture) and/or 9 (prohibition of arbitrary detention) as the safeguards contained in article 10 are an important element in preventing violations of those articles. It is also linked with article 14 (right to equality before courts and tribunals and to a fair trial) as an impartial judiciary and judicial oversight are necessary to guarantee all these rights.

**Issues addressed under this article include:**

- Living conditions in detention, including in pre-trial detention and migrant holding centres
  - ◊ Overcrowding
  - ◊ Disease
  - ◊ Inadequate or obsolete structures
  - ◊ Insanitary conditions
  - ◊ Malnutrition
  - ◊ Violence by prisoners
- Detention conditions and guarantees for terrorist suspects
- Living conditions in immigration detention centres and for those awaiting deportation (articles 6, 9 and 12)
- Separation of accused persons from convicted persons
- Status of detainees awaiting the decision of an appeal
- Separation of juveniles from adult detainees (article 24)
- Conditions in juvenile detention centres (article 24)
- Education and rehabilitation facilities for juveniles (article 14)
- Separation of detained asylum seekers from other detainees
- Torture and ill-treatment of detainees (article 7)
  - ◊ Prohibition of torture and ill-treatment
  - ◊ Prohibition on the use of statements obtained by torture in judicial proceedings (article 14)
  - ◊ Conditions for the admissibility of complaints of ill-treatment
  - ◊ Evidence needed to prove torture
  - ◊ Corporal punishment
  - ◊ Criteria for imposing punishments or restraints on prisoners
- Use of solitary confinement, particularly for extended periods
- Use of solitary confinement, as a disciplinary method
- Independent inspections of detention centres and complaints mechanisms (article 9)
- Independent investigation of all deaths in custody (article 6)
- Awareness of the complaints mechanism among detainees
- NGO and National Human Rights Institutions access to detention centres
- Length of pre-trial detention (articles 9 and 14)
- Centralised register of all detainees and their place of detention (article 9)
- Contact with families (article 9)
- Access to medical assistance (article 9)
- Access to legal assistance (article 14)

- Duration of interrogations and audio-visual recording of interrogations
- Alternatives to detention and training for judges on these alternatives
- Training of guards on human rights obligations
- Protection of patients from abuse in residential health institutions, particularly those dealing with mental health
- Treatment of elderly in long term care homes

**General Comment 21** (replacing General Comment 9) notes that article 10, paragraph 1 applies to “any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere. States Parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.” **General Comment 15** (the position of aliens under the Covenant) emphasises that the safeguards in this article also apply when non-nationals are detained as part of an expulsion procedure.

**General Comment 21** also notes that “treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State Party. This rule must be applied without distinction of any kind”. **General Comment 29** (article 4 - derogations during a state of emergency), paragraph 13(a), corroborates this by suggesting that this provision is effectively non-derogable since it expresses a peremptory norm of international law. **General Comment 21** also asserts that persons deprived of their liberty should “enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment”. The guarantee of the rights of detainees is repeated in other General Comments, notably **General Comment 22** (articles 18 - freedom of thought, conscience and religion) and 25 (article 25 - electoral rights). **General Comment 25** (article 25 - participation in public affairs and the right to vote) asserts that “if conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence” and that “persons deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote”.

**General Comment 21** points out that State reports should include information on the application and review of the legislation and procedures governing detention; training of personnel who have authority over persons deprived of their liberty; measures to ensure the education and rehabilitation of convicted persons; detailed information on the operation of the penitentiary system; the implementation of the relevant United Nations Standards; and the juvenile detention system.

The need to ensure that detainees are not subject to torture or cruel, inhuman or degrading treatment or punishment is mentioned in both this General Comment and **General Comment 20** (article 7 - prohibition of torture or cruel, inhuman or degrading treatment or punishment).

Issues around the treatment of children are dealt with in **General Comment 17** (article 24 - rights of the child). This General Comment mentions that States should specify in their reports at what age a child is considered adult for the purposes of article 10, paragraphs 2 and 3 and notes that this age should not be set too low. **General**

**Comment 32** (article 14 - right to equality before the courts and tribunals and to a fair trial) emphasises that the age of criminal responsibility should take into account their physical and mental immaturity. However, General Comment 21 mentions the HR Committee's opinion that "article 6, paragraph 5 [prohibition of the death penalty for under eighteens] suggests that all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice".

Paragraph 15 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses safeguards and provisions for female prisoners.

### **Article 11 (Imprisonment for Failure to Fulfil a Contractual Obligation)**

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

This article is rarely addressed and questions usually focus on specific laws which may violate this provision.

#### **Issues addressed under this article include:**

- Legislation prohibiting imprisonment for inability to fulfil a contractual obligation
- Arbitrary arrests for failure to fulfil a contractual obligation (article 9)
- Imprisonment for debt
- Number of detainees covered by this provision (article 10)

There is no General Comment dealing with this article.

### **Article 12 (Freedom of Movement)**

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.

This article is commonly associated with article 13 (right to remain in a territory), as both provisions are frequently mentioned in relation to the rights of immigrants and the detention and expulsion of asylum seekers. Articles 2 (non-discrimination) and 26 (equality before the law) are mentioned when restrictions on movement are applied to specific groups and so are discriminatory.

