



JUSTICE

**Reporting under the
International Covenant on
Civil and Political Rights**
Training Guide

PART I – Manual



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Reporting under the International Covenant on Civil and Political Rights

Training Guide

PART I – Manual

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Foreword by the United Nations High Commissioner for Human Rights

Stemming from the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights provides a comprehensive horizon of civil and political rights in a human rights treaty. States parties to the Covenant, more than four fifths of the world's nations from all regions, contracted legal obligations to respect civil and political rights.

The Human Rights Committee – the Covenant's monitoring body – has played a crucial role in guiding States in implementing and interpreting the Covenant and its two Optional Protocols through concluding observations, general comments and jurisprudence during its more than 40 years of existence. The Committee has played a key role, through its interpretation of the Covenant's provisions, including of various aspects and elements of each civil and political right, in enhancing the Covenant's relevance to developments in societies. The Committee has also consistently assisted the States parties in implementing the Covenant and recommended specific measures to ensure compliance and provide remedies, as appropriate.

While the Committee has paved the way in offering tools to simplify reporting, States parties sometimes find it challenging to navigate the reporting requirements under the Covenant and to fulfil their reporting obligations in a timely manner. Therefore, the Office of the United Nations High Commissioner for Human Rights (OHCHR), in close collaboration with the Committee, has developed the present manual on reporting under the Covenant. It will serve as an analytical information and training tool for the States parties, as well as States considering accession to the Covenant. It is complemented by training materials, tailored to each of the Covenant rights, published on the OHCHR website. Our objective is to equip States parties with practical tools to enhance their reporting skills with respect to the Covenant, as well as their capacity to implement the Committee's recommendations addressed to them. Such an initiative goes hand in hand with the efforts of OHCHR to increase coordination among all 10 human rights treaty bodies and to advance simplified and harmonized working methods throughout the treaty body system.

The support of the Committee in the development of the manual is greatly appreciated, including its in-depth review and comments. It is hoped that the manual will contribute to timely and quality reporting by the States parties and improved implementation of civil and political rights in their jurisdictions, and ultimately encourage universal ratification of the Covenant.

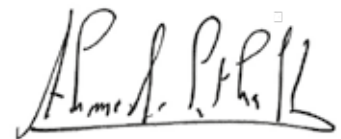


Michelle Bachelet
United Nations High Commissioner
for Human Rights

Foreword by the former Chair of the Human Rights Committee

The reporting procedure under the International Covenant on Civil and Political Rights provides the States parties with an invaluable opportunity to assess their laws, policies and programmes at the national level in light of the Covenant and to engage in a constructive dialogue with the Human Rights Committee on how to address challenges. To this end, the Committee strives to make the States parties' participation in the reporting procedure as effective and efficient as possible and to assist non-reporting and late-reporting States to meet their obligations. In particular, the Committee has adopted the simplified reporting procedure, which reduces the workload of States parties (while still allowing them to opt out), and introduced the predictable review cycle to streamline the process.

The Committee believes that the present manual will further contribute to streamlining the reporting procedure by providing more clarity and guidance for States parties when preparing reports. For instance, the manual provides a checklist of necessary information to be included under each article of the Covenant, as well as examples of good practices in the implementation of the Committee's recommendations. The Committee is of the view that the manual will thus prove to be an essential tool to advance the reporting procedure and contribute to the effective implementation of the rights enshrined in the Covenant.

A handwritten signature in black ink, appearing to read 'Ahmed Fathalla', with a horizontal line underneath.

Ahmed Fathalla
Chair of the Human Rights Committee
(2019–2020)



About the Manual



UN Photo/Jean-Marc Ferré

A. BACKGROUND

In January 2015, pursuant to General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established the treaty body capacity-building programme with a view to supporting States parties in increasing their capacity to implement their treaty obligations. The capacity-building programme is based at OHCHR in Geneva with a core team supporting capacity-building staff in its regional offices in Addis Ababa, Bangkok, Beirut, Bishkek, Dakar, Panama, Pretoria, Santiago, Suva and Yaoundé.

In paragraph 17 of its resolution 68/268, the General Assembly requested the Secretary-General, through OHCHR, to support States parties in building their capacity to implement their treaty obligations and to provide in this regard advisory services, technical assistance and capacity-building, in line with the mandate of the Office, in consultation with and with the consent of the State concerned.

The capacity-building programme aims to transform the perception of reporting from that of being a burden to one of being a concrete benefit to States parties and ultimately to rights holders. The capacity-building programme provides assistance to the States parties in treaty-specific reporting, including the preparation of common core documents and the establishment or effective functioning of national mechanisms for reporting and follow-up. At the outset, the capacity-building programme organized regional train-the-trainers events annually to equip designated State officials to become trainers with the knowledge and skills necessary to provide support to States parties in their increasing engagement with the treaty bodies and other human rights mechanisms. Based on such training programmes, a roster of State officials with extensive experience in treaty body reporting is being established on an

ongoing basis, and a community of practice maintained to facilitate exchanges of experience and good practice among roster members.

In 2017, to underpin all its activities, the capacity-building programme developed a training guide on reporting to the United Nations human rights treaty bodies.¹ The training guide is the first part of a comprehensive training curriculum on human rights treaty body reporting, with an emphasis on the procedural aspects of reporting. The training guide is divided into two complementary parts. Part I is a [manual](#), which provides an overview of the United Nations human rights system and detailed information on the reporting processes of the treaty bodies, including procedures, requirements and the roles of different stakeholders. It also includes chapters on the preparation of State party reports and on national mechanisms for reporting and follow-up, in accordance with the guidance provided in a [practical guide](#)² and [study](#)³ on such mechanisms published by OHCHR. There is also a specific section and checklist on the role of other stakeholders – the United Nations system, the national human rights institution and civil society organizations – in the reporting process. Part II is a [guide for facilitators](#) on preparing and delivering training courses on treaty reporting. It includes facilitators' notes, session plans, presentation slides, videos, quizzes and so forth. The training guide has been transformed into an interactive online [course](#) on reporting to the treaty bodies.

The training guide will be complemented by specific training materials on each core international human rights treaty, focusing on the substantive articles of each treaty. In addition to a training [guide on the Convention of Rights of Persons with Disabilities](#),⁴ the capacity-building programme has developed a [practical guide on the role of the national preventive mechanisms in preventing torture](#).⁵ The practical guide is designed to assist States parties in establishing or strengthening their national preventative mechanisms, which is their core obligation under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The present training guide on reporting under the International Covenant on Civil and Political Rights has been developed in this context.

B. OVERVIEW OF THE MANUAL

1. WHAT IS THE MANUAL?

The manual is aimed at assisting States parties to fulfil their reporting obligations under the Covenant. Its objective is to facilitate understanding of the rights enshrined in the Covenant and the corresponding obligations of the States parties in respecting, protecting and fulfilling those rights.

The manual is based on the provisions of the Covenant, the Committee's general comments, its jurisprudence on individual communications and its concluding observations on State party reports, as well as its reporting guidelines, rules of procedure, working methods and other documents. The manual should be understood as a practical tool, while bearing in mind the constantly developing practice of the Committee in interpreting the Covenant.

¹ See OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies Training Guide: Part I – Manual* (New York and Geneva, 2017) and *Reporting to the United Nations Human Rights Treaty Bodies Training Guide: Part II – Notes for Facilitators* (New York and Geneva, 2017). See also www.ohchr.org/EN/PublicationsResources/Pages/TrainingPackage.aspx.

² See OHCHR, *National Mechanisms for Reporting and Follow-up: a Practical Guide to Effective State Engagement with International Human Rights Mechanisms* (New York and Geneva, 2016). Available at www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf.

³ See OHCHR, *National Mechanisms for Reporting and Follow-up: a Study of State Engagement with International Human Rights Mechanisms* (New York and Geneva, 2016). Available at www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_Study.pdf.

⁴ See *The Convention on the Rights of Persons with Disabilities: Training Guide*, Professional Training Series No. 19 (United Nations publication, 2014). Available at www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf.

⁵ See OHCHR, *Preventing Torture: the Role of National Preventive Mechanisms – A Practical Guide*, Professional Training Series No. 21 (New York and Geneva, 2018). Available at www.ohchr.org/Documents/Publications/NPM_Guide_EN.pdf.

This manual also constitutes a reference document for trainers who intend to design and deliver training courses on reporting to the Committee on the implementation of the provisions of the Covenant. The manual can be used jointly with the training guide on reporting to the United Nations treaty bodies, which covers all the procedural aspects of the reporting process.

2. WHOM IS THE MANUAL FOR?

The manual is a reference source for States parties to assist them in preparing their reports to the Committee and for various other stakeholders, such as United Nations specialized agencies and United Nations country teams, national human rights institutions and civil society organizations seeking information on the Covenant and reporting to the Committee, and their role in that process.

3. HOW TO USE THE MANUAL

The manual provides States parties with condensed information, organized by chapters, on the provisions of the Covenant. The initial chapters contain a discussion of general issues, such as signature and ratification, reservations and declarations and limitation of rights, after which the role of the Committee and its task of examining States parties' reports is briefly explained. In the following chapters, there is an article-by-article discussion of the Covenant rights.

The article-by-article discussion includes: (a) comments on the relevant article of the Covenant; (b) an explanation of the information that the Committee expects from States parties, in accordance with the reporting guidelines, and of the questions that the Committee normally addresses to States parties in writing or during the constructive dialogue; (c) reference to the relevant general comment(s), which provide(s) further interpretation of the article; (d) reference to links with other articles of the Covenant; (e) a non-exhaustive list of other international treaties and instruments relevant to the same right; (f) a few concluding observations related to the respective right; and (g) examples of the Committee's recommendations concerning the particular right and of the good practices of States parties in implementing the respective provision. The manual also includes a chapter on the linkages between the provisions of the Covenant and the Sustainable Development Goals. The manual can be used as a general source of information for all actors playing a role in reporting under the Covenant.

The manual will be complemented by another tool, namely the notes for facilitators, which will closely follow the structure of Part I. The notes have been designed to assist facilitators in preparing and delivering a training course on reporting under the Covenant, ideally for relatively small groups of up to 25 participants. The notes will be published online on the OHCHR website and will be updated as necessary. They can be adapted to different audiences. The training sessions may comprise a mix of presentation slides and group activities, and include different training components: facilitators' notes, session plans, presentation slides, videos, quizzes and so on. The training sessions are based on the training methodology of OHCHR,⁶ which is based on a participatory approach. It is important that facilitators respect and use this approach to encourage enriching discussions and exchanges of information and experiences with and among the participants.

⁶ See *From Planning to Impact: A Manual on Human Rights Training Methodology*, Professional Training Series No. 6/Rev.1 (United Nations publication, 2000) and *Equitas* (International Centre for Human Rights Education) and OHCHR, *Evaluating Human Rights Training Activities: A Handbook for Human Rights Educators*, Professional Training Series No. 18 (Montreal, 2011). Available at www.ohchr.org/Documents/Publications/training6en.pdf and www.ohchr.org/Documents/Publications/EvaluationHandbookPT18.pdf, respectively.



Reporting under the Covenant



A. INTRODUCTION TO THE COVENANT

The International Covenant on Civil and Political Rights⁷ is the core international human rights treaty stipulating civil and political rights. Adopted in 1966, it entered into force in 1976. It has been supplemented by two Optional Protocols: the first Optional Protocol, which gave the Committee the competence to examine individual complaints with regard to alleged violations of the rights enshrined in the Covenant (adopted in 1966, entered into force in 1976),⁸ and the Second Optional Protocol, aiming at the abolition of the death penalty (adopted in 1989, entered into force in 1991).⁹

1. CONTENT AND STRUCTURE

The Covenant is divided into six parts. Parts I and II contain overarching provisions generally applicable to all rights stipulated in the Covenant, such as the right to an effective remedy. Part III stipulates specific civil and political rights and freedoms. Part IV establishes the Human Rights Committee entrusted with monitoring implementation of the rights stipulated in the Covenant. Parts V and VI address technical questions, such as signature and ratification, amendments and entry into force.

⁷ United Nations, *Treaty Series*, vol. 999, No. 14668, p. 171.

⁸ *Ibid.*

⁹ *Ibid.*, vol. 1642, No. 14668, p. 414.

2. SIGNATURE AND RATIFICATION OR ACCESSION

A State becomes bound by the Covenant when it ratifies or accedes to it, and the same applies to each of the Optional Protocols. A State can become a State party through signature followed by ratification or accession. Upon signature of the Covenant, the State is obliged not to act in a manner contrary to the object and purpose of the treaty.¹⁰ By depositing its instrument of ratification, a State indicates its intent to be bound by the treaty. Alternatively, a State can be bound by a treaty through accession. The Covenant and its Optional Protocols enter into force for the State party three months after the deposit of its instrument of ratification or accession. There are 173 States parties to the Covenant, 116 States parties to the first Optional Protocol and 88 States parties to the Second Optional Protocol (as of 1 December 2020).¹¹

3. DENUNCIATION

The Covenant and the Second Optional Protocol do not contain denunciation clauses. Under the provisions of article 56 (1) of the Vienna Convention on the Law of Treaties,¹² a treaty is not subject to denunciation or withdrawal, unless (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal or (b) a right to do so is implied by the nature of the treaty.

The Committee has taken a very firm view that the States parties cannot denounce or withdraw from the Covenant or from the Second Optional Protocol.¹³ The Committee has maintained that “the drafters of the Covenant deliberately intended to exclude the possibility of denunciation” and “the same conclusion applies to the Second Optional Protocol in the drafting of which a denunciation clause was deliberately omitted”.¹⁴ Furthermore, the Covenant is not the type of treaty that, by its nature, implies a right of denunciation. Together with the simultaneously prepared International Covenant on Economic, Social and Cultural Rights, the Covenant codifies in treaty form the universal human rights enshrined in the Universal Declaration of Human Rights. “As such, the Covenant does not have a temporary character typical of treaties where a right of denunciation is deemed to be admitted, notwithstanding the absence of a specific provision to that effect.”¹⁵ As regards the first Optional Protocol, denunciation is possible in accordance with article 12 thereof. This confirms that, if States had wanted to allow for denunciation in the other two treaties, they would have drafted a provision for such an eventuality.

¹⁰ Vienna Convention on the Law of Treaties, art. 18.

¹¹ The status of signature, ratification and accession of each instrument may be consulted at https://treaties.un.org/Pages/Index.aspx?clang=_en.

¹² United Nations, *Treaty Series*, vol. 1155, No. 18232, p. 331.

¹³ See general comment No. 26 (1997).

¹⁴ *Ibid.*, para. 2.

¹⁵ *Ibid.*, para. 3.



B. MONITORING AND REPORTING¹⁶

1. HUMAN RIGHTS COMMITTEE

Monitoring of States parties' compliance with the Covenant is entrusted to the Human Rights Committee – an independent, expert monitoring body established under article 28 of the Covenant. The Committee is composed of 18 members, who must be “persons of high moral character and recognized competence in the field of human rights” with “consideration given to the usefulness of the participation of some persons having legal experience”.¹⁷ All members are nationals of States parties and are nominated by their Governments and elected by the States parties to the Covenant. However, members serve in their personal capacity, not as representatives of nominating Governments, and are independent and impartial.¹⁸

¹⁶ For comprehensive information concerning monitoring and reporting, see OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies: Part I*.

¹⁷ Covenant, art. 28 (2).

¹⁸ See the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines) (A/67/222, annex). Details of the current membership of the Committee is available at www.ohchr.org/EN/HRBodies/CCPR/Pages/Membership.aspx.

2. EXAMINATION OF STATES PARTIES' REPORTS

Article 40 (1)

"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."*

The States parties to the Covenant should submit reports on the measures that they have adopted in order to give effect to the rights recognized by the Covenant and on the progress made in the enjoyment of those rights. The State parties should submit their initial reports within one year of the entry into force of the Covenant and periodic reports whenever the Committee so requests. According to the current practice of the Committee, the periodic reports should be submitted, in general, every three to six years, depending on the urgency of the situation in the State party, the time frame in which changes in practice are expected and the availability of other monitoring procedures for the State in question. The Committee specifies, in the final paragraph of its concluding observations on the State party report, the date by which the next periodic report is due. Occasionally, the Committee may also ask for reports from States outside the regular cycle due to exceptional developments in their situations, which affect their human rights records. However, since 2020, the Committee has started an eight-year cycle under the predictable review cycle, unless the State party opts out of this procedure (see sect. B.5 below).

States parties that do not comply with their reporting obligations will become subject to the Committee's procedure allowing it to consider the measures taken by a State in the implementation of the Covenant in the absence of a State report (rule 71 of the Committee's rules of procedure).¹⁹

States parties' reports consist of two parts: a common core document and a treaty-specific document (for example, an initial or periodic report). The common core document should contain general information on the reporting State, the general framework for the protection and promotion of human rights, as well as information on non-discrimination, equality and effective remedies.²⁰

3. GUIDELINES FOR INITIAL AND PERIODIC REPORTS

General guidance concerning initial and periodic reports is included in [the rules of procedure of the Human Rights Committee](#), while more detailed guidance is contained in [the guidelines for the treaty-specific document to be submitted by States parties under article 40 of the International Covenant on Civil and Political Rights](#) (see CCPR/C/2009/1).

According to the rules of procedure, States parties' reports should focus on specific issues relating to the implementation of the Covenant and should avoid duplication of information already provided in the common core documents. Although the reports should be comprehensive, while respecting the permitted word count, States parties should focus on the most urgent problems that have arisen within the reporting period. States parties should address every article of the Covenant in their reports, which should be structured to follow parts I, II and III of the Covenant.

¹⁹ See the rules of procedure of the Human Rights Committee (CCPR/C/3/Rev.11). The expected dates of consideration of States parties' reports are available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/MasterCalendar.aspx?Type=Session&Lang=En.

²⁰ See the harmonized reporting guidelines under the international human rights treaties (HRI/MC/2006/3 and Corr.1).

The reporting guidelines provide guidance – article by article – for reporting under specific provisions of the Covenant. They are intended to assist in the drafting of a structured report and in the dialogue with the Committee.

Periodic reports should take into account:

- (a) The concluding observations of the Committee on the previous report;
- (b) The summary records of the Committee’s deliberations relating to the State party;
- (c) An examination of progress and the current situation concerning the enjoyment of Covenant rights by persons within the territory or subject to the jurisdiction of the State party.

Reports should also include information on:

- (a) Any mechanism developed at the national level to ensure follow-up to the previous concluding observations, including information on the involvement of civil society in the preparation of the report;
- (b) Any reservation or declaration relating to the Covenant should be explained and its continued maintenance clarified;
- (c) Factors and difficulties affecting the implementation of the Covenant, including their nature, extent and causes, as well as the steps taken to overcome them.