#### **Issues addressed under this article include:**

- Possibility of, and criteria for, imposing restrictions on the right to leave the country
- Mandatory registration of place of residence

- Exit visas
- Requirement of local registration for access to rights
- Internally Displaced Persons (IDPs)
  - ◊ Efforts to create conditions for the voluntary, safe, and dignified return of IDPs
  - ◊ Integration of IDPs
  - ◊ Humanitarian access to displaced persons
  - ◊ Protection and assistance for those returning and to ensure sustainability of returns
  - ◊ Equal return of minorities (articles 2, 26 and 27)
  - ◊ Guarantees of security and freedom of movement for displaced persons
  - ◊ Access to personal documents enabling them to seek employment
  - ◊ Access to education, health, and social services
  - ◊ Discrimination against displaced minorities
- Legal framework regulating evictions and forced evictions (article 17)
- Forced displacement
- Restrictions on where refugees can stay and travel
- Integration of refugees

**General Comment 27** notes that, in principle, citizens of a State are always lawfully within the territory of that State, but that whether or not a non-national is lawfully within the territory of the State is governed by domestic law. However, “an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of article 12”. **General Comment 15** (the position of aliens under the Covenant) also notes “consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State Party they are entitled to the rights set out in the Covenant”. This General Comment adds that “in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise”. Paragraph 13(d) of **General Comment 29** (article 4 - derogations during a state of emergency) notes that the legitimate right to derogate from article 12 may not be used to justify the “forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present” since this is recognised as a crime against humanity by the Rome Statute of the International Criminal Court. The State is therefore asked to indicate any circumstances in which aliens lawfully within the State are treated differently from nationals and the justifications for this difference in treatment.

**General Comment 27** discusses in detail the restrictions that may and may not be imposed under paragraph 3 (including noting that special conditions apply to persons in detention), particularly that these restrictions must be provided for by law and that such legislation should establish the conditions under which the rights may be limited. This general comment highlights the obligation to report on and justify as necessary and compatible with the rights guaranteed under the Covenant all legal, administrative and practical restrictions on freedom of movement. It stresses that “the Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one’s own country could be reasonable. A State Party must not, by stripping a person of nationality or by expelling an individual to a third

country, arbitrarily prevent this person from returning to his or her own country”.

Paragraph 16 of **General Comment 28** (article 3 - the equality of rights between men and women) further discusses the particular restrictions sometimes imposed on, or which discriminate against, women.

Finally the HR Committee discusses the meaning of “his own country” in paragraph 4 of **General Comment 27**, emphasising that this is a broader term than “country of his nationality” and should be recognised as such.

### Article 13 (Right to Remain in a State)

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.

This article is commonly associated with article 12 (freedom of movement), as the two provisions interact, particularly in relation to the detention and deportation of immigrants and asylum seekers. Articles 2 (non-discrimination) and 26 (equality before the law) are also mentioned when deportations have a discriminatory aspect. It is also connected with article 14 (right to equality before courts and tribunals and to a fair trial) as the safeguards contained in that article are necessary for the effective review of cases.

#### Issues addressed under this article include:

- Criteria under which a person may be expelled/deported
- Possible separation of families due to expulsion or deportation of non-national parents when a child has nationality (articles 23 and 24)
- Asylum and refugee applicants:
  - ◇ Access to an effective and independent review of rejected applications and expulsion or deportation orders
  - ◇ Suspension of expulsion/deportation orders during an appeal
  - ◇ Provision of information on rights and the possibilities for appealing a decision
  - ◇ Access to legal assistance (article 14)
  - ◇ Mass expulsions/deportations
  - ◇ Conditions of those awaiting expulsion/deportation or decision on asylum applications (article 10)
  - ◇ Discrimination in asylum proceedings (article 2)
  - ◇ Guarantees against expulsion or deportation to countries where rights guaranteed by the Covenant, particularly articles 6 and 7, may be violated

There is no General Comment specifically dealing with this article, but **General Comment 15** (the position of aliens under the Covenant), paragraphs 9 and 10, stress that this article is “applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise”. It also observes that, although this article only protects aliens lawfully in the territory of the State, in situations where the legality of an alien’s entry or stay is in dispute, “any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13” and it is not permissible to discriminate between different categories of aliens.

It further identifies the prevention of arbitrary expulsions as one aim of this article, observing, in particular, that the requirement that each alien has a decision in his own case acts as a prohibition of collective or mass deportations, and is reinforced by the right to submit arguments against expulsion and to have the decision reviewed.

It notes that if expulsion procedures entail detention, the safeguards of the Covenant relating to deprivation of liberty (articles 9 (prohibition of arbitrary detention) and 10 (conditions of detention)) are also applicable. States are reminded that “normally an alien who is expelled must be allowed to leave for any country that agrees to take him”.

Paragraph 17 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the equality of men and women in the enjoyment of these rights.

**General Comment 32** (right to equality before courts and tribunals and to a fair trial) considers this article in the light of the procedural guarantees of article 14 and notes that “insofar as domestic law entrusts a judicial body with the task of deciding about expulsions or deportations, the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, and the principles of impartiality, fairness and equality of arms implicit in this guarantee are applicable. All relevant guarantees of article 14, however, apply where expulsion takes the form of a penal sanction or where violations of expulsion orders are punished under criminal law.”

### **Article 14 (Right to equality before courts and tribunals and to a 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 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** is often linked with articles 9 (prohibition of arbitrary detention) and 10 (conditions of detention) as the judicial guarantees in this article are necessary for, and closely associated with, the guarantees and oversight in those provisions. It is linked with article 7 (prohibition of torture) as both include issues related to the use of evidence or confessions obtained through torture.

**Issues addressed under this article include:**

- Independence and impartiality of the judiciary
  - ◊ Regulations governing the tenure, appointment, dismissal and disciplining of members of the judiciary
- Sufficient numbers of district court judges within the State territory
- Transparency and accountability of public institutions including the judiciary
- Prosecutions and convictions of judicial officials for corruption
- Processing time of cases
- Clarity in the calculation of court fees
- Budget allocated to the judiciary
- Lack of court translators and interpreters
- Guarantees of access to legal assistance and the implementation of this in practice
  - ◊ Discrimination in the provision of legal aid
  - ◊ Legal assistance for non-citizens, including asylum seekers and immigrants