If a State party to the Covenant is also a party to the Optional Protocol, and the Committee has issued Views with respect to the State party, the report should include information on the steps taken to provide appropriate remedies and to give full effect to those Views.²¹

If a State party has abolished the death penalty but is not a party to the Second Optional Protocol, it is encouraged to indicate factors impeding its accession and whether it intends to become a State party in the future.

Specific reports under the Covenant should contain information on the following:

- (a) The national legal framework, including laws, policies and strategies for the implementation of each Covenant right;
- (b) The mechanism for monitoring progress towards the full realization of each right;
- (c) Disaggregated data and statistics to enable the Committee to assess the progress made by the State party;
- (d) A description of the legal norms, factual situation and practical availability, effect and implementation of remedies for violations of each Covenant right, with examples.

The report of a State party to a treaty body, irrespective of the reporting procedure under which such a report is submitted (standard or simplified), comprises two distinct but complementary documents: the common core document and the treaty-specific document. The present manual addresses the latter.²²

²¹ See general comment No. 33 (2008).

²² For information on the common core document, see OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies: Part I and Reporting to the United Nations Human Rights Treaty Bodies: Part II* and the corresponding online training, which is available at <https://ecampus.itcilo.org/login/index.php>.

4. SIMPLIFIED REPORTING PROCEDURE

In October 2009, the Committee adopted a new reporting procedure – the simplified reporting procedure. The Committee sends the States parties a list of issues, a so-called “list of issues prior to reporting”, and considers their written replies as an initial or periodic report. Under the simplified reporting procedure, a State party’s replies constitute a report for the purposes of article 40 of the Covenant.²³

ESWATINI – ENGAGEMENT WITH THE COMMITTEE

Eswatini (formerly Swaziland) has intensified its constructive engagement with the treaty bodies during the past few years, culminating in the establishment of a national mechanism for reporting and follow-up in 2019.

In 2016, Eswatini had seven overdue treaty body reports, including its initial report under the Covenant. With the placement of a Treaty Body Capacity-Building Officer at the OHCHR Regional Office for Southern Africa, Eswatini availed itself of the technical assistance of OHCHR, leading to the submission of a follow-up report to the Committee on the Elimination of Discrimination against Women, a periodic report to the Committee on the Rights of the Child and the replies to the list of issues under the Covenant, followed by a constructive dialogue with the Human Rights Committee in 2017.

In the light of its detailed replies to the Committee’s list of issues, which the State party submitted in writing, and the constructive dialogue that the Committee had with a high-level delegation from the State party, the Committee considered the written replies as the initial report of the State party. Among other issues, it recommended that the Government “promptly adopt legislation to effectively criminalize and combat sexual offences and domestic violence” (CCPR/C/SWZ/CO/1, para. 27 (a)). In response, Eswatini adopted the Sexual Offences and Domestic Violence Act 2018.

5. PREDICTABLE REVIEW CYCLE

In March 2019, the Committee decided to move to a predictable review cycle, starting in 2020, in order to improve predictability in reporting and to ensure regular reporting by all States parties.²⁴ The predictable review cycle is an eight-year cycle, which includes periods for the submission of reports and constructive dialogue with the Committee.

This predictable review cycle involves:

- (a) Shifting from an opt-in model of simplified reporting to an opt-out model. The simplified reporting procedure will be applied to all States parties, unless they opt out from the procedure. Previously, States parties had to opt for the simplified reporting procedure instead of the standard reporting procedure;
- (b) Introducing the simplified reporting procedure for initial reports. The simplified reporting procedure will also be available for initial reports. Previously, States parties could use the simplified reporting procedure only for periodic reports;

²³ For a detailed explanation of the reporting process, including the standard and simplified reporting procedures, see OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies: Part I*. For information on the simplified reporting procedure, see also www.ohchr.org/EN/HRBodies/CCPR/Pages/SimplifiedReportingProcedure.aspx.

²⁴ See www.ohchr.org/EN/HRBodies/CCPR/Pages/PredictableReviewCycle.aspx.

- (c) Continuing the Committee’s efforts to align its methods of work and the lists of issues it produces with other treaty bodies. The methods of work of different treaty bodies vary and the list of issues sometimes contain unnecessary overlaps. The Committee aims to make the reporting process more harmonious and efficient by aligning its methods of work and lists of issues.

6. FOLLOW-UP PROCEDURE

Since 2001, the Committee has applied a follow-up procedure.²⁵ The Committee identifies up to three specific recommendations in its concluding observations that require immediate attention and can be implemented within a year. The Committee therefore requests the State party to provide, two years after the adoption of the concluding observations, additional information on the measures taken to implement these recommendations. The Special Rapporteur for follow-up on concluding observations analyses the follow-up report and presents that analysis to the Committee. Subsequently, a decision is taken in plenary as to the followup measures to be taken. Various options are available, including evaluation of the degree of compliance with the recommendations and a request for more information to be provided in the next periodic report. In all cases, the Special Rapporteur for follow-up on concluding observations will send a letter informing the State party of the decision adopted by the Committee.

ASSESSMENT OF FOLLOW-UP REPLIES BY THE COMMITTEE²⁶

- A. Reply/action largely satisfactory:** the State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee. In this case, the Special Rapporteur for follow-up on concluding observations or Views requests no additional information from the State party and the follow-up procedure on the particular issue is discontinued.
- B. Reply/action partially satisfactory:** the State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary. In this case, the Special Rapporteur for follow-up on concluding observations or Views requests additional information, within a specific time frame or in the next periodic report, on specific points of the State party’s previous reply that require clarification, or on additional steps taken by the State party to implement the recommendation.
- C. Reply/action not satisfactory:** a response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation. In the case of follow-up to concluding observations, information provided by the State party that reiterates information previously made available to the Committee prior to the concluding observations is considered not relevant for these purposes. The Special Rapporteur renews the request for information on the steps taken to implement the recommendation.
- D. No cooperation with the Committee:** no follow-up report has been received after the reminder(s). The State party has not provided a follow-up report after, inter alia, one reminder and a request for a meeting with the Special Rapporteur for follow-up on concluding observations or Views.
- E. The information or measures taken are contrary to or reflect rejection of the recommendation:** the State party adopted measures that are contrary to or have results or consequences that are contrary to the recommendation of the Committee or reflect rejection of the recommendation.

²⁵ See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en.

²⁶ Adopted by the Committee at its 118th session (17 October–4 November 2016).

All the follow-up decisions adopted are made public through the progress reports on follow-up adopted at each session.

COOPERATION BETWEEN THE COMMITTEE AND OTHER STAKEHOLDERS

Since consideration of States parties' reports by the Committee is founded on a constructive dialogue with those States, the Committee considers it necessary for this dialogue to be based on information received not only from States parties but also from United Nations entities, national human rights institutions and non-governmental organizations, to ensure a well-informed and constructive dialogue.

These stakeholders are encouraged to provide alternative reports that contain information on the implementation of some or all of the provisions of the Covenant; comments on States parties' reports and their written replies to the list of issues; and information on the implementation by the States parties of the recommendations contained in the Committee's previous concluding observations.

For more information on stakeholders' engagement with the Committee, see CCPR/C/104/3 and CCPR/C/106/3 and OHCHR, *Reporting to the United Nations Human Rights Treaty Bodies: Part I*, chaps. 5–6.

Everyone, in particular victims of human rights violations and civil society actors, is entitled to unhindered access to the human rights treaty bodies, including the Human Rights Committee, without fear of intimidation or reprisals. Over the past few years, intimidation and reprisals against those who cooperate or seek to cooperate with treaty bodies have increased. The treaty bodies have consistently reaffirmed that the free engagement of individuals and groups with the treaty bodies is critical to their efficiency and effectiveness and have repeatedly raised concerns about such acts, collectively and individually. As a result of increasing awareness of intimidation and reprisals, and a growing sense of the need to strengthen protection and bring coherence to the responses of the treaty bodies to persons and groups at risk of, or targeted by, intimidation or reprisals, the Chairs of the human rights treaty bodies endorsed the [Guidelines against Intimidation or Reprisals](#) (San José Guidelines) at their annual meeting in 2015. The Committee has nominated a focal point/rapporteur to respond to allegations of intimidation and reprisals. For more information on responses to acts of intimidation and reprisals, see www.ohchr.org/EN/HRBodies/Pages/Reprisal.aspx.





C. RESERVATIONS AND RESTRICTIONS ON RIGHTS

1. RESERVATIONS AND DECLARATIONS

The Committee systematically assesses reservations during consideration of States parties' reports. Although States parties can enter reservations to exclude or modify the application of a right stipulated in the Covenant, any such reservation should be compatible with the object and the purpose of the Covenant.²⁷ According to the Committee, reservations to provisions of the Covenant that imply an intention not to comply with customary norms or peremptory norms are not permissible.²⁸

DEFINITION OF RESERVATION

“‘Reservation’ means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”

Article 2 (1) (d) of the Vienna Convention on the Law of Treaties

The Committee has asserted that its authority to make a determination of the compatibility of reservations with the Covenant arises from its role of monitoring the obligations of States parties

²⁷ See also article 19 of the Vienna Convention on the Law of Treaties.

²⁸ General comment No. 24 (1994), para. 8.

under the Covenant.²⁹ Similarly, the International Law Commission has concluded that the treaty bodies are competent to assess the permissibility of a reservation when the issue comes before them in the exercise of their functions.³⁰ In case of an impermissible reservation, the Committee has taken the view that “the normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation.”³¹ The International Law Commission has modified this approach in the sense that the State would be considered to be bound by the treaty without the benefit of the reservation, unless the opposite intention is clearly stated, for example unless the State specifies that it does not intend to be bound by a treaty without benefiting from the reservation.

In contrast to a reservation, a declaration should specify a State party’s interpretation of a provision without excluding or modifying its application for the State party. However, if the interpretative declaration excludes or modifies a provision of the Covenant, it would be considered as a de facto reservation and the Committee would request consideration of its withdrawal.

WITHDRAWAL OF RESERVATIONS

- ✓ Reservations can be withdrawn at any time
- ✓ States should regularly review their reservations and assess whether such reservations are still needed and justified
- ✓ Reservations that are incompatible with the object and the purpose of the Covenant should be withdrawn as soon as possible
- ✓ States should report on the status of their reservations in their reports to the Committee

EXAMPLES OF RECOMMENDATIONS



The Committee notes that a blanket reservation to article 14 (3) (d) has the effect of depriving accused persons of the minimum guarantees set thereunder when the interests of justice may require that such persons be provided with legal assistance. The State party should consider withdrawing its reservation. In the meantime, the State party should give urgent priority to providing legal representation to juveniles facing imprisonment in order to meet its obligations under article 24.

The State party should review periodically the justifications for, and the necessity of, maintaining its reservations to articles 10, 14 (6) and 20 of the Covenant with a view to withdrawing them.

The State party should, in accordance with general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant: (a) consider withdrawing its remaining reservations to the Covenant; (b) revise its national law if necessary; and (c) refrain from introducing into national law provisions that impede the withdrawal of the reservations.

The State party should reconsider its interpretative declarations and reservations with a view to significantly reducing their number and ensuring the effective application of the Covenant.

²⁹ Ibid., para. 18.

³⁰ Report of the International Law Commission on the work of its sixty-first session (4 May–5 June and 6 July–7 August 2009), *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 10 (A/64/10)*, p. 119, para. (7).

³¹ General comment No. 24 (1994), para. 18. However, the International Law Commission has concluded that the treaty bodies do not have the power to sever reservations. According to the Commission, human rights treaty bodies may not substitute their own judgment for the State’s consent to be bound by the treaty. The powers of treaty bodies do not affect the power of States to accept reservations or object to them. In the case of impermissible reservations, the Commission drew a conclusion that the State would be considered to be bound by the treaty without the benefit of the reservation unless the opposite intention was clearly stated, for example unless the State specified that it did not intend to be bound by a treaty without benefiting from the reservation (Report of the International Law Commission on the work of its sixty-first session (4 May–5 June and 6 July–7 August 2009), *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 10 (A/64/10)*, p. 120, para. (6)).

EXAMPLES OF GOOD PRACTICE



In 2017, the Committee welcomed the fact that Pakistan had withdrawn a number of reservations in 2011 and narrowed its reservations to articles 3 and 25 (CCPR/C/PAK/CO/1, para. 7).

In 2016, the Committee noted that Denmark had narrowed its reservation to article 14 (5) of the Covenant (CCPR/C/DNK/CO/6, para. 7) and that Sweden was considering a review of its reservations as part of a forthcoming strategy for human rights (CCPR/C/SWE/CO/7, paras. 6–7).

2. PERMISSIBLE RESTRICTIONS ON RIGHTS

As stated by the Committee in paragraph 6 of its general comment No. 31 (2004), limitations on the rights guaranteed by the Covenant are not permitted other than pursuant to the terms contained in the Covenant itself. For instance, articles 12, 18, 19, 21 and 22 expressly permit some form of restriction or limitation on the rights enumerated therein, while some other articles implicitly recognize as permissible certain restrictive measures taken by a State. The burden to justify that any restriction satisfies the tests found in the Covenant, as interpreted by the Committee – the tests of legality, necessity, proportionality and legitimate purpose – lies with the State party. In no case may the restriction be applied or invoked in a manner that would impair the essence of a Covenant right.³² All limitations should be interpreted in the light and context of the particular right concerned and in favour of the right at issue. The Committee has developed extensive jurisprudence on restrictions on rights, including freedom of expression and peaceful assembly,³³ and has elaborated on these issues in concluding observations and general comments.³⁴ The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4) provide useful guidance on limitations and derogations to the Covenant.

According to the Committee, “legality” means that a restriction must be provided for in the law of the State party.³⁵ The law should be compatible with the Covenant and in force at the time the limitation is applied. “Necessity” implies that the legitimate purpose of the restriction cannot be achieved otherwise than by restricting the right. An assessment of the necessity should be made on objective considerations. “Proportionality” requires that a restriction should not be overbroad or result in harm to rights holders. A restriction must be appropriate to achieving its protective function. It must be the least intrusive instrument among those that might achieve the protective function and it must be proportionate to the interest to be protected.³⁶

The legitimate grounds or permissible purposes for restrictions on rights are listed in the respective articles of the Covenant. They may include national security, public order, public health, public safety, public morals or respect for the rights and reputations of others. Sometimes the provisions of the Covenant addressing limitations also include reference to “democratic society”, meaning that such restrictions are necessary in a democratic society. The Committee has interpreted the prohibition on certain arbitrary measures as including a requirement to comply with the conditions of legality, necessity and proportionality.

³² General comment No. 31 (2004), para. 6.

³³ See the Committee’s jurisprudence, available at <https://juris.ohchr.org>.

³⁴ See, e.g., general comment No. 22 (1993), para. 8; general comment No. 27 (1999), paras. 11–18; general comment No. 34 (2011), paras. 21–36; general comment No. 37 (2020), paras. 36–69.

³⁵ General comment No. 34 (2011), para. 22.

³⁶ *Ibid.*, para. 34.

National security may be invoked to justify measures limiting certain rights only in situations in which they are taken to protect serious national security interests, such as the existence of the nation, its territorial integrity or political independence against force or threat of force.³⁷ National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked in situations in which there exist adequate safeguards and effective remedies against abuse.

CHECKLIST

RESTRICTIONS

- ✓ **Legitimate purpose** – intended to achieve the policy objective stipulated in the respective article
- ✓ **Necessary** – the least intrusive measure that can achieve the policy objective
- ✓ **Proportional** – reasonable relationship between the measure taken and the policy objective sought
- ✓ **Legal** – prescribed by law

“Public order”, as used in the Covenant, may be defined as the sum of the rules that ensure the functioning of the society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order. Public order should be interpreted in the context of the purpose of the particular human right, which is limited on this ground. State organs or agents responsible for the maintenance of public order should be subject to controls in the exercise of their power through parliament, courts or other competent independent bodies.

Public health may be invoked in order to allow a State to take measures addressing a serious threat to the health of the population or individual members of the population.

“Public safety” means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.

Public morals vary over time and from one culture to another. The concept of morals derives from many social, philosophical and religious traditions. Consequently, limitations for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition³⁸ and any such limitations must be understood in the light of the universality of human rights and the principle of non-discrimination.³⁹ A State that invokes public morals as a ground for restricting human rights must demonstrate that the limitation in question is essential to the maintenance of respect for the fundamental values of the community.

³⁷ Siracusa Principles, para. 29.

³⁸ General comment No. 22 (1993), para. 8

³⁹ General comment No. 34 (2011), para. 32.

Protection of the rights and freedom of others or the rights and reputations of others may be invoked when a conflict exists between two rights protected in the Covenant, or between a right that is protected and one that is not. In the latter case, recognition and consideration should be given to the fact that the Covenant seeks to protect the most fundamental rights and freedoms. In this context, special weight should be afforded to the rights from which no derogation may be made under article 4 of the Covenant. A limitation on a human right based on the reputation of others should not be used to protect the State and its officials from public opinion or criticism.

Some rights, such as the right not to be subjected to torture, may never be restricted under any circumstances. The list of the rights that cannot be derogated from is contained in article 4 (2) of the Covenant (see sect. E.4). The inclusion of a right in the list means that States cannot deviate from the terms of the Covenant with regard to the right, including the tests for justifying the limitation on the right, even in times of emergency.

Reference material

- Human Rights Committee, general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant
- OHCHR, *Civil and Political Rights: The Human Rights Committee*, Fact Sheet No. 15 (Rev.1) (New York and Geneva, 2005)
- The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4)



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D. RIGHT OF SELF-DETERMINATION (ART. 1)

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.”*

“The Committee has noted that many [States parties] completely ignore article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties’ reports should contain information on each paragraph of article 1.”

General comment No. 12 (1984), para. 3.

Article 1 guarantees the right of self-determination. As stated by the Committee in paragraph 1 of its general comment No. 12 (1984), its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is the only right addressed to peoples, rather than individuals. It is also the only right common to both the Covenant and the International Covenant on Economic, Social and Cultural Rights.

As stated by the Committee in paragraph 4 of its general comment No. 12 (1984), States parties should describe in their reports the constitutional and political processes that, in practice, allow for the exercise of this right. Article 1 also affirms an economic aspect of the right of self-determination concerning free disposal of natural wealth and resources by peoples. States parties should describe any factors or difficulties that prevent fulfilment of this right, and to what extent these difficulties affect peoples' enjoyment of other rights set forth in the Covenant.