- ◊ Length of detention without access to a lawyer
- ◊ Restrictions on consultations with a lawyer
- Presence of a lawyer and audio-visual recording of interrogations
- Right to defend yourself in person (without a lawyer)
- Accessibility of justice system to all, including minorities
- Guarantees on the 'equality of arms' between the defence and prosecution in court, including access to relevant documentation and examination of witnesses
- Basing of convictions on confessions
- Openness of court proceedings to the public, including local and international human rights monitors
- Enforcement of judicial decisions
- Trials *in absentia* (including informing the suspect and the right to a re-trial)
- Combined trials
- Juvenile justice (article 24)
- Special courts, including military courts
- Exceptional circumstances in which derogation from regular judicial procedures is permitted
- Jurisdiction of customary courts
  - ◊ Right to legal assistance in customary courts
  - ◊ Right to have cases transferred to a standard court
- Prompt provision of information to detainees on their rights (article 10)
- Awareness of the right to appeal and the mechanisms for doing so
- Legal guarantees of the presumption of innocence
- Length of custody and/or detention before the detainee must be presented before a judge
- Length of preventative detention
- Effect of counter-terrorism legislation and guarantees for terrorist suspects

**General Comment 32** (replacing General Comment 13) defines the HR Committee's understanding of the terms used and discusses in detail what the safeguards and provisions of article 14 require in practice. It is strongly recommended to consult the relevant paragraphs when discussing violations of article 14.

Paragraphs 1-6 discuss article 14 in general terms and emphasise that these guarantees must be respected regardless of legal tradition or domestic law. States are reminded that they should report on all the guarantees contained in the provisions. Although this article is not listed in article 4 as non-derogable, any derogation must not exceed the strict requirements of the situation and must not have the effect of circumventing any of the non-derogable rights listed in article 4 (reiterated in paragraph 15 of **General Comment 29** (article 4 - derogations during a state of emergency)).

The first sentence of article 14, paragraph 1 is considered in detail by paragraphs 7-14 of General Comment 32. The right to equality before tribunals or courts applies to "any judicial body entrusted with a judicial task under domestic law" and includes "equal access and equality of arms". Paragraph 1 also guarantees that the parties to the "proceedings in question are treated without any discrimination". The right of access to justice through courts or tribunals "is not limited to citizens of States parties, but must also be available to all individuals [...] who may find themselves in the territory or subject to the jurisdiction of the State Party". States are encouraged to facilitate this access by providing "free legal aid in other cases, for individuals who do

not have sufficient means to pay for it". Similarly access must not be inhibited by the "the imposition of fees on the parties to proceedings that would *de facto* prevent their access to justice". Equality before courts also requires that "similar cases are dealt with in similar proceedings".

Paragraphs 15-21 deal with the second sentence of paragraph 1, and start by defining 'criminal charges' (15) and a 'suit at law' (16) while paragraph 17 explains the circumstances in which access to a court is not required.

Paragraph 18 gives the meaning of 'tribunal' as "a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature" and notes that "any criminal conviction by a body not constituting a tribunal is incompatible with this provision. Similarly, whenever rights and obligations in a suit at law are determined, this must be done at least at one stage of the proceedings by a tribunal within the meaning of this sentence."

The requirement that a tribunal be competent, independent and impartial is an absolute right that is not subject to any exception and has a bearing on the functioning of the judiciary.

Paragraphs 22 to 24 of the General Comment consider the application of article 14 in relation to special courts, including military and religious courts as well as customary courts. Article 14, paragraph 2 is discussed in paragraph 30, while **General Comment 21** (article 10 - humane treatment of persons deprived of their liberty) notes the close connection between the separation of accused and convicted persons with the presumption of innocence.

Paragraph 3 and its sub-paragraphs are covered by paragraphs 31-41 of the General Comment, defining the terms and expanding on the implications of these obligations

Paragraphs 58-65 discuss the relationship between article 14 and other provisions of the ICCPR, notably: articles 2, paragraph 1 (non-discrimination), article 3 (equal rights of men and women), article 26 (equality before the law); article 2, paragraph 3 (access to effective remedies); article 6 (right to life); article 7 (prohibition of torture); article 9 (prohibition of arbitrary detention); article 13 (right to remain in a State); articles 12 (freedom of movement) and 19 (freedom of expression); and article 25 (electoral rights).

Paragraph 18 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses matters specifically relating to women's access to justice.

## Article 15 (Non-retroactivity of laws)

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.

The HR Committee rarely asks about this article except in the context of specific laws which appear to be retroactive.

There is no General Comment dealing specifically with this article. However, paragraph 15 of **General Comment 29** (article 4 - derogations during a state of emergency) notes that procedural and judicial guarantees including those of this article may not be derogated from or adjusted in such a way as to amount to a derogation of non-derogable rights.

## Article 16 (Recognition as a Person before the Law)

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

This article is rarely addressed, but is sometimes connected with articles 24 (rights of the child) and 27 (rights of minorities) as birth registration and access to identity documents are occasionally mentioned under those articles and are necessary for the practical implementation of this article.

### Issues addressed under this article include:

- Birth registration (article 24)
- Inclusion of members of indigenous populations in the civil registry (articles 24 and 27)
- Access to personal identity documents (articles 2 and 26)

There is no General Comment dealing with this article, but the observations in paragraphs 7 and 8 of **General Comment 17** (article 24 - rights of the child) on the right of every child to be registered and have a name and the right to acquire a nationality may be relevant. Paragraph 19 of **General Comment 28** (article 3 - the equality of rights between men and women) notes that this provision implies the capacity of women to own property, to enter into a contract or to exercise other civil rights. It also notes the need to provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.

## Article 17 (Right to Privacy)

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, 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 17 is commonly linked with articles 18 (freedom of thought, conscience and religion), 19 (freedom of expression), and 21 (freedom of assembly), because the safeguards this article provides are necessary for the free exercise, in practice, of those rights.