Together with article 27, article 1 also protects the rights of indigenous communities. According to the reporting guidelines, States parties should indicate the ways and means by which they recognize and protect the rights of indigenous peoples to ownership of the lands and territories that they traditionally occupy or use as sources of livelihood (CCPR/C/2009/1, para. 28). In addition, they must consult indigenous peoples and local communities and obtain their free, prior and informed consent in any decision-making processes affecting their rights and interests under the Covenant. Reports should provide relevant examples.⁴⁰

Links with other articles of the Covenant

As the scope of the right of self-determination is limited to specific contexts, article 1 of the Covenant is rarely invoked by the Committee independently of other articles. In cases in which article 1 is addressed by the Committee, it does so by connecting article 1 to article 27 (rights of minorities), mainly in relation to issues concerning indigenous peoples.

CHECKLIST

INFORMATION ON THE RIGHT OF SELF-DETERMINATION IN STATES PARTIES' REPORTS

- ✓ Describe the constitutional and political processes that in practice allow for the exercise of this right
- ✓ Indicate any factors or difficulties preventing peoples' free disposal of their natural wealth and resources and to what extent this affects their enjoyment of other rights set forth in the Covenant
- ✓ Specify the ways and means by which the State party recognizes and protects the rights of indigenous peoples, if any, to ownership of the lands and territories that they traditionally occupy or use as sources of livelihood
- ✓ Specify the extent to which indigenous and local communities are consulted and whether their free, prior and informed consent is sought in any decision-making processes affecting their rights and interests under the Covenant
- ✓ Provide relevant examples

⁴⁰ In addition, the Committee's jurisprudence provides relevant examples. In *Sanila-Aikio v. Finland* (CCPR/C/124/D/2668/2015), the Committee recognized the right of an indigenous people (Sami) to internal self-determination for the first time and stated that requirements for eligibility to vote in Sami Parliament elections should be defined and applied in a manner that respects the right of the Sami people to exercise their internal self-determination. See also *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006); United Nations Declaration on the Rights of Indigenous Peoples, art. 19.

Right of self-determination in other international instruments

- International Covenant on Economic, Social and Cultural Rights, article 1
- Atlantic Charter
- Charter of the United Nations, Article 1
- Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations
- Declaration on the Granting of Independence to Colonial Countries and Peoples
- United Nations Declaration on the Rights of Indigenous Peoples

EXAMPLES OF RECOMMENDATIONS



The State party should take further steps to secure the rights of all indigenous peoples, under articles 1 and 27 of the Covenant, so as to give them greater influence in decision-making affecting their natural environment and their means of subsistence, as well as their own culture.

The Committee calls on the State party to organize general elections as soon as possible in order to enable its citizens to exercise their rights under articles 1 and 25 of the Covenant and, thus, to participate in the process of reconstruction of the country.

Following consultations with all indigenous peoples and with their free and informed consent, the State party should include in the next population census questions relating to the identification of indigenous peoples; design and implement public policies to move towards the full realization of their rights; and adopt special measures to address their marginalization. The State party should also, after consultation with all indigenous peoples, adopt measures to revive their languages and cultures.

EXAMPLES OF GOOD PRACTICE



In 2016, the Committee welcomed the commitment of Sweden to further advancing the interests of the Sami people and to realizing their right of self-determination. That included changes in the constitutional and legal framework, including amendments to the Constitution that had entered into force on 1 January 2011, wherein the Sami were explicitly recognized as a people (CCPR/C/SWE/CO/7, para. 38).

Reference material

- Human Rights Committee, general comment No. 12 (1984) on the right to self-determination





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E. OVERARCHING PROVISIONS (ARTS. 2–5)

Articles 2 to 5 contain provisions of a structural nature that are applicable to all the rights described in the Covenant. Articles 2, 3 and 5 provide interpretative guidance on how to implement the substantive rights of the Covenant. They also provide a core methodology for assessing whether the States parties have taken all necessary measures to implement the substantive provisions of the Covenant. They refer to the obligation to enforce Covenant rights in a non-discriminatory manner (art. 2), the obligation to ensure equal rights for men and women (art. 3) and the scope of the Covenant rights (art. 5). Article 4 addresses State actions during times of national emergency and defines rules concerning derogation from a State's obligations under the Covenant in these circumstances.



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1. NATURE OF OBLIGATIONS (ART. 2)

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 2 contains several key principles with respect to the nature of obligations under the Covenant. As stated by the Committee in paragraph 3 of its general comment No. 31 (2004), article 2 defines the scope of States parties’ legal obligations under the Covenant.

(a) Applicability (art. 2 (1))

As stipulated in paragraph 10 of general comment No. 31 (2004), the States parties to the Covenant should respect and ensure the rights stipulated in the Covenant to all persons within their territory and subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to everyone within the power or effective control of that State party, even if they are not situated within the territory of the State party. This principle also applies to those 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 peacekeeping or peace-enforcement operation.⁴¹

With a few exceptions, such as the right to vote, these rights apply not only to citizens but to all persons, including stateless persons, refugees and migrant workers, who find themselves on the State party’s territory or are subject to its power or effective control.⁴²

⁴¹ See, e.g., *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, at p. 179, para. 109. The Court observed that “while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, States parties to the Covenant should be bound to comply with its provisions”. In this specific situation, the Court confirmed that “the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory” (*ibid.*, para. 111). The Committee’s jurisprudence is also consistent with this approach, see, e.g., *López Burgos v. Uruguay* communication No. 52/1979; *Casariago v. Uruguay*, communication No. 56/1979; *Montero v. Uruguay*, communication No. 106/1981.

⁴² General comment No. 31 (2004), para. 10.

In accordance with general international law, the provisions of the Covenant are binding on every State party as a whole. All branches of the Government (executive, legislative and judicial) at whatever level (national, regional or local) may engage the responsibility of the State party. A State party may not invoke the provisions of its internal law as justification for its failure to respect its obligations under the Covenant.⁴³

As stated by the Committee in paragraph 11 of its general comment No. 31 (2004), the Covenant also applies in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.

(b) Types of obligations (art. 2 (1)–(2))



In common with other human rights treaties, the Covenant imposes three types of obligations on States parties:

- (a) The obligation to respect, which means refraining from violating the human rights stipulated in the Covenant. The State party should not engage in prohibited acts or practices, such as torture, arbitrary deprivation of life or slavery;
- (b) The obligation to protect, which implies protection against acts that violate the Covenant rights by third parties, whether they are individuals, corporations or other entities. The State party should take appropriate measures or exercise due diligence to guarantee the rights specified in the Covenant, including preventing, punishing and investigating such acts or redressing the harm caused by such acts, whether they are committed by private persons or entities. For example, the State party should ensure that the activities of a corporation on its territory do not infringe the rights of indigenous peoples, including their security and right to enjoy their own culture. The obligations in the Covenant are binding on States parties and not directly on individuals. However, failure to ensure Covenant rights against acts committed by private individuals or entities may give rise to a violation by the State party;
- (c) The obligation to fulfil, which requires that States parties take positive action to ensure enjoyment of the Covenant rights. For example, States parties must provide legal aid to persons in situations in which the interests of justice so require, or prevent the overcrowding of prisons to guarantee humane conditions in cases of deprivation of liberty.

⁴³ Vienna Convention on the Law of Treaties, art. 27.

National mechanism for reporting and follow-up

- Government body
- Coordinates reporting and follow-up on recommendations of international and regional human rights mechanisms

National human rights institution

- Independent body
- Promotes and protects human rights at the national level
- Receives, investigates and resolves complaints
- Monitors human rights
- Raises public awareness of human rights

(c) Constitutional, legal and institutional framework (art. 2 (2))**Legal framework**

States parties should have in place the constitutional and legal framework to give effect to the rights recognized by the Covenant. As required by the reporting guidelines, States parties should explain the status of the Covenant in domestic law – that is, whether the Covenant is incorporated into domestic law in such a manner as to be directly applicable or whether the Covenant rights are enacted or reflected in domestic law by legislation so as to be enforceable. States parties should also indicate whether the Covenant rights are guaranteed in the Constitution or other laws and to what extent. If special legal regimes are applicable in the State party, such as customary law, sharia law or common law, States should explain the measures taken to ensure compatibility of these regimes and their laws with the Covenant. If the Covenant is not directly applicable, States parties should clarify if its provisions can be invoked before and given effect to by courts, tribunals and administrative authorities, and provide examples of cases in which the Covenant has been invoked.

Institutional framework

States parties are also encouraged to establish an institutional framework that will ensure timely reporting to the Committee (and other international and regional human rights mechanisms), responding to complaints about violations of Covenant rights (if applicable) and implementing recommendations (and Views, if relevant) of the Committee at the national level. States parties that have established a standing government structure usually perform more efficiently when reporting and following up recommendations than States that have opted for ad hoc solutions.⁴⁴ Such government structures – often called national mechanisms for reporting and follow-up⁴⁵ – should be standing government bodies (ministerial, interministerial or institutionally separate) that are mandated to coordinate and prepare reports (and, if relevant, responses to complaints concerning violations of the Covenant) for submission to the Committee and other international and regional human rights mechanisms and to engage with them. Such a mechanism should perform the functions of engagement, coordination (across State authorities), collaboration (with civil society and other non-governmental actors) and information management.

⁴⁴ See OHCHR, *National Mechanisms for Reporting and Follow-up: a Study of State Engagement with International Human Rights Mechanisms*.

⁴⁵ See OHCHR, *National Mechanisms for Reporting and Follow-up: a Practical Guide to Effective State Engagement with International Human Rights Mechanisms*.

In addition, the Committee seeks information on the status of national human rights institutions and encourages States parties either to establish or to improve existing institutions so that they are independent, impartial and efficient. The Committee recommends that the institutions should be vested with the competence to promote and protect human rights, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)⁴⁶ and be provided with sufficient financial and human resources.

Raising awareness of the Covenant, reports, concluding observations and Views

In accordance with the reporting guidelines, States parties should inform the Committee about the measures taken to raise awareness of the Covenant among public officials and State agents, in particular through the training of judges, prosecutors and other lawyers and law enforcement officers. States parties are also required to disseminate information on their reports to the Committee and the concluding observations on these reports among the population at large.

CHECKLIST

INFORMATION ON THE CONSTITUTIONAL, LEGAL AND INSTITUTIONAL FRAMEWORK IN STATES PARTIES' REPORTS

- ✓ Indicate the principal legal measures that the State Party has taken to give effect to Covenant rights
- ✓ Specify which judicial, administrative and other competent authorities have jurisdiction to secure Covenant rights
- ✓ Indicate if the Covenant is directly applicable
- ✓ Indicate if the Covenant can be invoked before the courts and provide examples of cases in which it has been invoked
- ✓ Indicate if and to what extent Covenant rights are guaranteed in the Constitution or other laws
- ✓ Elaborate on the existence of government or independent structures at the national level that promote and protect human rights

EXAMPLE OF GOOD PRACTICE



In 2017, the Committee welcomed the information that the provisions of the Covenant had been invoked in more than 300 decisions of the Federal Supreme Court of Switzerland (CCPR/C/CHE/CO/4, para. 6).

Constitutional, legal and institutional framework in other international instruments

- International Covenant on Economic, Social and Cultural Rights, article 2
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 2
- Convention on the Elimination of All Forms of Discrimination against Women, article 3
- Convention on the Rights of Persons with Disabilities, article 4
- Convention on the Rights of the Child, article 2

⁴⁶ General Assembly resolution 48/134, annex.

- International Convention on the Elimination of All Forms of Racial Discrimination, article 2
- African Charter on Human and Peoples’ Rights, article 1
- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), article 1

2. EQUALITY AND NON-DISCRIMINATION (ARTS. 2 (1), 3 AND 26)



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.”

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 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.”

The Committee normally considers articles referring to equality (arts. 2–3) and non-discrimination (art. 26) together, since they are expressions of the same objective. As underlined by the Committee, non-discrimination together with equality before the law and equal protection of the law constitute basic and general principles of human rights law.⁴⁷ The right to equality before the law is directed against the enforcement of legislation rather than the legislation itself: it protects against arbitrary enforcement of legislation. The right to equal protection of the law means that laws should be enacted that prohibit discrimination and that there should be no discrimination when enacting laws.

⁴⁷ General comment No. 18 (1989), para. 1.

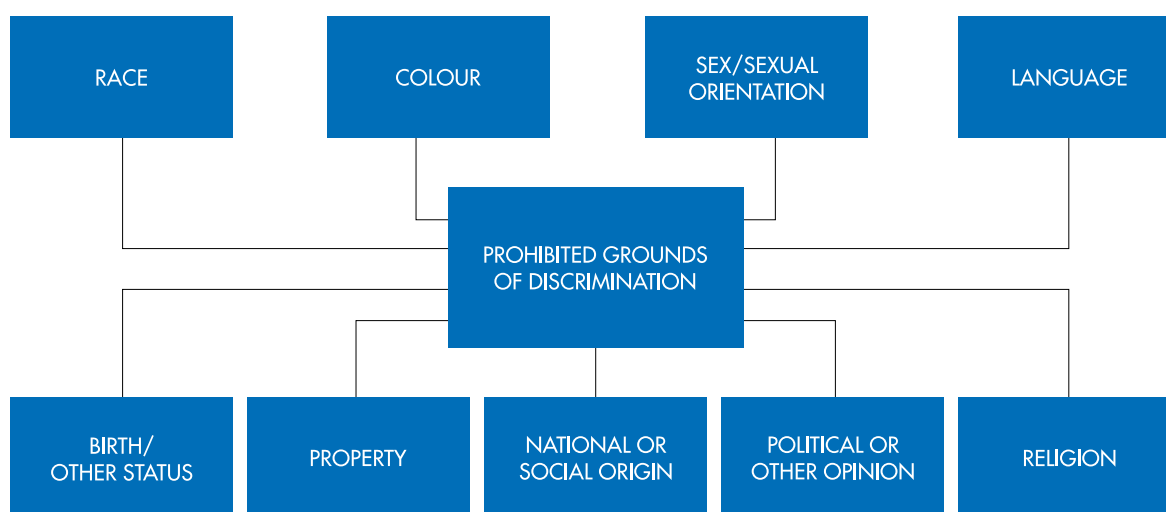
As stated by the Committee in paragraph 12 of its general comment No. 18 (1989), the Covenant not only protects against discrimination with respect to the rights provided therein (art. 2), but it also prohibits discrimination in law or in fact in any field regulated by law and protected by public authorities (art. 26). This means that when States parties adopt laws, even relating to rights that are not protected by the Covenant, they must comply with the principle of equality and the prohibition of discrimination as set down in article 26.⁴⁸ The Covenant does not contain a definition of discrimination but the Committee has developed its own interpretation of discrimination inspired by article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

DEFINITION OF DISCRIMINATION BY THE COMMITTEE

In general comment No. 18 (1989), the Committee defined 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 equal footing, of all rights and freedoms” (para. 7). “Other status” may include additional grounds of discrimination identified in the practice of the Committee, such as sexual orientation, caste or socioeconomic status.

As confirmed by the Committee’s jurisprudence, not all differences of treatment are automatically discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26, provided that such a differentiation does not entail disproportionate harm to those affected by it.⁴⁹

The Committee has pointed out that the principle of equality can sometimes require States parties to take positive measures, affirmative action or temporary special measures in order to diminish or eliminate conditions that cause or help to perpetuate discrimination prohibited by the Covenant.⁵⁰ The Committee regularly asks about such measures during the constructive dialogues. Such action should be temporary in nature and needed to correct de facto discrimination.



⁴⁸ *Zwaan-de Vries v. Netherlands*, communication No. 182/1984, para. 12.4.

⁴⁹ *Ibid.*, para. 13.

⁵⁰ General comment No. 18 (1989), para. 10.

TEMPORARY SPECIAL MEASURES

The Committee very often recommends that the States parties adopt temporary special measures in order to increase the participation of women in the private and public sectors, particularly in decision-making positions. It has also recommended temporary special measures to increase representation of members of national and ethnic minorities in State bodies at both the national and local levels and their access to education, employment opportunities and services, including housing.

According to the reporting guidelines, States parties should:

- (a) Report on legislative and administrative measures and recent court decisions relating to protection against discrimination in law and fact, in relation to the enjoyment of the rights found in the Covenant, on any ground such as race, colour, sex, language, religion, political or public opinion, national or social origin, property, birth or other status;
- (b) Indicate if any of the prohibited grounds of discrimination is excluded from national legislation and the significance of such an omission;
- (c) Report on remedies available for victims of discrimination and whether an independent mechanism has been established to receive complaints of discrimination and, if so, the number of complaints received and the measures taken in response;
- (d) Provide information on cases of discrimination by public authorities, private persons or private bodies that have been encountered during the reporting period.



TIP: WHEN REPORTING ON EACH COVENANT RIGHT, STATES PARTIES MUST PROVIDE INFORMATION REGARDING THE ENJOYMENT OF THE SPECIFIC RIGHT BY WOMEN, ADDRESSING IN PARTICULAR:

- The proportion of women in positions of responsibility in the public and the private sectors
- Measures taken to promote the representation of women in parliament, in senior positions in Government, in the judiciary and in the private sector
- Measures to ensure equal pay for work of equal value for women and men
- Whether the State party has adopted legislation that specifically criminalizes domestic violence
- Measures to ensure that acts of domestic violence are effectively investigated and perpetrators prosecuted and sanctioned
- Steps to combat domestic violence, such as training for judges, prosecutors, police officers and health workers and awareness-raising activities for women on their rights and available remedies, on safe shelters and the resources allocated to assist victims of domestic violence
- The minimum age of marriage, rights in marriage and divorce arrangements, including custody of children
- School attendance by girls
- Transmission of nationality to children
- Legislation on rape, including spousal rape
- Measures to eliminate traditional practices and customs affecting the dignity, personal integrity and socioeconomic status of women and girls

Concerning equal enjoyment of Covenant rights by men and women, States parties should provide information on the actual role of women in society. In this context, they should indicate all legislative and other steps taken to (a) eliminate stereotypes that discriminate against women and (b) put an end to discriminatory measures and practices, in both the public and private sectors, that impair the equal enjoyment of rights by women and men. Such steps might include legislative changes, education and public awareness campaigns.



Equal rights of men and women (art. 3) and equality before the law and discrimination (art. 26) in other international instruments

- Universal Declaration of Human Rights, article 7
- International Covenant on Economic, Social and Cultural Rights, article 3
- Convention on the Elimination of All Forms of Discrimination against Women, article 2
- Convention on the Rights of Persons with Disabilities, articles 3 (b) and 5
- International Convention on the Elimination of All Forms of Racial Discrimination, article 2
- Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- Convention on the Nationality of Married Women
- Convention on the Political Rights of Women
- Equal Remuneration Convention, 1951 (No. 100), of the International Labour Organization
- American Convention on Human Rights, articles 1 and 24
- European Convention on Human Rights, article 14
- Declaration on the Elimination of Violence against Women

EXAMPLES OF RECOMMENDATIONS



Article 3

The State party should adopt concrete measures to increase the representation of women in decision-making positions in the public sector and, where necessary, through appropriate temporary special measures to give effect to the provisions of the Covenant. The State party should take the necessary practical steps, including awareness-raising campaigns, to eradicate stereotypes regarding the position of women in society.

The State party should ensure that women victims of violence, including rape, are able to bring charges easily and, to this end, should review the requirement that a witness must be produced when a charge of rape is brought. It should also strengthen the protective measures for victims and refrain from criminal prosecution. Finally, the State party should strengthen its awareness campaigns, particularly in the framework of the national plan of action to combat violence against women and girls, and train officers to enforce the law on violence against women.

Article 26

The State party should accelerate the enactment of the anti-discrimination legislation that is currently under consideration by the Parliament, and ensure it includes a prohibition of discrimination on the basis of sexual orientation.

Reference material

- Human Rights Committee, general comment No. 18 (1989) on non-discrimination

EXAMPLES OF GOOD PRACTICE



With respect to equality and the prohibition of discrimination, the Committee welcomed the following measures taken by the States parties:

- The measures taken by Denmark to prevent and combat domestic violence, which included the operationalization of a national unit to combat violence in family and intimate relations, and an update to that country's guidelines on interrelational violent crimes;⁵¹
 - Article 8 of the Constitution of the Niger, which established equality before the law regardless of gender and legislation that set the representation of women at 15 per cent in elected office and at 25 per cent in public administration (CCPR/C/NER/CO/2, para. 20);
 - The measures taken by Czechia to address racism, hate speech and other forms of intolerance, including the annual Concept for Combating Extremism and Prejudiced Hatred, the Campaign against Racism project and the Hate Free media campaign (CCPR/C/CZE/CO/4, para. 16);
 - The adoption of amendments to the Law on Prohibition of Discrimination and an annual plan for the implementation of the gender action plan in Bosnia and Herzegovina (CCPR/C/BIH/CO/3, para. 25);
 - The various measures taken by Australia in order to address violence against women, including the National Plan to Reduce Violence against Women and their Children 2010–2022 and the Stop the Violence project (CCPR/C/AUS/CO/6, para. 21);
 - The 2015 amendments to the Schools Act introducing a number of measures aimed at promoting desegregation of Roma pupils in Slovakia (CCPR/C/SVK/CO/4, para. 18).
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⁵¹ See OHCHR, "Human Rights Committee gives top grades for follow-up to five countries", 13 December 2019. Available at www.ohchr.org/EN/NewsEvents/Pages/HumanRightsCommitteeFollowUp.aspx.

3. RIGHT TO AN EFFECTIVE REMEDY (ART. 2 (3))

Article 2 (3)

“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.”*

The States parties must ensure that individuals have accessible and effective remedies for any violations of Covenant rights. This includes appropriate judicial and administrative mechanisms for addressing claims of violations of Covenant rights under domestic law, as well as mechanisms for the implementation of the Committee’s Views following violations under the first Optional Protocol.

According to the guidelines adopted by the Committee, States parties are obliged to provide reparation to individuals whose Covenant rights have been violated.⁵² The Committee explains that reparation can involve restitution, compensation, rehabilitation and satisfaction, as follows:

- (a) Restitution includes measures taken with a view to restoring rights that have been violated, for example the victim’s release from prison or reinstatement in employment that was lost as a result of the violation committed;
- (b) Rehabilitation may comprise medical or psychological treatment of victims and their families;
- (c) Compensation includes monetary reparation for harm, both material and non-material;
- (d) Measures of satisfaction may comprise investigation of acts that constituted violation of the Covenant; bringing perpetrators to justice; measures to commute, reduce or not enforce a sentence; or a public apology;
- (e) States parties are equally obliged to take measures to prevent a recurrence of a violation of the Covenant. Guarantees of non-repetition may embrace legislative changes, improvements in conditions in places of detention, changes in official procedures and practices, training and raising the awareness of relevant professional groups.

Links with other articles of the Covenant

Article 2 (3) is often quoted in conjunction with article 14 (right to a fair trial) since the safeguards guaranteed by the latter article are part of the remedies presented in the former article.

Non-discrimination, national legal framework and access to remedies in other international instruments

- African Charter on Human and Peoples’ Rights, articles 1, 2 and 26
- American Convention on Human Rights, articles 1, 2 and 25
- European Convention on Human Rights, articles 1, 13 and 14

⁵² The Committee has adopted guidelines on measures of reparation under the first Optional Protocol that offer some guidance on interpreting article 2 (3) of the Covenant (CCPR/C/158).

EXAMPLES OF RECOMMENDATIONS



The State party should consider establishing an adequate mechanism to implement the Committee's Views, in accordance with the right to an effective remedy, including compensation, when there has been a violation of the Covenant.

The State party should take appropriate measures to raise awareness of the Covenant among judges, prosecutors, lawyers and the public at large to ensure that its provisions are taken into account before national courts.

The State party should step up its efforts to dispel stereotypes of and eliminate discrimination against indigenous peoples, persons of African descent, migrants, asylum seekers and refugees, and persons with disabilities, by carrying out awareness-raising campaigns to promote tolerance and respect for diversity, among other actions. It should expedite the adoption of an act on the prevention and punishment of all forms of discrimination and should ensure that it contains a general prohibition of discrimination on all the grounds enumerated in the Covenant and includes provisions allowing for reparation through effective and appropriate legal remedies in cases of discrimination, racism or xenophobia.

The State party should take appropriate measures to ensure that its definition of discrimination prohibits all forms of discrimination as set out in the Covenant (race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) and put in place effective mechanisms to provide access to justice and remedies in cases of violation of those rights.

4. STATES OF EMERGENCY (ART. 4)

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 4 recognizes exceptional situations in which the State party may not be able to practically guarantee some of the Covenant rights for a temporary period of time. Such situations may include armed conflicts, civil and violent unrest, natural disasters or major industrial accidents. Should the State party decide to derogate from the Covenant rights, it must comply with the strict requirements of article 4.

In paragraph 2 of its general comment No. 29 (2001), the Committee stated that the measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature. Indefinite states of emergency are incompatible with article 4. Two fundamental conditions must be met: the situation



must amount to a public emergency that threatens the life of the nation; and the State party must have officially proclaimed a state of emergency.

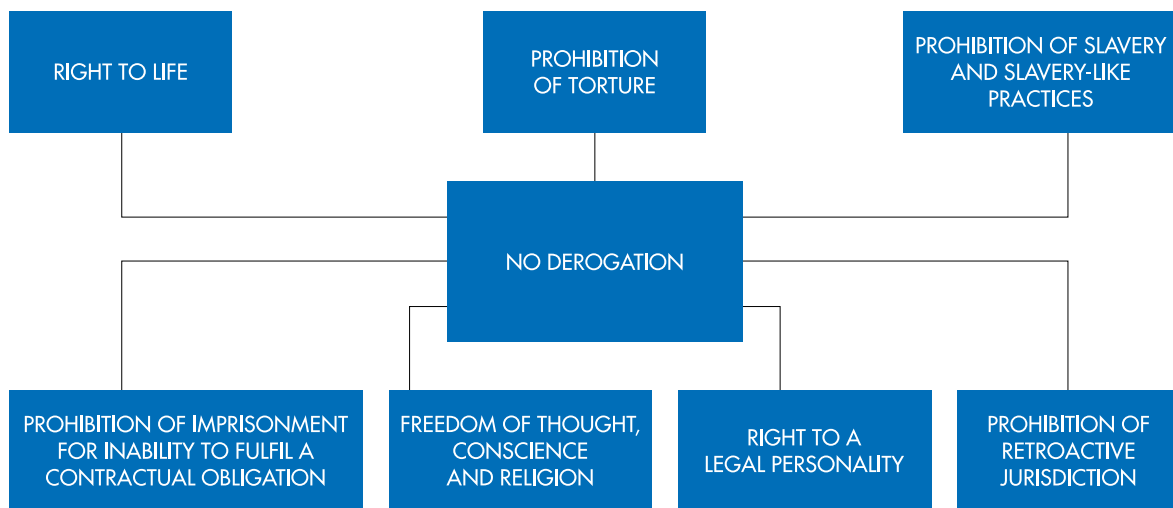
The situation amounting to a public emergency (such as an armed conflict or natural disaster) does not automatically satisfy the derogation criteria unless it constitutes a threat to the life of the nation. The requirement of an official proclamation is a prerequisite for the application of the derogation. States parties must act within their constitutional and other provisions of law that govern such proclamations and the exercise of emergency powers. This requirement is essential for the maintenance of the principles of legality and rule of law at times when they are most needed.

Public emergency refers primarily to situations of armed conflict. However, even during an armed conflict, measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation. If the States parties consider invoking article 4 in situations other than an armed conflict, they should carefully consider why such a measure is necessary in the circumstances. With regard to pandemics, emergency powers must be used for legitimate public health goals, not as a basis for quashing dissent, silencing the work of human rights defenders or journalists or taking any other steps that are not necessary to address the health situation.⁵³ The clear preference is for States parties not to derogate from the Covenant rights if they are able to attain their public health or other public policy objectives by invoking the possibility of restricting certain rights, such as articles 12 (freedom of movement), 19 (freedom of opinion and expression) or 21 (right of peaceful assembly), in conformity with the provisions for such restrictions set out in the Covenant, or by invoking the possibility of introducing reasonable limitations on certain rights, such as article 9 (right to liberty and security of person) and article 17 (right to privacy), in accordance with their provisions.

Measures derogating from the Covenant must be proportional and strictly required by the exigencies of the situation. Such measures should not involve any discrimination. This requirement relates to the duration, geographical coverage and material scope of the state of emergency.

Article 4 expressly prohibits derogations from the following articles: article 6 (right to life), article 7 (prohibition of torture), article 8 (1) and (2) (prohibition of slavery and slavery-like practices), article 11 (prohibition of imprisonment for inability to fulfil a contractual obligation), article 15 (prohibition of retroactive jurisdiction), article 16 (right to a legal personality) and article 18 (freedom

⁵³ See www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx.



of thought, conscience and religion). There are other rights that cannot be derogated from, including those covered by international humanitarian law, international criminal law and peremptory norms of international law, such as non-refoulement, the prohibition against hostage-taking or imposing collective punishments, arbitrary deprivation of liberty and deviating from fundamental principles of fair trial (including the presumption of innocence), especially in trials for capital offences, where the right to life, which is non-derogable, is involved.

CHECKLIST

INFORMATION ON STATES OF EMERGENCY IN STATES PARTIES' REPORTS

- ✓ Provide information on legislation on states of emergency
- ✓ Indicate the procedures for imposing and lifting derogations
- ✓ Provide information on any state of emergency that has been declared during the reporting period

Any State party exercising its right of derogation shall notify the Secretary-General of the provisions from which it has derogated and of the reasons for which such a derogation was invoked. The requirement of immediate notification applies equally in relation to the termination of such a derogation. Notifications by States parties should include full information on the measures taken and a clear explanation of the reasons for them, together with full documentation regarding the applicable law. The Secretary-General transmits such information to all States parties.

In their reports, States parties must describe the constitutional mechanism by which a state of emergency can be declared in the country, including the powers of the executive branch under such circumstances and guarantees for the protection of non-derogable rights. They must provide information on the date, extent of and procedures for imposing and lifting any derogations under article 4, with a full explanation in relation to every article of the Covenant affected by the derogation. States must explain the role of State authorities, such as the military and police, during the period of emergency, and specify which mechanisms are available to review the exercise of extraordinary powers by such authorities during a period of emergency, in a manner consistent with the requirements of the Covenant.

States parties must report whether any state of emergency has been declared during the reporting period, the precise content of the official act of declaration and, as appropriate, the act of termination of the state of emergency and the notification sent to the Secretary-General.

EXAMPLES OF NOTIFICATIONS UNDER ARTICLE 4 (3) TO THE SECRETARY-GENERAL (ABRIDGED VERSIONS)

France (terrorist attacks)

On 23 November 2015, France notified the Secretary-General of the Decree of the President of the Republic of 14 November 2014 declaring a state of emergency for three months due to terrorist attacks that had taken place on 13 November, the ongoing terrorist threat and the wish to prevent further terrorist attacks, and of other decrees or measures that could be taken by the administrative authorities. Some of the measures prescribed by the decrees could involve derogation from the obligations under the Covenant, particularly articles 9, 12 and 17.⁵⁴

Latvia (coronavirus disease COVID-19 pandemic)

Following the announcement by the World Health Organization of 11 March 2020 that COVID-19 had been confirmed as a pandemic and taking into account the significant danger of COVID-19 to public health, on 12 March 2020, the Government of Latvia declared a state of emergency. The aim of the declaration was to ensure epidemiological safety and restrict the spread of COVID-19. The emergency situation commenced on 13 March 2020 and remained in force initially until 14 April 2020. Among the measures taken under the state of emergency, the Government suspended in-class learning at schools, restricted access of third persons to hospitals, social care institutions and places of detention, cancelled and prohibited all public events, meetings and gatherings, and restricted the movement of persons. The application of those measures implied the need to derogate from certain obligations under articles 12, 17 and 21 of the Covenant.⁵⁵

According to the reporting guidelines, within the context of article 4, States should report on any measures adopted to combat terrorism. The Committee has expressed concern about broad definitions of terrorism in national legislation; measures taken to tackle terrorism that are not in accordance with the provisions of the Covenant, due in some cases to an absence of legal certainty and predictability, and their misuse against human rights defenders; and an absence of fair trial guarantees and legal safeguards concerning arrest and detention.

CHECKLIST

INFORMATION ON COUNTER-TERRORISM MEASURES IN STATES PARTIES' REPORTS

- ✓ Explain how the State party ensures that its counter-terrorism legislation is compatible with the rights guaranteed by the Covenant
- ✓ Provide a definition of terrorism under national law and specify all deviations from ordinary law sanctioned by counter-terrorism legislation
- ✓ Specify the administrative or judicial cases in which the measures on counter-terrorism adopted at the national level pursuant to Security Council resolution 1373 (2001) have been applied
- ✓ Indicate how the State party protects the values of the Covenant when complying with the sanctions regime of the Security Council

⁵⁴ See France, notification under article 4 (3) of the Covenant, C.N.703.2015.TREATIES-IV.4 (depository notification), transmitted to the Secretary-General on 23 November 2015.

⁵⁵ See Latvia, notification under article 4 (3) of the Covenant, C.N.105.2020.TREATIES-IV.4 (depository notification), transmitted to the Secretary-General on 16 March 2020.

Links with other articles of the Covenant

When article 4 is quoted in conjunction with another provision of the Covenant, it is generally with article 2 (2) (constitutional and legal framework for the implementation of the Covenant). In addition, if the actual or potential state of emergency within a State party affects the enjoyment of a right, the Committee can address this issue by linking article 4 with other Covenant article(s) that may be affected.

EXAMPLES OF RECOMMENDATIONS



The State party should consider amending the Constitution and the state of emergency law so as to ensure that national law prohibits derogation from the provisions of the Covenant that are considered non-derogable.

The State party should take the necessary steps to ensure compliance with article 4 of the Covenant, particularly insofar as it relates to the principle of exceptional threat and the non-derogability of the fundamental rights referred to in paragraph 2 of that article.

The Committee recalls its general comment No. 29 (2001) on derogations from the Covenant during a state of emergency and requests the State party to develop legislation containing clear provisions on states of emergency so that the rights protected under article 4 (2) of the Covenant may not be suspended under any circumstances and to ensure that the requirements of a derogation are consistent with the Covenant.

The State party should take the steps necessary to ensure that rights are limited only in compliance with the Covenant, in particular with respect to the principles of exceptional threat, proportionality and non-discrimination and the non-derogability of the fundamental rights referred to in article 4. The Committee draws the State party's attention to its general comment No. 29 (2001), in which the Committee deals with the matter of temporary derogations from obligations during states of emergency.

The State party should bring its current counter-terrorism and counter-extremism regulations and practices into full compliance with the Covenant, including with the requirements of article 4. Inter alia, it should clarify and narrow the broad definitions of terrorism, the public justification of terrorist and extremist activity, and extremism (including by adding a requirement of violence or advocacy of hatred), and ensure that they comply with the principles of legal certainty and predictability and with relevant international standards, and that any limitations of human rights for national security purposes ensuing from the application of such regulations serve legitimate aims, are necessary and proportionate and are subject to appropriate safeguards. The State party should also ensure that any newly adopted counter-terrorism and counter-extremism regulations fully comply with the above principles.

Reference material

- Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency



EXAMPLES OF GOOD PRACTICE



In 2016, the Committee welcomed the inclusion of the principle of non-derogation of basic rights and freedoms in a state of emergency in article 59 of the Constitution of Morocco (CCPR/C/MAR/CO/6, para. 7).

In 2006, the Committee welcomed the adoption of a law in Belgium that provided for the insertion of a new subparagraph into article 417 ter of the Criminal Code to expressly prohibit the use of the existence of a state of emergency as a pretext for torture (CCPR/C/BEL/CO/5, para. 4 (g)).

5. SCOPE OF RIGHTS (ART. 5)

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.”

Article 5 guarantees that nothing in the Covenant confers the right to destroy any of its provisions by any State party, group or person, or limit it beyond the permissible grounds of limitation provided for therein.

It also contains a safeguard against restricting otherwise applicable human rights. A State party that provides stronger protection than the provisions of the Covenant in its domestic or under international law may not use the Covenant as an excuse for failure to comply with such higher standards. In its jurisprudence, the Committee has stated that article 5 is one of the “general undertakings by States and cannot be invoked, in isolation”.⁵⁶ It is an accessory provision that strengthens the protection of other substantive Covenant rights. There is no reporting specifically on article 5 and it is not included in the reporting guidelines.

Links with other articles of the Covenant

Article 5 is not often invoked. As an accessory right designed to ensure the maximum extension of Covenant protection, it is linked with all substantive rights of the Covenant. It is quoted, for example, in connection with article 4 (1), which requires that no measure derogating from the provisions of the Covenant may be inconsistent with the State party’s other obligations under international law.

Similar protection in other international instruments

- Universal Declaration of Human Rights, article 30
- American Convention on Human Rights, article 29
- European Convention on Human Rights, articles 17–18

⁵⁶ *H.G.B. and S.P. v. Trinidad and Tobago*, communication No. 268/1987, para. 6.2.