### Issues addressed under this article include:

- Legislation on monitoring of communications and the permitted duration of such measures
- Illegal monitoring of communications and surveillance
- Remedies for misuse and abuse of monitoring of communications
- Judicial control and independent overview of monitoring of communications, including outside of the national territory
- Counter-terrorism powers affecting this article
- Possibility of search without a warrant
- Right not to have data collected
- DNA testing to control and restrict family reunification (article 23)
- Consideration of the right to privacy and family life when the criminal conviction of an alien is accompanied by an expulsion order

**General Comment 16** emphasises that the State has a duty to protect individuals from undue interference both by the State and its officials and by other natural and legal persons. To this end the State report should contain information on both the law (including on access to remedies and case law on these matters) and the practice. The General Comment goes on to consider some of the restrictions and safeguards necessary for the implementation of this right in practice, while acknowledging that 'family' and 'home' have different meanings in different contexts.

The General Comment explains the inclusion of the term 'arbitrary interference' as "intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances".

Finally the General Comment discusses the regulation of "gathering and holding of personal information on computers, data banks and other devices" and stresses the right of the individual to know what information about him or her is held and who has access to it.

**General Comment 22** (article 18 - freedom of thought, conscience or religion) observes that together this article and paragraph 2 of article 18 provide that "no one can be compelled to reveal his thoughts or adherence to a religion or belief".

**General Comment 28** (article 3 - the equality of rights between men and women) paragraph 20 notes specific areas, particularly reproductive rights, in which women frequently suffer violations of the right to privacy.

### 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.

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.

This article is frequently associated with articles 17 (right to privacy) and 19 (freedom of expression) because those provisions are related to the ability to manifest one's religion or belief. It is linked with articles 2 (non-discrimination), 20 (prohibition of propaganda for war and advocacy of national, racial or religious hatred) and 26 (equality before the law) as these provide guarantees against discrimination or violence on the grounds of religion.

It should also be remembered that religious minorities are specifically protected under article 27.

#### Issues addressed under this article include:

- Registration of religions (including any restrictions on the groups that can register)
- Status of religious groups
- Consequences of non-recognition of religions or places of worship
- Guarantees of the right to change religion (including apostasy)
- Restrictions on the criminalisation of conversions
- Measures discriminating against some religions or religious manifestations
  - ◊ Restrictions on the use of religious symbols in public
- Authorisation of religious ministers to perform civil wedding ceremonies
- Implicit or explicit requirements to accept the State religion in order to hold a public office (including in the judiciary)
- Promotion of religious tolerance
- Measures to combat acts of religious intolerance
- Protection of places of worship
- Discrimination against children not attending religious classes

- Prohibition of religious teachings
- Subsidisation of a State religion
- Conscientious objection to military service
  - ◊ Imprisonment for failure to discharge compulsory military service (article 9)
  - ◊ Availability of a non-punitive alternative service
  - ◊ Taxation of conscientious objectors
  - ◊ Preferential treatment of specific religions in granting exemptions from military service

**General Comment 22** emphasises the broad scope of the freedoms of thought, conscience and religion or belief, encompassing freedom of thought on all matters and including “theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief” and of possible manifestations of religion or belief. The HR Committee emphasises that article 18 “does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. [...] In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief”.

The freedom to manifest a religion or belief, in contrast, may be limited, but only on the grounds specified in paragraph 3 and article 20 (prohibition of propaganda for war and advocacy of national, racial or religious hatred). The HR Committee emphasises that restrictions on other grounds may not be imposed “even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security”.

The General Comment points out that the recognition of a State religion or the existence of a majority religious group “shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers” and notes various specific forms that such discrimination may take. The rights of religious minorities are also covered by article 27 (rights of minorities).

**General Comment 19** (article 23 - the family) notes that while legislation on marriage should allow both religious and civil ceremonies “for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the Covenant”

Paragraph 21 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the equality of men and women and notes that freedom of thought, conscience and religion cannot be used to justify the infringement of other rights guaranteed under the Covenant.

Finally, in **General Comment 22**, the HR Committee declares that a right to conscientious objection to military service can be derived from article 18 “inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief”. It also requires that “when this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service”. States should therefore report on the conditions under



which persons may be exempted from military service and on the nature and length of alternative national service. **General Comment 32** (right to equality before courts and tribunals and to a fair trial) also deals with conscientious objection, specifically noting that the principle of '*ne bis in idem*' (paragraph 7 of article 14) prohibits the repeated punishment of conscientious objectors for a refusal to perform military service.

### Article 19 (Freedom of 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.

This article is often associated with article 18 (freedom of thought, conscience and religion) as it is linked to the expression or manifestation of those beliefs. It is also frequently linked with articles 21 (freedom of assembly) and 22 (freedom of association) as these too reflect the manifestation of beliefs and opinions, the guarantees provided in this article are necessary for the full exercise of those rights.

#### Issues addressed under this article include:

- Implementation of legislation on freedom of expression
- Guarantees, including judicial mechanisms, of freedom of expression
  - ◊ Incidents of threats and attacks against journalists
  - ◊ Censorship of journalists, including self-censorship
  - ◊ Blocking of information critical to the government
- Restrictions on freedom of expression
  - ◊ Restrictions because of the fear of terrorism
  - ◊ Definitions of crimes such as incitement to terrorism and case law for these offences
  - ◊ Application (and consistency of application) of laws on incitement to racial hatred (article 20)
- Access to the Internet
- Legislation on libel and defamation, including exceptions for public figures
- Existence of non-state controlled media
- Equal access to the media for opposition officials and those critical of the government
- Measures to protect places of worship belonging to minorities and to provide safe access to those places (articles 18 and 20)
- Arrest or harassment of demonstrators (articles 21 and 22)



A new General Comment (34) on Freedom of Expression (CCPR/C/GC/34) was adopted at the 102<sup>nd</sup> session of the HR Committee in July 2011. It replaces General Comment 10. In its introduction, the Committee recalls that freedom of opinion and freedom of expression are “closely related, with freedom of expression providing the vehicle for the exchange and development of opinions”. It also notes that the other articles containing guarantees of freedom of opinion and/or expression, are articles 18, 17, 25 and 27 and delineates the scope of possible limitation to article 19 in the context of article 4.