F. SUBSTANTIVE PROVISIONS (ARTS. 6–27)

1. RIGHT TO LIFE, LIBERTY AND PHYSICAL SECURITY OF THE INDIVIDUAL (ARTS. 6–13)

(a) Right to life (art. 6)

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 capital punishment by any State Party to the present Covenant.”*

As stated by the Committee in paragraph 2 of its general comment No. 36 (2018), the right to life is the supreme right from which no derogation is permitted. It is a right that should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy life with dignity (*ibid.*, para. 3). It encompasses a duty on the part of the State party to respect the right to life – for example, the State’s agents may not deprive a person of life arbitrarily – and to protect private individuals from deprivation of life by each other or by third parties. States are obliged to take measures against arbitrary deprivation of life by criminal acts and to prevent arbitrary killing by their own security forces. Deprivation of life is, as a rule, arbitrary if it is inconsistent with international or domestic law. However, the notion of “arbitrariness” is not to be equated with something being “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law,⁵⁷ as well as elements of reasonableness, necessity and proportionality. States should adopt laws to establish when force may be used (legality principle), when life may be taken (substantive component) and how they are accountable (procedural component). The law must strictly control the use of force and firearms by the police and security forces. States parties should ensure that less lethal weapons are subject to strict independent testing, and evaluate and monitor the impact on the right to life of weapons such as electro-muscular disruption devices.

States should take measures to prevent cases of extrajudicial executions and disappearances, including establishing effective procedures to investigate such cases, prosecute and punish perpetrators and provide victims with an effective remedy.

In accordance with paragraph 7 of general comment No. 36 (2018) and the Committee’s jurisprudence, the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations.⁵⁸ Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.⁵⁹

States parties are also required to take special measures to protect persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence, for instance human rights defenders. States parties also have obligations to prevent suicides, and to ensure robust safeguards in States that allow the termination of life of adults, such as the terminally ill.

States parties must take appropriate measures to protect individuals against deprivation of life by other States, international organizations and foreign corporations operating within their territory or in other areas subject to their jurisdiction.

⁵⁷ *Van Alphen v. Netherlands*, communication No. 305/1988, para. 5.8; *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.1.

⁵⁸ *Toussaint v. Canada* (CCPR/C/123/D/2348/2014), para. 11.3; *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.3.

⁵⁹ General comment No. 36 (2018), para. 62; *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016), para. 9.4.

CHECKLIST

INFORMATION ON THE RIGHT TO LIFE IN STATES PARTIES' REPORTS

- ✓ Provide information on the measures taken to prevent any arbitrary deprivation of life and to punish those responsible should it occur, and the remedies and compensation for victims
- ✓ Give details about the cases of extrajudicial executions and the investigations carried out and their outcomes, including deaths that have occurred during past disturbances, and the remedies and compensation for the families of victims
- ✓ Give details about the cases of enforced disappearances of individuals and the action taken to prevent such disappearances, and the procedures established and followed to investigate complaints regarding missing persons
- ✓ Provide information on laws, rules and regulations governing the use of force and firearms by the police and security forces

With respect to the use of force and firearms by the police and security forces, States must provide information on the rules and regulations governing such use of force and firearms by the police and security forces, and their compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁶⁰ States must further indicate whether any violations of the Basic Principles have occurred and, if so, whether any lives were lost as a result of the excessive use of force by the military, the police or any other law enforcement agency. Moreover, States must specify if any investigations have been carried out to establish the responsibility of and to punish those found responsible for such acts, and any measures adopted to prevent the recurrence of such abuses.

States that have not yet abolished the death penalty are obliged to limit its use to only the most serious crimes (according to the Committee those involving the intentional killing of other individuals) in accordance with the law in force at the time of the commission of the crime. States must also provide procedural guarantees that must be strictly observed, including the right to a fair trial by an independent tribunal, the presumption of innocence, the minimum guarantees for a defence and a right to review by an independent tribunal. These rights are in addition to the particular right to seek pardon or commutation of the sentence. The death penalty may never be imposed as a mandatory sentence. It must not be imposed for crimes committed by persons below 18 years of age at the time of the commission of the crime and must not be carried out on pregnant women. While article 6 does not prohibit the death penalty, it suggests its abolition is desirable and prohibits reintroduction of the death penalty after its abolition.

As stated by the Committee in its general comment No. 36 (2018), States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life and therefore its abolition is both desirable and necessary for the enhancement of human dignity and the progressive development of human rights. According to the Committee, it is contrary to the object and purpose of article 6 if the States parties take retrograde steps, such as increasing the rate and extent to which they resort to the death penalty, or reducing the number of pardons and commutations that they grant.

⁶⁰ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990. See *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (United Nations publication, 2020).

CHECKLIST

INFORMATION ON THE DEATH PENALTY IN STATES PARTIES' REPORTS

- ✓ Explain the current situation in relation to capital punishment
- If capital punishment still exists:
- ✓ Provide information on any initiatives and plans aiming at further reducing or totally abolishing it
 - ✓ Specify the crimes that are punishable by the death penalty and whether its application in such cases is mandatory or not
 - ✓ Indicate the number of death sentences issued during the reporting period, the number of sentences carried out, the nature of the crimes involved, the age, ethnic origin and sex of those sentenced to death, the method of execution, the number of sentences commuted or suspended and the number of persons awaiting execution
 - ✓ Provide information on the situation of persons under 18 or pregnant women who have committed an offence punishable by the death penalty
 - ✓ Provide information on courts competent to impose capital punishment, the procedures to be followed, including the procedural guarantees, the possibility of appealing a death sentence, and the additional right to seek pardon or commutation of the sentence

The inherent right to life should not be understood in a restrictive manner, since it requires States parties to adopt positive measures, such as measures to reduce maternal mortality, to increase life expectancy and to prevent clandestine, unsafe abortions.

Although States parties may adopt measures designed to regulate voluntary termination of pregnancy, any restriction on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering, which would violate article 7, discriminate against them or arbitrarily interfere with their privacy. States parties must provide safe, legal and effective access to abortion in situations in which the life and health of a pregnant woman or girl are at risk or in which carrying a pregnancy to term would cause a pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable. States parties should not (a) take measures such as criminalizing the pregnancies of unmarried women or applying criminal sanctions against women and girls undergoing abortions or against medical service providers assisting them in doing so; or (b) introduce barriers to deny women and girls effective access to safe and legal abortions, including barriers caused by the exercise of conscientious objection by individual medical providers.

CHECKLIST

INFORMATION RELATED TO MATERNAL MORTALITY IN STATES PARTIES' REPORTS

- ✓ Provide information on birth rates and pregnancy and childbirth-related deaths of women
- ✓ Provide information on the measures taken to help women access medical services for the termination of pregnancies, to ensure they do not have to undergo life-threatening clandestine abortions

In its general comment No. 36 (2018), the Committee recommended that States parties ensured that women and men, girls and boys had access to quality and evidence-based information and education about sexual and reproductive health and to a wide range of affordable contraceptive methods. States parties should ensure effective access to quality prenatal and post-abortion health care for women and girls, in all circumstances, and on a confidential basis. States parties must take measures to protect women from practices that violate their right to life, such as female infanticide and so-called honour killings, and provide information on them in their reports.

Links with other articles of the Covenant

Article 6 is generally mentioned along with articles 7 (prohibition of torture), 9 (right to liberty and security of person) and 10 (rights of persons deprived of their liberty), as non-respect of these provisions can also lead to violation of article 6. In situations involving the death penalty, article 14 (right to a fair trial) has also been cited.

Right to life in other international instruments

- Universal Declaration of Human Rights, article 3
- African Charter on Human and Peoples' Rights, article 4
- American Convention on Human Rights, article 4
- European Convention on Human Rights, article 2

EXAMPLES OF RECOMMENDATIONS



The State party should consider abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, the State party should ensure that it is maintained only for the most serious crimes within the meaning of article 6 (2) of the Covenant, and is in no case mandatory. The State party should also ensure that the death penalty is never imposed in violation of the Covenant and never applied to crimes committed by persons below 18 years of age.

The State party should review its legislation to ensure that women are not prompted by legal obstacles to resort to clandestine abortions that put their lives and health at risk, and to guarantee that the provisions on voluntary termination of pregnancy in the draft bill on reproductive health care are in full compliance with the Covenant.

Reference material

- African Commission on Human and Peoples' Rights, general comment No. 3 on the African Charter on Human and Peoples' Rights: the right to life (article 4)
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Human Rights Committee, general comment No. 36 (2018) on the right to life
- Minnesota Protocol on the Investigation of Potentially Unlawful Death
- *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (United Nations publication, 2020)

EXAMPLES OF GOOD PRACTICE



In 2018, the Committee welcomed the appointment of a special prosecutor for war crimes in Montenegro, the creation of the function of ombudsperson in Greece to investigate claims of excessive use of force by law enforcement officials and the abolition of the death penalty in Benin in implementation of the Committee's recommendations.⁶¹

In 2016, the Committee welcomed the abolition of the death penalty in the new Criminal Procedure Code and the information that the death sentences of 34 prisoners had been commuted to 30 years of imprisonment in Mongolia (CCPR/C/MNG/CO/6, para. 19).

In 2015, the Committee welcomed the adoption of Act No. 1.359 of 20 April 2009, which had amended article 248 of the Criminal Code of Monaco to allow women to seek the termination of a pregnancy in certain situations (CCPR/C/MCO/CO/3, para. 12).

(b) Prohibition of torture (art. 7)



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."

As stated by the Committee in its general comment No. 20 (1992), article 7 protects both the dignity and the physical and mental integrity of an individual. States parties should protect individuals against torture or cruel, inhuman or degrading treatment or punishment, whether inflicted by people acting in their official capacity, outside that capacity or in a private capacity, through legislative and other measures. Prohibition of such acts is absolute and cannot be restricted or derogated from under any circumstances. No justification or extenuating circumstances, including orders from a superior or public authority, may be invoked to excuse violations of article 7.

As stipulated in general comment No. 20 (1992), it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or make it a crime. States parties should take the legislative,

⁶¹ See OHCHR, "UN review reveals concrete progress on human rights, experts say", 1 November 2018. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23812&LangID=E.

administrative, judicial and other measures necessary to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction. States parties should prohibit the admissibility in judicial proceedings of statements or confessions obtained through torture. The prolonged solitary confinement of detained or imprisoned persons may amount to a violation of article 7. When the death penalty is applied by a State party for the most serious crimes, it must not only be strictly limited in accordance with article 6, but it must be carried out in such a way as to cause the least possible physical and mental suffering so as not to violate article 7.

DEFINITION OF TORTURE UNDER THE COVENANT AND THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Covenant does not contain any definition of torture or cruel, inhuman or degrading treatment or punishment. The Committee did not consider it necessary to draw up a list of prohibited acts or establish sharp distinctions between the different kinds of punishment or treatment. The distinctions depend on the nature, purpose and severity of the treatment applied. The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim and extends also to corporal punishment. States parties have a duty to afford everyone protection 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.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines “torture”, in article 1, as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

States that are parties to both the Covenant and the Convention against Torture sometimes rely on the Convention’s definition of torture only. This is not sufficient for the purposes of article 7 of the Covenant since its scope of protection is broader. Article 7 of the Covenant protects against torture and other prohibited acts constituting cruel, inhuman or degrading treatment or punishment, inflicted not only by persons acting in their official capacity but also outside their official capacity or in a private capacity.

The Committee has considered as acts of torture under article 7 such practices as enforced disappearance, corporal punishment, ill-treatment of detainees (beatings, electric shocks, waterboarding), traditional practices harmful to women (female genital mutilation), rape, sexual assault or refusal to allow a termination of pregnancy.

In considering the implementation of article 7, the Committee seeks information on persons deprived of their liberty (a particularly vulnerable group), including safeguards to protect them from torture and other prohibited acts. In order to provide such safeguards, States parties should, inter alia:

- (a) Carry out systematic reviews of interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment;
- (b) Ensure that persons are detained in officially recognized places of detention – not in secret detention facilities, where prisoner abuse is more likely to occur;

- (c) Maintain registers of detainees' names and places of detention, as well as the names of persons responsible for their detention. Such registers should be readily available and accessible to those concerned, including relatives and friends;
- (d) Record the time and place of all interrogations, together with the names of all those present. This information should also be available for the purposes of judicial or administrative proceedings;
- (e) Ensure that all places of detention are free from any equipment that is liable to be used for inflicting torture or ill-treatment;
- (f) Ensure that prompt and regular access is given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members;
- (g) Monitor and control regularly all places of detention to ensure that persons arrested or detained are not subjected to torture or ill-treatment.

Punitive measures should include penalties commensurate with the gravity of the crime of torture and other ill-treatment.

CHECKLIST

INFORMATION ON PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT IN STATES PARTIES' REPORTS

- ✓ Provide the definition of torture and other cruel, inhuman or degrading treatment or punishment adopted under domestic law
- ✓ Specify the laws prohibiting torture and other cruel, inhuman or degrading treatment or punishment
- ✓ Explain whether and to what extent torture and other cruel, inhuman or degrading treatment or punishment constitute a serious crime
- ✓ Indicate the penalties applicable for acts of torture and other cruel, inhuman or degrading treatment or punishment
- ✓ Explain whether national law prohibits the use and admissibility in judicial proceedings of statements and confessions obtained through torture or other prohibited treatment
- ✓ Specify the control mechanisms used to ensure that persons arrested or detained are not subjected to torture or ill-treatment
- ✓ Indicate the procedures under which complaints about torture or ill-treatment by the police, security forces or prison officials are filed, investigated and prosecuted
- ✓ Specify whether any complaints have been made during the reporting period and how allegations of torture or ill-treatment have been investigated and with what results
- ✓ Explain which remedies, including the right to obtain compensation, are provided by domestic law for victims of torture and ill-treatment, as well as the procedure that complainants must follow
- ✓ Provide information on specific cases in which compensation has been obtained during the reporting period, including details of the nature of the complaints and the compensation granted
- ✓ Provide information on regulations concerning the treatment of persons on death row and the methods of execution in States parties retaining the death penalty

States parties must ensure that competent and independent authorities investigate complaints promptly and impartially and establish a complaints mechanism for this purpose.

Compliance with article 7 also requires appropriate instruction and training for enforcement personnel, medical personnel, police officers and any other person involved in the custody or treatment of persons deprived of their liberty. The Committee advocates the systematic inclusion of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in such training. The prohibition of torture and cruel, inhuman or degrading treatment or punishment should form an integral part of the operational rules and ethical standards governing law enforcement officials. Furthermore, information concerning the prohibition of torture and cruel, inhuman or degrading treatment or punishment should be disseminated to the population at large.

States parties must not expose individuals to the danger of death, torture or cruel, inhuman or degrading treatment or punishment upon their return to another country by way of extradition, expulsion or refoulement. In accordance with the reporting guidelines, States parties must report which measures they have taken to ensure that they do not extradite, deport, expel or otherwise remove any person from their territory when there are substantial grounds for believing that there is a risk of irreparable harm to the person concerned, either in the country to which removal is to be effected or in any country to which the person may be subsequently removed. States parties must also provide information on the specific measures taken to make relevant judicial and administrative authorities aware of the need to ensure compliance with the Covenant obligations in such matters.

States parties must report on correctional methods in schools and other educational establishments. The protection afforded by article 7 extends to protection against corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure, in particular with respect to children, pupils and patients in teaching and medical institutions, including psychiatric institutions. It also includes the prohibition of harmful traditional practices and customs, such as female genital mutilation. If relevant, States parties must report on the measures taken to address such practices.

Medical or scientific experimentation without the free consent of the person concerned is also prohibited. Special protection is necessary in the case of persons not capable of giving valid consent, in particular those under any form of detention or imprisonment.

Links with other articles of the Covenant

Article 7 is frequently mentioned in conjunction with articles 6 (right to life), 9 (right to liberty and security of person) and 10 (rights of persons deprived of their liberty). Article 6 is closely connected with article 7, as circumstances may lead to violations of these provisions. Articles 9 and 10 are linked with this article because the protections that they provide are necessary for the effective implementation of article 7. Article 7 is also linked with article 14 (right to a fair trial) due to the prohibition of the use in judicial proceedings of statements or confessions obtained through torture.

Prohibition of torture in other international instruments

- Universal Declaration of Human Rights, article 5
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child, articles 19, 28 (2) and 37
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- American Convention on Human Rights, article 5

- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Protocols thereto
- European Convention on Human Rights, article 3
- Inter-American Convention to Prevent and Punish Torture
- Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment
- Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement

EXAMPLES OF RECOMMENDATIONS



The State party should take expeditious measures to include in its Criminal Code a definition of torture that is fully in line with article 7 of the Covenant and internationally established norms, including with respect to an appropriate statute of limitations for the grave crime of torture.

The State party should establish an independent complaints mechanism with the authority to investigate all reported allegations of and complaints about acts of torture and ill-treatment. It should also ensure that alleged perpetrators of these crimes are prosecuted and that the victims are adequately compensated. The State party should take the steps necessary to ensure that confessions obtained under torture or ill-treatment are inadmissible in court in all cases, in line with its domestic legislation and article 14 of the Covenant. In addition, the State party should speedily establish or designate a national mechanism for the prevention of torture, as provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The State party should extend and intensify its strategies of information and prevention of domestic violence against women through information campaigns and the promotion of judicial prosecution of the cases. Specific measures should be taken to facilitate the access of the victims of domestic violence to justice and their protection throughout the legal processes and to guarantee a specialized professional attention to these cases by the police, lawyers and the judiciary. The State party should also adopt, without delay, the necessary legislation to criminalize marital rape.

The State party should adopt effective measures, particularly in terms of training, to prevent law enforcement and security forces from using excessive force or non-lethal weapons in situations that do not warrant recourse to greater or lethal force.

Reference material

- Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment

EXAMPLES OF GOOD PRACTICE



In 2019, the Committee welcomed the adoption of the law on the national mechanism for the prevention of torture in Morocco, designating its National Human Rights Council as the operative body.⁶²

Also in 2019, the Committee welcomed the adoption of Act No. 2015-033, which contained a definition of torture in line with the Covenant, as well as the promulgation of Act No. 2015-034 on the establishment of a national mechanism for the prevention of torture in Mauritania (CCPR/C/MRT/CO/2, para. 26).

In 2017, the Committee welcomed the adoption of amendments to the Criminal Code of Bosnia and Herzegovina aimed at bringing the definitions of torture and other international crimes into line with international standards (CCPR/C/BIH/CO/3, para. 15).

In 2016, the Committee welcomed the abolition of the statute of limitations for the crime of torture and the elimination of amnesties for persons convicted of torture in Kazakhstan (CCPR/C/KAZ/CO/2, para. 23).

Also in 2016, the Committee welcomed the Moroccan authorities' efforts to combat torture and ill-treatment and noted that there had been a marked reduction in such practices since its last concluding observations were issued (CCPR/C/MAR/CO/6, para. 23).

(c) Prohibition of slavery and slavery-like practices (art. 8)



UN Photo/Martine Perreel

⁶² See OHCHR, "Human Rights Committee gives top grades for follow-up to five countries".

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 sub-paragraph (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 8 protects against slavery, the slave trade and all contemporary forms of slavery and servitude. The reporting guidelines include examples of other forms of servitude: bonded labour, enforced domestic work, forced marriages, abduction of women and children, and all forms of trafficking in persons. In accordance with the reporting guidelines, States parties are obliged to take measures to prevent and combat such practices and to protect and rehabilitate victims.

Article 8 also contains exceptions to the prohibition of forced or compulsory labour, namely work done by detainees or persons during conditional release who perform such labour as a consequence of a lawful order of a court, labour performed as alternative service by conscientious objectors, and labour performed during an emergency or as a part of civil obligations. In this context, States parties must report whether hard labour is used as a punishment measure under domestic law and what the actual practice is. States parties must describe the existing kinds of work that are an ordinary consequence of a court order for persons in detention and for persons on conditional release, including their hiring out to private enterprises.

CHECKLIST**INFORMATION ON TRAFFICKING IN PERSONS IN STATES PARTIES’ REPORTS**

- ✓ Provide information on legislation to combat trafficking and all forms of servitude
- ✓ Provide information on the prosecution of traffickers
- ✓ Provide information on the concrete measures taken to protect and rehabilitate victims of trafficking
- ✓ Provide information on the training of all public officials involved in addressing trafficking
- ✓ Specify the measures taken to address the demand for trafficking

Links with other articles of the Covenant

Article 8 is often linked with articles 24 (rights of the child) and 3 (equal rights of men and women), since children and women are often victims of trafficking.

Prohibition of slavery and slavery-like practices in other international instruments

- Universal Declaration of Human Rights, article 4
- Convention on the Elimination of Discrimination against Women, article 6
- Convention on the Rights of the Child, article 35
- Abolition of Forced Labour Convention, 1957 (No. 105), of the International Labour Organization
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Forced Labour Convention, 1930 (No. 29), of the International Labour Organization
- Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)
- African Charter on Human and People's Rights, article 5
- American Convention on Human Rights, article 6
- European Convention on Human Rights, article 4

EXAMPLES OF RECOMMENDATIONS



The State party should ensure the effective implementation of its legislation criminalizing slavery and guarantee effective remedies for victims of slavery who have lodged complaints. The State party should also conduct investigations, effectively prosecute and sentence those responsible and provide compensation for and rehabilitate the victims.

The State party should:

- (a) Ensure the protection of victims of trafficking, commercial sexual exploitation and other contemporary forms of slavery, the immediate and thorough investigation of all allegations of such acts, and the prosecution and punishment of perpetrators;
 - (b) Develop and implement programmes for victims' rehabilitation and redress, with particular focus on women and child victims;
 - (c) Effectively regulate and monitor international labour contractors and recruitment agencies to prevent trafficking, commercial sexual exploitation and other contemporary forms of slavery;
 - (d) Ensure that victims of trafficking are not prosecuted, detained or punished for activities they were involved in as a result of their situation as trafficked persons, and consider offering immigration status options to these victims.
-

EXAMPLES OF GOOD PRACTICE



In 2019, the Committee welcomed the measures taken by Mauritania to combat slavery and slavery-like practices and their legacy, in particular the adoption of Act No. 2015-031, on the criminalization and punishment of slavery and slavery-like practices, and the establishment of the national agency Tadamoun for eradicating the legacy of slavery (CCPR/C/MRT/CO/2, para. 30).

In the same year, the Committee also commended Burkina Faso for its efforts to address trafficking in persons and child labour through awareness-raising activities.⁶³

In 2017, the Committee welcomed the adoption of the People Trafficking and People Smuggling (Prohibition) Act in Eswatini (CCPR/C/SWZ/CO/1, para. 42).

In 2016, the Committee welcomed amendment of section 98D of the Crimes Act 1961 of New Zealand, concerning trafficking in persons, which aligned the definition of trafficking with international standards. The Committee also welcomed the adoption of measures to combat trafficking in persons and the State party's efforts to prevent other slavery-like practices, such as economic exploitation and forced labour in foreign-chartered vessels operating in New Zealand waters and in other labour sectors in New Zealand (CCPR/C/NZL/CO/6, para. 39).

(d) Right to liberty and security of person (art. 9)



⁶³ Ibid.

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 9 protects liberty and security of person. As stated by the Committee in its general comment No. 35 (2014), liberty concerns freedom from confinement of the body; security concerns freedom from injury to the body and the mind (bodily and mental integrity).

With respect to liberty of person, article 9 stipulates specific safeguards against arbitrary arrest or detention. As the Committee explains in its general comment No. 35 (2014), lawfulness of deprivation of liberty means that it must be based on legitimate grounds and executed in accordance with procedure established by the law. Lawful deprivation of liberty may nonetheless be arbitrary if it involves elements of inappropriateness, injustice and lack of predictability and due process of law, and fails to take into account reasonableness, necessity and proportionality.

States parties should provide safeguards against arbitrary arrest. All persons arrested or detained have the right to be informed immediately of the reason for their arrest and to be told promptly about any charges against them, in a language that they understand. Arrested persons must be promptly brought before a judge to decide upon the lawfulness of their detention and their release ordered if it is not lawful and they must be tried within a reasonable time or released. All persons deprived of their liberty have the right to legal counsel.

EXAMPLES OF FORMS OF DEPRIVATION OF LIBERTY

- Police custody
- Remand detention
- Imprisonment after conviction
- House arrest
- Administrative detention
- Involuntary hospitalization
- Institutional custody of children
- Confinement to a restricted area of an airport
- Involuntary transport

Detention in custody of persons awaiting trial must be the exception rather than the rule. States parties should take measures to reduce the length and number of detentions pending trial and detentions on remand, and provide safeguards against incommunicado detention.

CHECKLIST

INFORMATION ON SAFEGUARDS RELATING TO DETENTION IN STATES PARTIES' REPORTS

- ✓ Indicate the conditions under which courts may exercise control over the legality of all forms of deprivation of liberty
- ✓ Provide information on the effective remedies, including compensation, that exist for all persons unlawfully detained
- ✓ Provide statistics on the number of complaints of unlawful detention and their outcomes
- ✓ Provide information on detention in psychiatric hospitals, including the measures taken to prevent abuse, the appeals available to persons interned, and the number and outcome of complaints
- ✓ Provide information on the detention of asylum seekers and irregular migrants, including their rights to legal aid, judicial remedies and to be informed about the reasons for their detention
- ✓ Provide information on any practice of detaining unaccompanied minors

States parties should revise outdated laws and practices in the field of mental health in order to avoid arbitrary detention. The existence of a disability does not in and of itself justify deprivation of liberty, but rather any deprivation of liberty must be necessary and proportionate for the purpose of protecting the individual in question from serious harm or preventing injury to others.

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

States parties also have a duty to protect against deprivation of liberty by third parties. This means taking measures to protect individuals against abduction or detention by individual criminals or irregular groups, including armed or terrorist groups, operating within their territory. States must also afford protection against deprivation of liberty by lawful organizations, such as employers, schools and hospitals, and by the action of other States within their territory. When private entities are empowered or authorized by the State party to exercise the power of arrest or detention, the State party remains responsible for ensuring that the exercise of such powers is compliant with article 9. This requires strict and effective control to ensure that such powers are not misused and the provision of effective remedies for victims if arbitrary arrest or detention does occur.

DETENTION OF IMMIGRANTS AND ASYLUM SEEKERS

“Detention in the course of proceedings for the control of immigration is not per se arbitrary, but detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. Asylum seekers who unlawfully enter a State party’s territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as the likelihood of their absconding or the risk of their committing crimes against others or acts against national security. The decision must consider relevant factors case by case and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review. Decisions regarding the detention of migrants must also take into account the effect of the detention on their physical or mental health. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons. The inability of a State party to carry out the expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention. Children should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests with regard to the duration and conditions of detention, and the extreme vulnerability and need for care of unaccompanied minors.”

General comment No. 35 (2014), para. 18.

The right to security protects individuals against the intentional infliction of bodily or mental injury, regardless of whether the individual is detained or not. States parties must, for example, ensure that their officials do not unjustifiably inflict bodily injuries, and that they take measures and respond appropriately to death threats against others and patterns of violence against certain categories of victims, such as human rights defenders, journalists, witnesses, women, children, lesbian, gay, bisexual, transgender and intersex persons and persons with disabilities.

CHECKLIST

INFORMATION ON ARREST AND DETENTION IN STATES PARTIES’ REPORTS

- ✓ Indicate how soon and under what conditions persons are informed of the reasons for their arrest, how soon they can contact a lawyer and obtain medical treatment and how soon their families are notified
- ✓ Indicate the requirements for placing a person in police custody, the length of such custody and the rights of persons while in police custody
- ✓ Indicate the length of detention pending trial and any mechanisms or measures taken with a view to reducing the duration of such detention, including alternatives to detention
- ✓ Provide statistical data on the number of persons held on remand and their percentage in relation to the entire prison population
- ✓ Specify the duration of detention without charges for all suspects
- ✓ Report on safeguards against incommunicado detention and other abuses in detention
- ✓ Provide information on the conditions for visits while in detention

Links with other articles of the Covenant

Article 9 is generally quoted in conjunction with articles 6 (right to life), 7 (prohibition of torture) and 10 (rights of persons deprived of their liberty), since the arbitrary and unlawful deprivation of liberty as prohibited by article 9 often leads to the violation of those articles. It may also be linked with articles 12 (freedom of movement) and 13 (prohibition of arbitrary expulsion of aliens) when the detention of aliens, especially refugees and asylum seekers, is concerned. It is also generally connected with the procedural guarantees offered by article 14 (right to a fair trial), which constitute a way of avoiding arbitrary detention.

Right to liberty and security of person in other international instruments

- Universal Declaration of Human Rights, article 9
- Convention on the Rights of Persons with Disabilities, article 14
- African Charter on Human and People's Rights, article 6
- American Convention on Human Rights, article 7
- European Convention on Human Rights, article 5

EXAMPLES OF RECOMMENDATIONS



The State party should adopt alternative measures to the deprivation of liberty and should ensure that pretrial detention is used solely as an exceptional measure and not for excessively long periods, in accordance with article 9 of the Covenant.

The State party should step up its efforts to reduce the high percentage of persons in pretrial detention. In particular, it should take the necessary steps to ensure that pretrial detention is not the rule and that, in practice, priority is given to alternatives to that form of detention. In this connection, the Committee wishes to draw the State party's attention to paragraph 38 of its general comment No. 35 (2014).

The State party should:

- Ensure that migrants and asylum seekers who unlawfully enter the State party's territory, including those who fall under the definition of mass arrival, are detained only for a short period of time in order to document their entry, record their claims and determine their identity if it is in doubt;
 - Ensure that migrants and asylum seekers detained in correctional and police facilities are separated from the rest of the detainee population.
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Reference material

- Human Rights Committee, general comment No. 35 (2014) on liberty and security of person

EXAMPLES OF GOOD PRACTICE



In 2017, the Committee welcomed new developments in the area of detention, including the adoption of the Law on Foreigners and the establishment of the Institute for Forensic Psychiatry, in Bosnia and Herzegovina (CCPR/C/BIH/CO/3, para. 29).

In 2016, the Committee welcomed the adoption in Burkina Faso of circular No. 2015-004/MJDHPC/CAB of 5 March 2015, setting out the right to be assisted by a lawyer from the very outset of a criminal investigation and the prohibition of holding orders (CCPR/C/BFA/CO/1, para. 29).

Under the follow-up procedure for Portugal in 2015, the Committee welcomed the reduction, between 2012 and 2014, in the number of persons in pretrial detention (CCPR/C/114/2, p. 5).

(e) Rights of persons deprived of their liberty (art. 10)**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."*

All those deprived of their liberty are entitled to be treated with humanity and with respect for their inherent dignity while in police custody, remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalization, institutional custody in the case of children and confinement to a restricted area of an airport. In determining whether the conditions of detention violate this standard, the nature and context of the treatment, its duration and its physical or mental effects should be considered, as well as the characteristics of the individuals concerned. Examples of inhuman conditions include a lack of adequate food, water, medical services, adequate accommodation and bedding, and a minimum level of privacy.

States parties must ensure the separation of accused and convicted adults, and the separation of accused or convicted juveniles and adults. They should also put in place legislative, administrative and practical measures to provide for the rehabilitation of convicted persons, including education, vocational training and guidance.

Solitary confinement is only permissible in exceptional circumstances and for a strictly limited time.

States should also ensure humane treatment for elderly persons in long-term care homes, patients in residential health institutions, especially those concerned with mental health, and asylum seekers and irregular migrants in detention centres, as well as women deprived of their liberty.

CHECKLIST

INFORMATION ON THE PENITENTIARY SYSTEM IN STATES PARTIES' REPORTS

- ✓ Provide information on the legislative and administrative measures taken to ensure the proper treatment of persons deprived of their liberty, including:
 - Mechanisms for inspections of places of detention
 - Complaints mechanisms
 - Provision of training and instruction for personnel exercising authority over persons deprived of their liberty
- ✓ Provide information on the disciplinary system in place in penitentiary establishments, solitary confinement and high-security detention, and the conditions under which prisoners have contact with the outside world
- ✓ Provide information on the separation of accused and convicted persons, and differences in their treatment
- ✓ Provide information on the system for supervising penitentiary establishments and measures to remedy specific problems, such as overcrowding of prisons, inadequate or obsolete infrastructure, lack of sanitary conditions, disease, malnutrition and violence among prisoners

Links with other articles of the Covenant

Article 10 is frequently mentioned in conjunction with articles 6 (right to life), 7 (prohibition of torture) and 9 (right to liberty and security of person), since non-compliance with article 10 can lead to violations of the rights guaranteed by the other provisions. It is also generally quoted with article 14 (right to a fair trial), as the safeguards contained in this article are a way of guaranteeing the other rights.

Rights of persons deprived of their liberty in other international instruments

- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- Code of Conduct for Law Enforcement Officials
- Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)
- United Nations Standard Minimum Rules for Treatment of Prisoners (the Nelson Mandela Rules)

EXAMPLES OF RECOMMENDATIONS



The State party should take measures to establish a comprehensive juvenile justice system in order to ensure that juveniles are treated in a manner commensurate with their age. It should also ensure the strict separation of juveniles and adults in places of detention, in compliance with international standards.

The State party should continue to take measures to improve prison conditions on a sustainable basis, including with regard to adequate health services and sanitary conditions, with a view to achieving full compliance with the requirements of article 10. In this regard, the State party should strive to achieve sufficient staffing levels to meet the ratio established in the Standard Prisoner Decree. The State party should ensure that prisoners are adequately supervised when working for private entities and that prisoners are equitably remunerated for their work. The State party should reconsider the policy of obliging prisoners to pay their incarceration costs.

The State party should step up efforts to improve living conditions at migrant detention centres, including with regard to appropriate sanitation and health services, with a view to fully complying with the provisions of article 10. The State should guarantee that migrants are held in administrative detention only when justified as a reasonable, necessary and proportionate measure, guaranteeing as well that such detention is used only as a measure of last resort and for the shortest time possible.

Reference material

- Human Rights Committee, general comment No. 21 (1992) on humane treatment of persons deprived of their liberty

EXAMPLES OF GOOD PRACTICE



In 2019, the Committee welcomed the adoption of Act No. 2017-005 of 31 March 2017 in the Niger, establishing community service as a substitute for custodial sentences. It also welcomed Act No. 201708 of 31 March 2017 on the prison system, which provided for an increase in prisoners' food rations from two meals a day to three (CCPR/C/NER/CO/2, para. 32).

In 2017, the Committee welcomed the efforts made to open places of detention in Madagascar (CCPR/C/MDG/CO/4, para. 37).

(f) Prohibition of imprisonment for inability to fulfil a contractual obligation (art. 11)

Article 11

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

Article 11 expressly prohibits imprisonment on the ground of inability to fulfil a contractual obligation. This provision is designed, among other things, to protect individuals from being imprisoned because of poverty.

According to the Committee's jurisprudence, States parties are required to adopt legislation prohibiting criminal imprisonment for misconduct not covered by criminal law.⁶⁴ However, detention for specific criminal offences related to civil law debts may be compatible with article 11. For instance, in the case

⁶⁴ *Calvet Ràfols v. Spain* (CCPR/C/84/D/1333/2004), para. 6.4.

of fraud and negligent or fraudulent bankruptcy, the offender may be punished with imprisonment even when no longer able to pay the debts.⁶⁵

The article may be invoked against legislation that allows custodial arrest on the basis of inability to fulfil obligations in respect of debts, performance of services or delivery of goods, as well as in actual instances of arbitrary arrest for failure to fulfil a contractual obligation, which is also linked with article 9.

As stated in the reporting guidelines, States parties must provide information on legislation prohibiting imprisonment for failure to fulfil a contractual obligation and specify whether non-compliance with a court order to fulfil a contractual obligation has resulted in deprivation of liberty.

Links with other articles of the Covenant

Article 11 complements article 9, which addresses conditions of detention. It is also linked with article 8 (2) prohibiting servitude. Article 11 has rarely been invoked in individual communications to the Committee.

Prohibition against detention for inability to fulfil a contract in other international instruments

- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto as amended by Protocol No. 11, article 1
- American Convention on Human Rights, article 7

EXAMPLES OF RECOMMENDATIONS



The State party should fully implement the Fines (Payment and Recovery) Act 2014 to provide for a community service order as an alternative to imprisonment for failure to pay court-ordered fines or civil debt, and ensure that in no case is imprisonment used as a method of enforcing contractual obligations.

The State party should, by virtue of articles 3, 23 (4) and 26, take steps to promote the enjoyment by women of all the civil and political rights set forth in the Covenant. It should, because the practice is contrary to article 11 of the Covenant, put an end to the imprisonment of women who do not return their dowries when they separate from their husbands.

(g) Freedom of movement (art. 12)

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."*

⁶⁵ *Gavrilin v. Belarus* (CCPR/C/89/D/1342/2005), para. 7.3; *Foumbi v. Cameroon* (CCPR/C/112/D/2325/2013), para. 8.7.

Article 12 protects the right of everyone to move freely within a territory of a State where they lawfully are and to choose their place of residence, enter their own country and leave any country. As stated in general comment No. 27 (1999), the question of whether an alien is “lawfully” within the territory of a State is a matter governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions, provided that they are compatible with the State’s international obligations. An alien who entered the State illegally, but whose status has been regularized, even on a temporary basis, must be considered to be lawfully within the territory for the purpose of article 12.

The rights guaranteed in article 12 are protected not only from public but also from private interference. For example, freedom of movement and choice of a residence on the part of a woman cannot be subject to the decision of a relative. They also include protection against all forms of forced internal displacement. The right to leave a country comprises the right to obtain the necessary travel documents.

Rights related to freedom of movement can only be restricted under exceptional circumstances – to protect national security, public order, public health or morals and the rights and freedoms of others. Restrictions must be provided for by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant. Restrictions must also be compatible with the principles of equality and non-discrimination (see permissible restrictions on rights, sect. C.2).