The General Comment also explores the scope of freedom of opinion, affirming that “the Covenant permits no exception or restriction to this right”, as well as the content of freedom of expression which includes “the right to seek, receive and impart information and ideas of all kinds regardless of frontiers”.

The Comment also covers the link between freedom of expression and the media on one hand and political rights on the other. The scope of the right of access to information is also addressed.

A substantial part is devoted to limitations on the rights guaranteed in the first paragraph of Article 19, in particular the limitation provided in the third paragraph. The General Comment recalls that restrictions may be imposed under strict conditions, namely, a) the restrictions must be “provided by law” and b) must conform to the strict tests of necessity and proportionality regarding the grounds set out in subparagraphs (a) and (b) of paragraph 3. Finally the Committee addresses other specific areas where restrictions of limited scope on freedom of expression are permitted, including in the context of the article 20.

Older General Comments also address the link between article 19 and other provisions of the Covenant. **General Comment 23** (article 27 - rights of minorities) is careful to distinguish between the right of linguistic minorities to use their language, guaranteed in article 27, and the general right of freedom of expression, which is available to all, not only to minorities.

**General Comment 25** (article 25 - participation in public affairs and the right to vote) notes the particular importance of freedoms of expression, association and assembly in ensuring electoral rights and touches on ways the State might facilitate the exercise of these rights.

Paragraph 22 of **General Comment 28** (article 3 - equality of rights between men and women) discusses the equality of men and women in the exercise of this right and, in particular, observes that States should restrict the publication and dissemination of pornographic material as this “portrays women and girls as objects of violence or degrading or inhuman treatment [which] is likely to promote these kinds of treatment of women and girls”.

### **Article 20 (Propaganda for War and Advocacy of National, Racial or Religious Hatred)**

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.

This article is associated with article 19 (freedom of expression) since it imposes some restriction on freedom of expression. It is also sometimes linked with articles 2 (non-discrimination) and 26 (equality before the law). It may also be linked with article 18 (freedom of thought, conscience and religion) when dealing with attacks on religious grounds.

### Issues addressed under this article include:

- Legislation criminalising incitement to national, racial, or religious hatred
- Racist motivation as an aggravating factor in offences
- Leniency of sentences for hate crimes and low numbers of prosecutions
- Combating hate speech in the media
- Measures to counter the spread of racism and xenophobia via the internet and in sports.
- Responses to religious or racially motivated attacks on places of worship (article 18)
- Protection of places of worship belonging to minorities and safe access to these (articles 18 and 19)

**General Comment 11** notes that “for article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation”. It emphasises that this is a legitimate restriction of the right to freedom of expression (article 19).

**Recent General Comment 34** (article 19 - freedoms of opinion and expression) clarifies the relationship between articles 19 and 20. It notes that a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3. It recalls that for the acts addressed in article 20, the Covenant indicates the State should have a specific response, which is their prohibition by law. This is the main distinction between this restriction and other restrictions that can be adopted in the context of the article 19, paragraph 3.

**General Comment 22** (article 18 - freedom of thought, conscience or religion) also notes that the freedom to manifest religion or belief guaranteed by article 18 is subject to the restrictions of article 20. This General Comment also stresses the importance of article 20, paragraph 2 in protecting religious minorities against violence and persecution.

**General Comment 11** explains the term ‘propaganda for war’ as “all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations”.

## Article 21 (Freedom of 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.

This article is commonly linked with article 19 (freedom of expression) as this right may be seen as a manifestation of freedom of expression and with article 22 (freedom of association) as the right to assembly is necessary for the effective exercise of the right to association, particularly where this concerns trade unions and the right to strike.

### Issues addressed under this article include:

- Restrictions on the freedom of assembly
  - ◊ Criteria for declaring a meeting illegal or a threat to public security
- Measures to guarantee the right to assembly to all those in the territory or jurisdiction of the State (including migrant workers)
- Conditions for the authorisation of a public assembly
  - ◊ Remedies if authorisation is refused
  - ◊ Statistics on the number of refusals and reasons for the refusal
- Prevention of the use of excessive force by law enforcement personnel when dispersing assemblies
- Statistics on penalties and arrests for holding unauthorised meetings

There is no General Comment dealing with this article. However, **General Comment 25** (article 25 - participation in public affairs and the right to vote) notes the particular importance of freedoms of expression, association, and assembly in ensuring the electoral rights guaranteed by that article and touches on ways the State might facilitate the exercise of these rights.

## 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.

This article is often associated with articles 19 (freedom of expression) and 21 (freedom of assembly) as those rights are necessary if the right to form and join associations is to be fully respected.

**Issues addressed under this article include:**

- Legislation on freedom of association
  - ◊ Impact of counter-terrorism legislation on the freedom of association
- Requirements or restrictions on the recognition of associations, including political parties
  - ◊ Refusal to register certain types of organisations, such as human rights associations or political parties (article 25)
  - ◊ Possibility of appealing the refusal to register an organisation and decisions in such cases
  - ◊ Penalties imposed on members of prohibited organisations
  - ◊ Statistics on applications, refusals, and reasons for the refusal of applications
- Trade Unions
  - ◊ Legislative guarantees of the right to strike
  - ◊ Attacks and threats to members of trade unions
  - ◊ Restrictions on forming and joining trade unions for certain categories of workers
  - ◊ Percentage of the workforce belonging to a trade union
  - ◊ Institutional frameworks for recognising unions and collective bargaining
- Exclusion of human rights organisations from discussions and decisions on welfare and human rights policy
- Measures to ensure the right to association to all those within the State
  - ◊ Restrictions on immigrant workers, undocumented workers or other groups
- Financial or other controls on NGOs

There is no General Comment dealing with this article. However, **General Comment 25** (article 25 - participation in public affairs and the right to vote) notes the particular importance of the freedoms of expression, association and assembly in ensuring the electoral rights guaranteed by that article and touches on ways the State might facilitate the exercise of these rights.