The Committee’s jurisprudence confirms that the right of persons to enter their own country recognizes the special relationship between a person and that country. The notion of “own country” is broader than the concept of “country of nationality” since it embraces individuals who, because of their special ties to or claims in relation to a given country, cannot be considered to be mere aliens. The words “own country” invite consideration of such matters as long-standing residence, close personal and family ties and intentions to remain, as well as to the absence of such ties elsewhere.⁶⁶

CHECKLIST

INFORMATION ON FREEDOM OF MOVEMENT IN STATES PARTIES’ REPORTS

- ✓ Indicate the requirements for the registration of persons and formalities or conditions governing the registration of a person as a resident in a particular area
- ✓ Provide information on the controls imposed on travelling persons and restrictions regarding access to certain areas or conditions or limitations governing the movement of persons within the State, including the movement of non-citizens, in particular asylum seekers
- ✓ Explain all the legal and practical restrictions on the right to leave a State, as applied to nationals and/or foreigners
- ✓ Explain the conditions for the issuance of travel documents, including statistics regarding the number of applications submitted for travel; the percentage of applications turned down; reasons for the refusal of documents during the reporting period; conditions allowing for the withdrawal of a person’s passport; and requirements of exit visas
- ✓ Indicate any treatment of aliens different from that accorded to nationals and how this difference of treatment is justified

Links with other articles of the Covenant

Article 12 is frequently linked with article 13 (prohibition of arbitrary expulsion of aliens) since the rights of liberty of movement, as recognized by article 12, often involve immigrants or asylum seekers.

⁶⁶ *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 8.4.

Articles 2 (equality) and 26 (non-discrimination) have also been quoted in conjunction with article 12 when specific groups of aliens are expelled on discriminatory grounds, and article 9 (right to liberty and security of person) when restriction on movement is introduced as an alternative to incarceration

Freedom of movement in other international instruments

- Universal Declaration of Human Rights, articles 9 and 13
- Convention on the Rights of Persons with Disabilities, article 18
- African Charter on Human and Peoples’ Rights, article 12
- American Convention on Human Rights, article 22
- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto as amended by Protocol No. 11, articles 2 and 4
- Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, article 1

EXAMPLES OF RECOMMENDATIONS



The State party should ensure that restrictions on the movement of individuals within the territory of the State party, as well as the right to exit, and any surveillance programmes for purposes of State security are compatible with the strict requirements of article 12. In this regard, the State party should ensure that the requirement that individuals register their place of residence is in full compliance with the provisions of article 12 of the Covenant.

The State party should, in conformity with the provisions of articles 9, 12 and 25 of the Covenant, guarantee the freedom of circulation recognized in article 12 of the Covenant by doing away with all military roadblocks or taking steps to prevent their being used as a means of extortion, by repealing the requirement to obtain a visa to leave the country and by abolishing the practice of internal political exile.

Reference material

- Human Rights Committee, general comment No. 27 (1999) on freedom of movement



EXAMPLES OF GOOD PRACTICE



In 2015, the Committee welcomed the adoption by the French National Assembly of the bill to repeal the Act of 1969 that required travellers to hold a permit (*livret de circulation*), which the Committee considered to be a breach of article 12 of the Covenant (CCPR/C/FRA/CO/5, para. 14).

EXAMPLES OF IMPERMISSIBLE OBSTACLES CONCERNING THE RIGHT TO LEAVE ONE'S OWN COUNTRY

- Lack of access for applicants to the competent authorities
- Lack of information regarding requirements to leave
- Requirement of supportive statements from employers or family members
- Requirement of a repatriation deposit or a return ticket
- Requirement of an invitation from the State of destination
- Harassment of applicants

General comment No. 27 (1999), para. 17.

(h) Prohibition of arbitrary expulsion of aliens (art. 13)

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.”

The aim of article 13 is to prevent the arbitrary expulsion of aliens. In paragraph 4 of its general comment No. 15 (1986), the Committee indicated that States parties should pay attention to the position of aliens, both under their law and in actual practice. Article 13 only protects aliens who are lawfully on the territory of a State party. It does not cover illegal entrants and aliens who have stayed longer than the law or their permits allow. If the legality of an alien's entry or stay is in dispute, any decision on this point leading to their expulsion or deportation should be in accordance with article 13.

Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, it allows only expulsions carried out in pursuance of a decision reached in accordance with the law. It entitles each alien to a decision in his or her own case and does not allow for collective or mass expulsions. The basic requirements of due process stipulated in article 14 of the Covenant also apply to expulsions under article 13. An alien must be given full facilities for pursuing a remedy against expulsion, except where compelling reasons of national security require otherwise. According to the Committee's jurisprudence, the term “compelling reasons of national security” implies a sensitive factual determination. The Committee has stated that it will not “test a sovereign State's evaluation of an alien's security rating”.⁶⁷ Nevertheless, the State party must demonstrate serious evidence of a threat

⁶⁷ *V.M.R.B. v. Canada*, communication No. 236/1987, para. 6.3.

to national security, if invoking this provision of article 13. Discrimination may not be made between different categories of aliens in the application of article 13.

CHECKLIST

INFORMATION ON SAFEGUARDS AGAINST ARBITRARY EXPULSION OF ALIENS IN STATES PARTIES' REPORTS

- ✓ Indicate the requirements for the admission of non-citizens, in particular asylum seekers, to the territory of the State
- ✓ Specify the laws and practice concerning the expulsion of non-citizens from the territory of the State, the grounds for expulsion and the procedures leading to it, including those for reaching a decision on the legality or illegality of a person's stay in the country
- ✓ Provide information on the availability of remedies against expulsion, whether or not they have a suspensive effect, and whether the persons concerned have access to legal assistance
- ✓ Provide information on the situation of internally displaced persons, if any, and in particular the steps taken to ensure adequate conditions for their return and to redress their specific needs, in particular their personal security, freedom of movement and access to personal documents enabling them to seek employment as well as to enjoy access to education, health and social services⁶⁸

Links with other articles of the Covenant

Article 13 is usually mentioned in conjunction with article 12 (freedom of movement) when the right guaranteed by the former article is denied to immigrants and asylum seekers. Articles 2 (equality), 14 (right to a fair trial) and 26 (non-discrimination) are also commonly quoted in situations in which immigrants and asylum seekers are deported on discriminatory grounds.

Expulsion of aliens in other international instruments

- African Charter on Human and Peoples' Rights, article 12 (paras. 4–5)
- American Convention on Human Rights, article 22 (paras. 6 and 9)
- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto as amended by Protocol No. 11, articles 3–4
- Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, article 1

⁶⁸ Although the Committee requests this information in relation to article 13, the issue is also relevant for article 12 (CCPR/C/2009/1, para. 72).

EXAMPLES OF RECOMMENDATIONS



The State party should ensure that the return of foreign nationals, including asylum seekers, is assessed through a fair process that effectively excludes the real risk that any person will face serious human rights violations upon his or her return. Undocumented foreign nationals and asylum seekers must be properly informed and assured of their rights, including the right to apply for asylum, with access to free legal aid. The State party should also ensure that all individuals subject to deportation orders have an adequate period to prepare an asylum application, with guaranteed access to translators, and a right of appeal with suspensive effect.

The State party should ensure that persons subject to deportation proceedings benefit from an effective right to be heard, to have an adequate defence and to request that their case be reviewed by a competent authority.

Reference material

- Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the Covenant

EXAMPLES OF GOOD PRACTICE



In 2012, the Committee requested that Germany extend the suspension of transfers of asylum seekers to Greece if difficult reception conditions remained (CCPR/C/DEU/CO/6, para. 11). Under the follow-up procedure, the Committee appreciated the State party's decision to comply with the request of the Committee (CCPR/C/117/2, p. 2).

2. JUDICIAL PROTECTION (ARTS. 14–16)

Articles 14 and 15 address the treatment of persons during the judicial process. This includes the right to a fair trial and the prohibition of retroactive jurisdiction in criminal matters. Article 16 refers to the right of everyone to be recognized as a person before the law.

(a) Right to a fair trial (art. 14)



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 14 guarantees the right to a fair trial in both criminal and civil cases. As stipulated in paragraphs 7 and 8 of general comment No. 32 (2007), the first sentence of article 14 sets out a general guarantee of equality before courts and tribunals regardless of the nature of the proceedings before such bodies. It encompasses equal access to judicial bodies, and equality of the arms and treatment of the parties to the proceedings, without any discrimination. Paragraphs 2–7 of article 14 apply only to criminal trials.

TRIBUNAL

- A body, regardless of its denomination, established by law
- Independent of the executive and legislative branches of government
- Enjoys judicial independence in deciding legal matters in proceedings that are judicial in nature

In general comment No. 32 (2007), the Committee underlined that the right of access to courts and tribunals and equality before them must be available to all individuals under the State party's jurisdiction, regardless of their nationality, statelessness or any other status.

Equality before courts and tribunals requires that similar cases be handled under similar proceedings. If exceptional criminal procedures or specially constituted courts or tribunals apply in determination of certain categories of cases, objective and reasonable grounds must be provided to justify the distinction. Equality of arms means that the same procedural rights are provided to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the parties.

GUARANTEES OF THE INDEPENDENCE OF JUDGES

- Procedures and qualifications for the appointment of judges
- Security of tenure until a mandatory retirement age or the expiry of their term of office
- Conditions governing promotion, transfer, suspension and cessation of their functions
- Actual independence of the judiciary from political interference by the executive branch and legislature

States parties should guarantee the right to a fair trial and public hearing by a competent, impartial and independent tribunal established by law in determining criminal charges against individuals or their rights and obligations in a suit at law (civil suits and comparable proceedings in administrative law and other bodies of law). The concept of fair trial includes the guarantee of a fair and expeditious public hearing. Fairness of proceedings encompasses the absence of any direct or indirect influence, pressure or intimidation or intrusion. Public hearings ensure transparency of proceedings.

The public may be excluded from the courtroom only for reasons of morals, public order or national security in a democratic society, or when the interests of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances in which publicity would be prejudicial to the interests of justice. States parties must adopt rules and practices for publicizing trials and judgments, as well as rules governing the admission of the public and (local and international) media to courtrooms.

Persons charged with a criminal offence must be informed promptly, in a language that they understand, of the nature and cause of criminal charges brought against them. They have a right to legal assistance of their own choosing, including free legal assistance for indigent defendants or when it is in the interests of justice, whether nationals or non-citizens, and the right to freely communicate with their counsel. Interpreters should be provided free of charge during pretrial and trial phases. The accused have the right to be tried without undue delay, and those convicted should be informed and provided with the right to have their sentence reviewed by a higher tribunal.

MINIMUM GUARANTEES IN A CRIMINAL TRIAL

- Presumption of innocence
- Prompt information on the nature and cause of criminal charges in a language one understands
- Presence of the accused during the trial
- Legal assistance of one's own choosing
- Trial without undue delay
- Time and facilities for preparation of a defence
- Free assistance of an interpreter
- Access to documents and evidence
- Examination of witnesses
- No compulsion to testify against oneself
- Review of the sentence by a higher tribunal
- *Non bis in idem* (double jeopardy)

The judiciary

The requirement of competence, independence and impartiality of the judiciary is not subject to any exception. States parties should take specific measures to guarantee the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for their appointment, remuneration, tenure, promotion, suspension and dismissal, and for disciplinary measures against them.

States parties must fulfil two key conditions relating to the impartiality of judges and tribunals in the exercise of judicial functions. First, the judges must not allow their judgments to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other(s). Second, the tribunal must appear to be impartial to a reasonable observer.

MILITARY COURTS

Trial of civilians by military courts should be exceptional. In addition, they should:

- Be limited to emergency situations and other extraordinary cases
- Be necessary and justified by objective and serious reasons
- Be necessary owing to civilian courts being unable to conduct the trials due to the specific class of individuals and offences involved
- Conform with article 14 guarantees

Customary or religious courts can hand down binding judgments recognized by the State party only if the following criteria are met:

- (a) Proceedings are limited to minor civil and criminal matters;
- (b) Proceedings meet the basic requirements of a fair trial;
- (c) Judgments are validated by the State courts.

CHECKLIST

INFORMATION ON THE INDEPENDENCE OF THE JUDICIARY IN STATES PARTIES' REPORTS

- ✓ Provide information on the organization of the judiciary
- ✓ Explain the procedures for appointing judges and the qualifications required by them
- ✓ Provide statistical information on the representation of women and ethnic minorities in the judiciary
- ✓ Explain the rules governing the status of judges, including:
 - Guarantees for their security of tenure until the mandatory retirement age or the expiry of their term of office
 - Conditions governing their remuneration, promotion, transfer, suspension, dismissal or any disciplinary measures, and cessation of their functions
- ✓ Specify any cases in which sanctions have been imposed for corruption among the judiciary
- ✓ Provide information on the existence and competences of military or special courts
- ✓ Explain the reasons for establishing extraordinary courts and their competences, including the circumstances under which such courts can hold trials
- ✓ Explain the functioning of courts based on customary law or religious courts, and their competences and practices

Article 14 guarantees procedural fairness. Evaluation of the facts and evidence in specific cases and the application of domestic legislation in particular cases is left to the domestic courts. However, article 14 is violated if it can be shown that such an evaluation or application was clearly arbitrary or amounted to a manifest error or a denial of justice, or that the court otherwise violated its obligation of independence and impartiality.

In cases involving juvenile offenders, procedures should take their age into account and should promote their rehabilitation. States should establish an appropriate juvenile criminal justice system to ensure that juveniles are treated in a manner commensurate with their age. States should also establish a minimum age of criminal responsibility.

Compensation must be granted to persons who have been convicted of a criminal offence by a final decision and have suffered punishment as a result of such conviction, if their conviction has been reversed or they have been pardoned due to a miscarriage of justice.

CHECKLIST

INFORMATION ON THE RIGHT TO A FAIR TRIAL IN STATES PARTIES' REPORTS

Provide information on legislation on and practical application of the following guarantees:

- ✓ The right of all persons to a fair and public hearing, including rules and practices for the publicity of trials and judgments, and rules governing the admission of the public and (local and international) media to courtrooms
- ✓ The right to be presumed innocent until proven guilty according to law
- ✓ The right of all persons charged with a criminal offence to be informed promptly in a language that they understand of the nature and cause of the criminal charges brought against them
- ✓ The right to legal assistance of one's own choosing, including free legal assistance for indigent defendants, whether nationals or non-citizens, and the right to communicate freely with counsel
- ✓ The availability of interpreters, free of charge, during the pretrial and trial phases
- ✓ The right of the accused to be tried without undue delay and information on delays in practice
- ✓ Rules governing trials in absentia
- ✓ Access to documents and other evidence, as well as rules governing the examination of witnesses
- ✓ The right to have one's conviction and sentence reviewed by a higher tribunal and measures taken to ensure awareness of this right for the persons concerned
- ✓ Granting of compensation in cases of a miscarriage of justice
- ✓ Respect for the principle of *non bis in idem*

Links with other articles of the Covenant

This article is commonly associated with articles 9 (right to liberty and security of person) and 10 (rights of persons deprived of their liberty), since the safeguards provided by these three provisions are closely linked and complement one another in some contexts. Article 14 is also closely linked with article 2 (3) (right to an effective remedy).

Right to a fair trial in other international instruments

- Universal Declaration of Human Rights, articles 10–11

- American Convention on Human Rights, article 8
- European Convention on Human Rights, article 6
- Bangalore Principles of Judicial Conduct
- Basic Principles on the Independence of the Judiciary

EXAMPLES OF RECOMMENDATIONS



The State party should uphold the right to a fair trial in line with article 14 of the Covenant. In this regard, it should:

- Urgently improve the functioning of the judicial system, including by increasing the number of qualified and professionally trained judicial personnel, and training judges and court staff in efficient case-management techniques;
- Ensure that adequate compensation is awarded in cases related to lengthy proceedings;
- Ensure the actual availability of free legal aid in cases where the interest of justice so requires.

The State party should uphold the principle of the independence of the judiciary and ensure that judges and public prosecutors are appointed on the basis of objective and transparent criteria that allow for candidates' qualifications to be assessed in terms of the required skills, competence and integrity. It should also guarantee the tenure and independence of judges and the impartiality of public prosecutors by protecting the work of the judiciary from any interference.

The State party should put in place specific constitutional guarantees to protect judges and prosecutors from any form of political influence in their decision-making and effectively ensure that they are free of pressure and interference in the performance of their work. The State party should align the traditional justice system with fair trial standards under the Covenant. It should also ensure that the jurisdiction of traditional courts is limited to minor civil and criminal matters and that their judgments may be validated by State courts.

Reference material

- Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial

EXAMPLES OF GOOD PRACTICE



In 2018, the Committee welcomed the reconstitution of the Judicial Service Commission and the abolition of the contract judges system in the Gambia (CCPR/C/GMB/CO/2, para. 37).

In 2017, the Committee welcomed the legislative measures taken by Madagascar to combat corruption and commended efforts to recruit new judges and police officers (CCPR/C/MDG/CO/4, para. 11).

Also in 2017, the Committee welcomed amendments to the Law on Establishing Courts with a view to ensuring that access to justice was guaranteed in all districts of Mongolia. It also appreciated the steps taken by Mongolia to provide the judiciary with adequate remuneration and security of tenure, and to investigate allegations of corruption within the judiciary (CCPR/C/MNG/CO/6, para. 31).

Under the follow-up procedure, in 2017, the Committee appreciated the efforts of Czechia to train judges, prosecutors and police officials to detect hate and racially motivated crimes (CCPR/C/117/2, p. 8).

EXAMPLE OF A REFERENCE TO THE COMMITTEE'S CONCLUDING OBSERVATIONS BY THE EUROPEAN COURT OF HUMAN RIGHTS

International courts, including regional human rights courts, have referred to the Committee's jurisprudence, general comments and concluding observations in their judgments. Recently, the European Court of Human Rights referred in its judgment in the case of *Kövesi v. Romania* (application No. 3594/19, judgment of 5 May 2020, para. 89) – which concerned the dismissal of the Chief Prosecutor of the National Anti-Corruption Directorate before the end of her second term, following her criticism of legislative reforms – to relevant international materials concerning the independence of prosecutors. It specifically cited the Committee's recent concluding observations on Romania (2017), namely that "the Committee is concerned about allegations of persistent corruption in all branches of Government, including the judiciary and prosecutors, and its negative impact on the full enjoyment of the rights guaranteed by the Covenant and by parliamentary initiatives to reverse anti-corruption legislation. The Committee is also concerned about reports that the head of the National Anti-Corruption Directorate (DNA) was subjected to harassment in connection with her work The State party should strengthen its efforts to combat corruption in all branches of Government and provide the necessary protection to officials involved in anti-corruption efforts" (CCPR/C/ROU/CO/5, paras. 7–8).