### **Article 23 (Right to a Family)**

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.

This article is often linked with article 24 (rights of the child) as family life inevitably has an impact on the child. It is also linked with article 3 (equal rights of men and women) particularly paragraphs 3 and 4 as they also refer to the equality of spouses in marriage.

**Issues addressed under this article include:**

- Legislation discriminating between spouses
  - ◊ Right to choose a place of residence (article 12)
  - ◊ Guardianship of woman by their husband (article 3)
  - ◊ Equal right of parents to claim child benefits
- Transmission of nationality to children (article 24)
- Minimum age for marriage, including differences for men and women, or for foreigners
- Forced marriages
- Polygamy
- Religious ministers authorised to perform civil weddings, and religious ceremonies recognised as weddings (article 18)
- Restrictions on family reunification, including for families of immigrants
- Legislation on the dissolution of marriages and restriction on divorce
- Domestic violence (articles 3 and 7)
- Status and activities of courts specialising in family law

**General Comment 19** notes that the concept of the family differs from State to State and that even within States, different forms of family exist. The HR Committee therefore asks the State to report on “how the concept and scope of the family is construed or defined in their own society and legal system” and for information on the recognition and protection in law and in practice of all forms of family, including unmarried couples and their children or single parents and their children.

The HR Committee also notes the importance of equality of spouses at all stages of marriage and is particularly concerned about provisions for the protection of children during the dissolution of a marriage or the separation of spouses.

The General Comment notes that although the Covenant does not establish a minimum age for marriage this must be “such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law” while General Comment 28 (article 3 - the equality of rights between men and women) notes the desirability of having the same minimum age for men and women. Both the Committee on the Rights of the Child (General Comment 4) and the Committee on the Elimination of Discrimination Against Women (General Recommendation 2) have, however, suggested that ideally the minimum age for marriage should be 18 for both men and women. The HR Committee also emphasises that legal provisions must be compatible with the full exercise of the other rights guaranteed by the Covenant, giving as an example provisions for both religious and civil marriages (required by article 18), although they add “for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the Covenant”.

Finally, the General Comment notes that “the right to found a family implies, in principle, the possibility to procreate and live together” which affects family planning policies and the duty of the State to ensure the reunification of families.

Paragraphs 23-27 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the equality of men and women in the exercise of this right, particularly noting the influence of practices and social attitudes on the exercise of these rights.

### Article 24 (Rights of the Child)

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.

Article 24 is associated at times with a wide range of articles, but most commonly with articles 2 (non-discrimination), 3 (equal rights of men and women) and 26 (equality before the law) as it reiterates the principle of non-discrimination. It is also linked with article 23 (right to a family) as the rights of the child are intimately associated with family life.

It should be remembered that children are guaranteed all the rights covered by other provisions of the Covenant; article 24 and other provisions dealing specifically with children provide additional protection, without limiting the exercise of other rights.

#### Issues addressed under this article include:

- Street children
- Measures to prevent the removal of children to third jurisdictions by parents or guardians in order to be subjected to practices which breach their rights under the Covenant
- Violence and abuse
  - ◊ Sexual abuse and exploitation
  - ◊ Rehabilitation facilities for abused children
  - ◊ Corporal punishment (article 7)
  - ◊ Ill-treatment of children in residential care institutions (article 7)
- Minimum age for sexual consent
- Marriage of minors
- Acquisition of nationality
  - ◊ Transmission from parents (article 23)
  - ◊ Birth registration for all (article 16)
  - ◊ Measures to prevent statelessness
- Discrimination against children born out of wedlock
- Gender based inequalities in the education system (article 3)
- Measures to ensure compliance with child support decisions and to protect child-



ren when support is not provided

- Provision of child benefits to low income families
- Infant mortality rate (article 6)
- Extrajudicial executions of street children (article 6)
- Child Labour (article 8)
- Military recruitment
- Trafficking (article 8)
- Return and reintegration of abducted children (article 8)
- Children in immigration detention (articles 9 and 13)
- Treatment and return of unaccompanied minors entering the State (article 13)
- Provisions for school attendance for refugee children or those awaiting refugee status
- Juvenile Justice System (article 14)
  - ◊ Length of pre-trial detention (articles 9 and 10)
  - ◊ Legal aid
  - ◊ Age of criminal responsibility
  - ◊ Separation from adults in detention (article 10)
  - ◊ Investigations into ill-treatment and deaths in detention (articles 6, 7, and 10)
  - ◊ Disciplinary measures in detention (articles 7 and 10)
  - ◊ Life sentences without the possibility of parole
- Access to childcare services and education for children who accompany their mothers in prison (articles 9 and 10)
- Children of minorities (article 27)
  - ◊ Opportunities to receive education in or about their language and about their culture
  - ◊ Over-representation of minorities in schools intended for children with mental disabilities

**General Comment 17** emphasises that article 24 requires States to adopt special measures to protect children in addition to ensuring to them all rights guaranteed by the Covenant. These additional measures for juveniles are not limited to the specific protections included in the Covenant (e.g. the prohibition on the juvenile death penalty), but must be assessed by the State “in the light of the protection needs of children in its territory and within its jurisdiction”. The HR Committee notes that these measures should include economic and social measures as these affect the exercise of civil and political rights.

The General Comment also clarifies that, as the Covenant does not define the age of majority, this is to be determined by the State in the light of social and cultural conditions. The State report should indicate the age of majority in civil matters, under labour law and in the justice system as well as the minimum ages for labour and criminal responsibility, which should take account of their physical and mental immaturity (**General Comment 32** (right to equality before courts and tribunals and to a fair trial)). The HR Committee emphasises that the age of majority should not be set too low and that a lower age of majority does not release a State from its obligations where the Covenant requires special provisions for those under eighteen. Paragraph 13 of **General Comment 21** (article 10 - humane treatment of persons deprived of their liberty) gives the HR Committee’s opinion that “article 6, paragraph 5 [prohibition on the death penalty for under eighteens], suggests that all persons under the age of 18 should be treated as juveniles, at least in matters relating to



criminal justice". It may also be worth referring to comments by the Committee on the Rights of the Child on the age of majority established by the State for various purposes.

The General Comment also discusses the State's role in intervening in family life to protect children, and the purpose and nature of the rights to birth registration and the acquisition of a name and nationality.

**General Comment 20** (article 7 - prohibition of torture or cruel, inhuman or degrading treatment or punishment) notes that the HR Committee considers the prohibition of torture to extend to corporal punishment "including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure" and therefore emphasises the protection provided to "in particular, children, pupils and patients in teaching and medical institutions" under that provision.

**General Comment 28** (article 3 - the equality of rights between men and women), paragraph 28, reminds States of the obligation to protect and provide equally between boys and girls.

### 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.

This article is frequently linked with articles 2 (non-discrimination), 3 (equal rights of men and women), 26 (equality before the law) and 27 (rights of minorities) since the majority of the issues raised concern inequalities in the exercise of these rights.

#### Issues addressed under this article include:

- Participation of women in public life (article 3)
- Representation of minorities in public life (article 27)
- Representation of persons with disabilities in public life
- Right of convicted persons to vote and be elected (article 10)
- Measures to ensure free and fair elections
  - ◊ Control of funding (public or private) for political parties
  - ◊ Equal access to the media (article 19)
  - ◊ Independent investigations into irregularities in elections
  - ◊ Violence against members of political parties
  - ◊ Registration of political parties/prohibition of certain parties (article 22)
- Use of minority languages in government and administration (article 27)
- Need for fluency in the majority language to access or be employed in public services (article 27)
- Acquisition of the right to vote by foreigners

- Special voting arrangements for hospitalized, homebound or imprisoned citizens or citizens temporarily living abroad

**General Comment 25** notes that, in contrast to all the other rights guaranteed under the Covenant, article 25 is explicitly limited to 'citizens'. State reports should therefore "outline the legal provisions which define citizenship in the context of the rights protected by article 25". The HR Committee repeatedly stresses that any restrictions or differences in the ability of citizens to exercise these rights must be justified on objective and reasonable criteria (and provides examples of what it considers reasonable criteria). In particular the General Comment notes that "discrimination between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25". **General Comment 22** (article 18 - freedom of thought, conscience and religion) also observes that policies and practice must not discriminate against holders of a particular religion or belief in the exercise of these rights.

The majority of General Comment 25 is taken up by an elaboration on the meaning of the rights indicated in article 25 and the obligations these impose on the State as well as the safeguards necessary for their implementation and the associated reporting requirements. It also lays out the inevitable relationship between the exercise of these rights and the freedoms of expression, association and assembly.

Paragraph 29 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the equality of men and women in the enjoyment of these rights.

**General Comment 32** (right to equality before courts and tribunals and to a fair trial), paragraph 64 discusses the impact of the dismissal of judges on equal access to public services.

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 26 (Equality before the Law)**

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.

This article is linked with a wide range of other articles, but most commonly with articles 2 (non-discrimination) and 3 (equal rights of men and women) and these three articles are often mentioned together when dealing with discrimination. The three articles differ slightly in their scope and implications: article 2 only covers the rights guaranteed in the Covenant, but requires positive measures to guarantee

these rights as well as respect for them without discrimination; article 3 is limited to discrimination on grounds of gender; and article 26 requires protection against any discrimination (not limited to the rights in the Covenant), but does not include the positive aspects included in the other two articles.

**General Comment 18** lays out the connections and differences between these articles and the references to non-discrimination in other provisions as well as providing the HR Committee's working definition of discrimination. Since discrimination may affect the exercise of all rights these articles are frequently invoked and may be linked with any other article.

**Issues addressed under this article include:**

- Legislation on discrimination
- Legislation allowing discrimination or exceptions to the prohibition of discrimination
- Effective implementation of non-discrimination legislation and measures to combat discriminatory attitudes
- Discriminatory attitudes and stereotypes
- Discrimination, including against women, under customary law
- Traditional, historical, cultural and religious practices impeding the implementation of the Covenant
- Effective remedies for discrimination
- Specific groups mentioned as suffering discrimination:
  - ◊ Women (article 3)
  - ◊ Homosexuals
  - ◊ Persons with HIV/AIDS
  - ◊ Persons with disabilities
  - ◊ Citizens of foreign origin
  - ◊ Refugees and asylum seekers (articles 12 and 13)
  - ◊ Foreigners, immigrants and non-citizens (article 13)
  - ◊ Internally displaced persons (article 12)
  - ◊ Those living in the street, particularly street children (article 24)
  - ◊ Children born out of wedlock (article 24)
  - ◊ Persons from religious minorities (articles 18 and 27)
  - ◊ Minorities (article 27)
  - ◊ Indigenous peoples (article 27)
- A wide range of specific rights and areas in which discrimination may occur are mentioned, including:
  - ◊ Employment, including equal pay for equal work
  - ◊ Standard of living, including access to housing
  - ◊ Immigration laws and naturalisation (article 13)
  - ◊ Access to justice (article 14)
  - ◊ Ability to acquire personal identification necessary for the exercise of rights (article 16)
  - ◊ Acquiring and transmitting nationality (articles 16, 23 and 24)
  - ◊ Punitive nature of alternatives to military service (article 18)
  - ◊ Equality in contracting, during, and at separation of marriages (article 23)
  - ◊ Education, including attendance, achievement and relevance of the syllabus

- bus (articles 3, 24 and 27)
- ◊ Representation in government (article 25)
- ◊ Access to services (article 25)
- ◊ Requirement of fluency in the majority or official language to access services and be elected (articles 25 and 27)
- Discriminatory behaviour by law enforcement personnel, including violence, ill-treatment or extrajudicial executions targeting certain groups (articles 6, 7 and 10)
- Sexual harassment
- Domestic violence (articles 3, 6 and 7)

There is no General Comment dealing exclusively with article 26, but **General Comment 18** covers all the non-discrimination provisions. It mentions that non-discrimination is effectively non-derogable under article 4 as well as reminding States of the need to report on the situation and problems in practice as well as legislation on discrimination. This General Comment notes that some of the grounds for discrimination listed in articles 2 and 26 are omitted from domestic laws and observes that States should clarify the significance of these omissions. This General Comment emphasises the three elements contained in article 26: equality before the law; equal protection of the law; and the prohibition of discrimination under the law. It defines discrimination as “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 an equal footing, of all rights and freedoms”. However the HR Committee emphasises that “enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance”, observing that affirmative measures may be necessary to eliminate discrimination and notes several provisions of the Covenant which specifically require or allow different treatment. It also notes that not every difference in treatment constitutes discrimination “if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”.

The General Comment notes that article 26 does not duplicate article 2 since article 26 is not limited to those rights provided for in the Covenant, but requires that all legislation and administration be non-discriminatory.

**General Comment 23** (article 27 - rights of minorities) carefully distinguishes between the specific rights of minorities in that article and the right to equality before the law for all under this article. The HR Committee notes that the absence of discrimination on the grounds of ethnicity, language or religion does not mean that there are no ethnic, linguistic or religious minorities, or that the provisions of article 27 are irrelevant in this regard.

Paragraph 31 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses this article with particular reference to unequal penalties for the same offence and so-called ‘honour crimes’.

## Article 27 (Rights of 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.

Article 27 may be linked with a wide range of articles, but most commonly with articles 2 (non-discrimination) and 26 (equality before the law), as minorities often face discrimination, and 25 (electoral rights) for the issues around representation and access to services.

### Issues addressed under this article include:

- General statistical information on the population, showing the existence of minorities
- Provisions ensuring the rights of minorities
  - ◊ Consultation of minorities on legislative and administrative measures likely to affect them
- Discrimination, including by law enforcement personnel and in employment
- Land rights of indigenous peoples, including compensation for displacement (article 1)
- Representation of minorities in governing and administrative bodies (article 25)
- Minority languages (article 25)
  - ◊ Translation of official documents
  - ◊ Use in local administration
  - ◊ The necessity of fluency in the majority language for election to office
  - ◊ Availability of teaching (including textbooks) in minority languages (article 24)
  - ◊ Teaching of minority languages as a second language
- Inclusion of minority cultures and history in the education syllabus (article 24)
- Acquisition of nationality for all those born within the State's territory (articles 16 and 24)

**General Comment 23** explains that article 27 is distinct from article 1 in that it deals with the rights of individuals belonging to a minority (although they “depend in turn on the ability of the minority group to maintain its culture, language or religion”) while article 1 is a right of ‘peoples’. This is particularly important in relation to the First Optional Protocol on Individual Communications as article 1 is excluded from that procedure, but article 27 can be the grounds of a complaint. The General Comment also emphasises that this article is distinct from the non-discrimination provisions of the Covenant as it guarantees specific rights to members of minorities in addition to the rights provided by the Covenant, which also extend to members of minorities. In this regard the HR Committee emphasises that the absence of discrimination against minorities does not remove the obligation to guarantee them these rights. It asserts that the existence of minorities in a State Party does not depend on State recognition and carries no requirement of permanence, so that “they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State Party constituting such minorities are entitled not to be denied the exercise of those rights”. The State is also obliged to provide protection for minorities “not only against the acts of the State Party itself, whether through

its legislative, judicial or administrative authorities, but also against the acts of other persons within the State Party". Paragraph 9 of **General Comment 22** (article 18 - freedom of thought conscience and religion) also deals with the position and rights of religious minorities. **General Comment 29** (article 4 - derogations during a state of emergency), paragraph 13(c), notes that certain elements of the protection of minorities must be maintained in all circumstances.

**General Comment 23** draws particular attention to the right of linguistic minorities to use their own language among themselves in private or in public and distinguishes this from the general right to freedom of expression (article 19) and that of access to interpretation in court proceedings (article 14, paragraph 3) as this only applies if the individual cannot understand or express himself in the language of the court.

The HR Committee also notes that the cultural rights protected by this article may "manifest itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them".

Finally, the HR Committee emphasises that "none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant", in particular measures in favour of minority communities should be consistent with the non-discrimination provisions (although, as discussed under those provisions, this means distinctions based on objective and reasonable criteria not identical treatment). Paragraph 32 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the continuing obligation to ensure equal rights of men and women including in traditional ways of life.



# INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (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,

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



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.

## **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 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 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 (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 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 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 eighteen 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 capi-

tal punishment by any State Party to the present Covenant.

### 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.

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.

#### **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.

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.

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.

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.

## 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 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 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.

#### **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 eighteen 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, 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.

### 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 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.
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 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 ex-

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

(h) The Committee shall, within twelve 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 ten 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 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 twelve 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 twelve 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;

(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.

## **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.

### 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.

#### **Article 52**

1. 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.



NGOs play an important and decisive role in the implementation of the International Covenant on Civil and Political Rights (ICCPR). They first complement the information contained in the State Party report and highlight Human Rights issues in their respective countries. They also engage face-to-face with Committee members and answer their questions at the informal briefing sessions that take place during the HR Committee. Last but not least, NGOs also play a critical role in the implementation of the Concluding Observations, a key stage in the HR Committee process. This way, NGOs put in place their own follow-up activities such as the dissemination of the information through the media or the invitation of Committee members for country follow-up visits.

These guidelines foreshadow an even better collaboration between civil society and Committee members for the sessions to come.



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