(b) Prohibition of retroactive jurisdiction (art. 15)

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."*

States parties should prohibit retroactive jurisdiction in domestic law and ensure its application in ordinary criminal law and military criminal codes, both in peacetime and in time of war.

As confirmed by the Committee's jurisprudence, article 15 (1) prohibits:

- (a) Holding a person guilty for a crime that did not constitute a criminal offence, under national or international law, at the time when it was committed;
- (b) Imposing a heavier penalty than the one that was applicable at the time of the commission of the offence. The offender should benefit from a lighter penalty if such is provided for by law subsequent to the commission of the offence.⁶⁹

⁶⁹ *Quliyev v. Azerbaijan* (CCPR/C/112/D/1972/2010), para. 9.4.

The Committee has also stressed that the principle of legality requires that imprisonment must not be determined on the grounds of a vague and broad criminal law provision. The conduct for which one is punished must be clearly prescribed by criminal law.⁷⁰ The Committee's jurisprudence affirms that detention will be deemed arbitrary if the manner in which detainees are treated does not relate to the purpose for which they are ostensibly being detained.⁷¹ In addition, the imposition of a draconian penalty of imprisonment for contempt of court without adequate explanation and without independent procedural safeguards is also arbitrary.⁷²

CHECKLIST

INFORMATION ON THE PROHIBITION OF RETROACTIVE JURISDICTION IN STATES PARTIES' REPORTS

- ✓ Indicate if the principle of non-retroactive jurisdiction is included in domestic law and give its exact formulation
- ✓ Specify if the principle of non-retroactive jurisdiction is applied in ordinary and/or military criminal codes in peacetime and time of war
- ✓ Provide examples of the application of the principle in practice

Links with other articles of the Covenant

This article is rarely addressed by the Committee except when it has to address specific jurisdictions that prove to be retroactive.

Prohibition of retroactive jurisdiction in other international instruments

- Universal Declaration of Human Rights, article 11 (2)
- African Charter on Human and Peoples' Rights, article 7 (2)
- American Convention on Human Rights, article 9
- European Convention on Human Rights, article 7

EXAMPLES OF RECOMMENDATIONS



The Committee is concerned about the vagueness of definitions in counter-terrorism legislation and regulations which, although their application is subject to judicial review, appear to run counter to the principle of legality in several aspects owing to the ambiguous wording of the provisions and the use of several evidentiary presumptions to the detriment of the defendant. This has adverse consequences on the rights protected under article 15 of the Covenant, which is non-derogable under article 4 (2) of the Covenant. The State party should ensure that measures designed to counter acts of terrorism, whether adopted in connection with Security Council resolution 1373 (2001) or in the context of the ongoing armed conflict, are in full conformity with the Covenant.

⁷⁰ CCPR/C/79/Add.115, para. 12; CCPR/CO/77/EST, para. 8; CCPR/CO/78/ISR, para. 14.

⁷¹ CCPR/CO/73/UK-CCPR/CO/73/UKOT, para. 16 (detention of asylum seekers in prisons); CCPR/CO/81/BEL, para. 18 (placement in prisons and psychiatric annexes); *Fardon v. Australia* (CCPR/C/98/D/1629/2007), para. 7.4 (1) (civil detention under same regime as prior prison sentence).

⁷² *Fernando v. Sri Lanka* (CCPR/C/83/D/1189/2003), para. 9.2; *Dissanayake v. Sri Lanka* (CCPR/C/93/D/1373/2005), para. 8.3.

EXAMPLES OF GOOD PRACTICE



In 2014, the Committee noted with satisfaction the decisions of the Supreme Court of the United States of America prohibiting sentences of life imprisonment without parole for children convicted of non-homicide offences (*Graham v. Florida*), and barring sentences of mandatory life imprisonment without parole for children convicted of homicide offences (*Miller v. Alabama*). It noted with satisfaction the commitment of the United States to the retroactive application of these decisions (CCPR/C/USA/CO/4, para. 23).

(c) Right to a legal personality (art. 16)

Article 16

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

With respect to a legal personality, States parties should ensure the right of every person to be recognized as a person before the law. This includes taking measures to prevent the enforced disappearance of persons, which removes them from any legal protection. The Committee requires information on measures concerning the registration of births of children born on the territory of the States parties and access to personal identity documents.

CHECKLIST

INFORMATION ON THE RIGHT TO A LEGAL PERSONALITY IN STATES PARTIES' REPORTS

- ✓ Indicate the moment at which legal personality is acquired under the law
- ✓ Specify the regulations governing the definition of legal personality in national law
- ✓ Provide information on the rules concerning birth registration of all children born on the territory of the State party and access to personal identity documents for all

Links with other articles of the Covenant

Article 16 is rarely mentioned by the Committee except in specific cases that may lead to its violation, such as issues concerning birth registration.

Right to a legal personality in other international instruments

- Universal Declaration of Human Rights, article 6
- Convention on the Rights of Persons with Disabilities, article 12 (1)
- Convention on the Rights of the Child, article 7
- African Charter on Human and Peoples' Rights, article 5
- American Convention on Human Rights, article 3

EXAMPLES OF RECOMMENDATIONS



The State party should strengthen its efforts to realize birth registration and the provision of birth certificates for all children, particularly in the rural areas, through appropriate interventions such as awareness-raising programmes on the need to register births and to simplify procedures for registration. The State party should provide information in its initial report on the impact of the lack of birth certificates on claims to nationality and access to social benefits.

The State party should take all the measures necessary to ensure full enjoyment of Covenant rights by all residents, including stateless persons. It should establish and implement effective measures to address statelessness and regularize the status of Roma, including by facilitating access to identification documentation.

The State party should reform the legal and administrative framework for civil registration in order to ensure the right of every child born in the territory of the State party to birth registration without discrimination, irrespective of the legal status of the parents, and to facilitate the enjoyment by children of their right to acquire a nationality. It should ensure that birth registration, particularly regular birth registration, is free of charge and make the procedure for late birth registration accessible and affordable for anyone.

EXAMPLES OF GOOD PRACTICE



In 2017, the Committee acknowledged the progress made by Thailand since the adoption of the Civil Registration Act of 2008 and its regulations on birth and late registration of children (CCPR/C/THA/CO/2, para. 41).

Also in 2017, the Committee welcomed the efforts made by Bosnia and Herzegovina to eliminate discrimination against Roma people, including improvements in birth registration among the Roma population (CCPR/C/BIH/CO/3, para. 39).

In 2013, the Committee took note of the efforts made by Belize to improve birth registration, such as the establishment of points of registration at major hospitals (CCPR/C/BLZ/CO/1, para. 22).

3. PROTECTION AGAINST UNJUSTIFIED EXTERNAL INTERFERENCE (ARTS. 17–22)

Articles 17 to 22 set out fundamental freedoms to be enjoyed without unjustified external interference in the exercise of civil and political rights and freedoms. These include the right to privacy; freedom of thought, conscience and religion; freedom of opinion and expression; the right of peaceful assembly; and the right to freedom of association. Prohibition of propaganda of war and advocacy of hatred is also contained within this part of the Covenant.

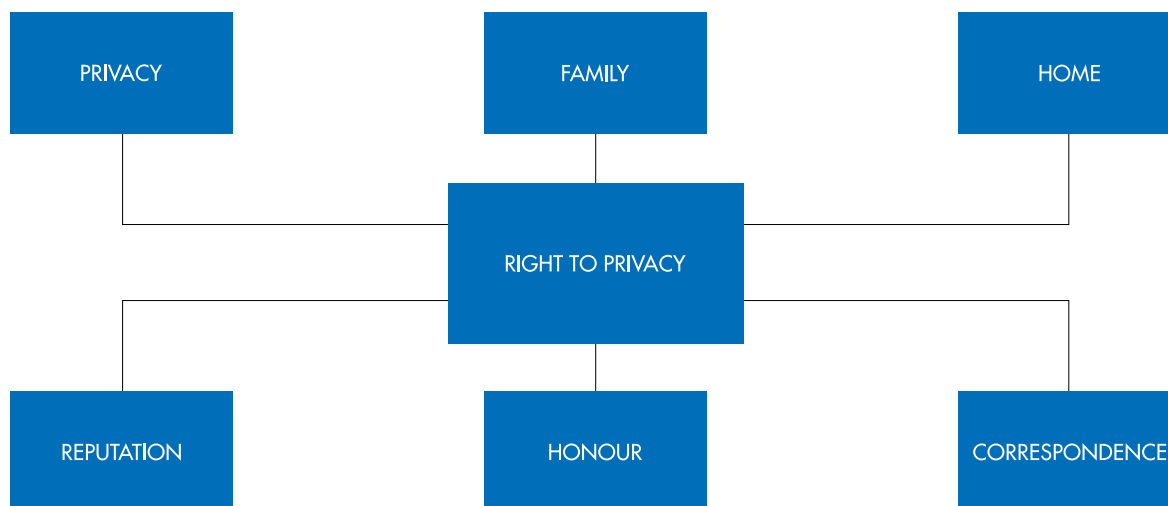
(a) Right to privacy (art. 17)

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.”

As stated by the Committee in its general comment No. 16 (1988), States parties should adopt legislative and other measures to give effect to the prohibition against arbitrary or unlawful interference with privacy, family, home or correspondence, as well as unlawful attacks on the honour and reputation of persons under their jurisdiction. Unlawful interference refers to the fact that no interference may take place unless a law authorizes it. The Committee also clarified the concept of arbitrary interference in the same general comment: even interference provided by law should be in accordance with the provisions, aims and objectives of the Covenant and should be necessary and proportionate in the particular circumstances.



Any interference should be in accordance with the Covenant and the law must specify in detail the precise circumstances in which such interference may be permitted. A decision to interfere must be made by an authority designated under the law and on a case-by-case basis. Surveillance without adequate legal safeguards, whether electronic or otherwise, interceptions of any form of communication, wiretapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to the needs of crime prevention or investigation and be preauthorized, as a rule by an officer exercising judicial authority.

The gathering and holding of personal information – including genetic data – on computers, in databases and on other devices, whether by public authorities or private individuals or bodies, must be regulated by law and subject to effective safeguards. Individuals have the right to ascertain the details of the personal data concerning them that are being stored and the reasons therefor. They also have the right to request rectification or elimination of such data.

Article 17 also protects choices concerning sexual orientation and reproduction. The Committee has identified laws criminalizing homosexuality as incompatible with article 17, regardless of whether they are being enforced. It has also held that any regulation of abortion must allow for safe legal abortion at least in cases involving rape, incest and a threat to the life or health of the pregnant woman, and when the pregnancy is not viable (see also sect. F.1.a).

CHECKLIST

INFORMATION TO BE PROVIDED IN STATES PARTIES' REPORTS ON SURVEILLANCE AND THE GATHERING AND STORING OF PERSONAL INFORMATION

Provide information on:

- ✓ The authorities and organs competent to authorize any possible interference and those that are entitled to exercise control over such interference
- ✓ The remedies available to individuals wishing to complain of a violation of their rights under article 17
- ✓ The complaints lodged during the reporting period and their outcome
- ✓ The practical steps taken to prevent future violations, in particular those that resulted from arbitrary behaviour of public officials

Specify the rules governing:

- ✓ Surveillance, electronic or otherwise, and the interception of telephonic, telegraphic or other forms of communication, wiretapping and recording of conversations
- ✓ Searches of a person's home
- ✓ Personal and body searches by State officials
- ✓ The gathering and holding of personal information, including genetic data and metadata, on computers, databases and other devices, whether by public authorities or private individuals or bodies, as well as the possibility for individuals to ascertain what personal data concerning them are stored and for what purpose, and the right to request rectification or elimination of such data

Links with other articles of the Covenant

This article is commonly addressed in conjunction with articles 18 (freedom of thought, conscience and religion), 19 (freedom of opinion and expression) and 21 (right of peaceful assembly) since the protection offered under article 17 is a condition for the enjoyment of those rights.

Right to privacy in other international instruments

- Universal Declaration of Human Rights, article 12
- Convention on the Rights of Persons with Disabilities, article 22
- African Charter on the Rights and Welfare of the Child, article 10
- American Convention on Human Rights, article 11
- European Convention on Human Rights, article 8

EXAMPLES OF RECOMMENDATIONS



The State party should apply Law No. 28 of 26 February 2004 in a manner compatible with article 17 and ensure that any future law on wire and phone-tapping for investigation purposes is compatible with the Covenant. In addition, the State party should ensure that its counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the Covenant and in particular that the legislation adopted in this context is limited to crimes that would justify being characterized as terrorist.

The State party should bring its regulations governing data retention and access thereto, surveillance and interception activities, and those relating to the intelligence-sharing of personal communications, into full conformity with the Covenant, in particular article 17, including with the principles of legality, proportionality and necessity. It should ensure that (a) any such interference with privacy requires prior authorization from a court or other suitable independent body and is subject to effective and independent oversight mechanisms; (b) access to communications data is limited to the extent strictly necessary for investigations into and prosecution of serious crimes; and (c) persons affected are notified of surveillance and interception activities, where possible, and have access to effective remedies in cases of abuse.

The State party should strengthen the safeguards against arbitrary interference with the privacy of individuals with regard to accessing metadata by introducing judicial control over such access.

The State party should take all the measures necessary to effectively combat and eliminate ethnic profiling by law enforcement officers, inter alia, by clearly defining and prohibiting ethnic profiling by law and providing mandatory training on cultural awareness and the inadmissibility of ethnic profiling to law enforcement personnel.

Reference material

- Human Rights Committee, general comment No. 16 (1988) on the right to privacy

(b) Freedom of thought, conscience and religion (art. 18)

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."*

As stated by the Committee in its general comment No. 22 (1993), the right to freedom of thought, conscience and religion covers freedom of thought on all matters, personal conviction and commitment to a religion or belief, manifested individually or collectively. It protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. It protects all religions and is



not limited to traditional or official State religions. Freedom of thought, conscience, religion or belief is absolute and cannot be derogated from, even in time of public emergency. It includes a right to choose or change religion or belief without coercion.

In the same general comment, the Committee stressed that the freedom to manifest religion may be exercised either individually or in community with others and in public or private. It may be subject only to legitimate limitations that are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.

The concept of morals derives from many social, philosophical and religious traditions; hence limitations on the manifestation of religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. The fact that the State recognizes a State religion, that it is established as official or traditional or that its followers comprise the majority of the population, must not permit discrimination against adherents of other religions or against non-believers.

EXAMPLES OF MANIFESTATION OF RELIGION

- **Worship:** ritual and ceremonial acts, building places of worship, use of ritual formulae and objects, display of symbols and observance of holidays and days of rest
- **Observance and practice of religion:** ceremonial acts and customs, observance of dietary regulations, wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life and use of a particular language
- **Practice and teaching of religion:** freedom to choose religious leaders, to establish seminaries and religious schools and to prepare and distribute religious texts and publications

Public schools may provide instruction in subjects such as the general history of religions and ethics if it is offered in a manner that does not negate freedom of thought, conscience and religion. Public schools that offer religious education should provide non-discriminatory exceptions or alternatives to accommodate the wishes of parents and guardians not interested in the religious education offered.

The Committee always enquires about the right of conscientious objection to military service, which is also protected by article 18. The obligation to use lethal force may seriously conflict with freedom of conscience and the right to manifest one's religion or belief. States parties recognizing this right in law or practice should not differentiate among conscientious objectors because of the nature of their beliefs, nor discriminate against conscientious objectors or punish them because they have failed to perform military service. States parties may require conscientious objectors to carry out alternative service on terms that do not discriminate against them in relation to those performing military service.

Links with other articles of the Covenant

Article 18 is commonly linked with articles 17 (right to privacy) and 19 (freedom of opinion and expression), since these provisions provide a framework for exercising freedom of thought, conscience and religion. It is also associated with articles 2 (equality), 20 (prohibition of propaganda for war and advocacy of hatred) and 26 (non-discrimination), since protection against discrimination on the grounds of religion or belief is provided by these provisions. Article 27 (rights of minorities) specifically protects persons belonging to religious minorities.

Right to freedom of thought, conscience and religion in other international instruments

- Universal Declaration of Human Rights, article 18
- African Charter on Human and Peoples' Rights, article 8
- American Convention on Human Rights, articles 12–13
- European Convention on Human Rights, article 9
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

CHECKLIST

INFORMATION ON FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION IN STATES PARTIES' REPORTS

- ✓ Indicate the existence of different religions and beliefs within the State party's jurisdiction
- ✓ Describe the publication and circulation of religious material
- ✓ Comment on the measures taken to prevent and punish offences against the free exercise of one's religion or belief
- ✓ In cases in which a State religion exists, explain how a person's freedom to practice another religion, to convert to another religion or not to have a religion is guaranteed, and how the application of the principle of non-discrimination on religious grounds is ensured
- ✓ Specify any procedures that must be followed for the legal recognition and authorization of various religious denominations in the country, and their practical application, including information on any refusal of recognition that might have occurred during the reporting period
- ✓ Explain the main differences regarding status between the dominant religion and other denominations, in particular with regard to the granting of subsidies and the protection of, and access to, places of worship, in particular for those belonging to religious minorities

- ✓ Provide information on the legal regulation and practice of religious education, in particular in situations in which religion is taught in State schools, the possibility for children not to attend religious classes and how the right of parents to ensure the religious education of their children in conformity with their own convictions is guaranteed
- ✓ Indicate the fiscal provisions applicable to religions
- ✓ Specify the status and legal position of conscientious objectors to military service
- ✓ Indicate the number of persons who applied for the status of conscientious objectors and how many were actually recognized as such
- ✓ Indicate the reasons considered to justify conscientious objection and the rights and duties of conscientious objectors as compared with those of persons who perform regular military service

EXAMPLES OF RECOMMENDATIONS



Notwithstanding the decision of the Constitutional Court upholding Law No. 1 of 1965 on defamation of religion, the Committee is of the view that the said law is inconsistent with the provisions of the Covenant and that it should be repealed forthwith. The Committee reiterates its position, as stated in paragraph 48 of general comment No. 34 (2011), that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. ... Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents, over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

The Committee recommends that the State party provide adequate protection against violence perpetrated against members of religious minorities.

The State party should revise its Constitution to ensure that religion is not a basis for citizenship.

The State party should abolish the crime of apostasy, which is incompatible with article 18 of the Covenant. The State party should also eliminate other discriminatory laws and practices that violate freedom of religion, as expounded by the Committee in its general comment No. 22 (1993).

EXAMPLES OF GOOD PRACTICE



The Committee noted with satisfaction the information that it had received on the decision of the Constitutional Court of the Republic of Korea requiring that alternatives to military service be offered to conscientious objectors.⁷³

Reference material

- Beirut Declaration and its 18 Commitments on Faith for Rights (A/HRC/40/58, annexes I and II)
- Human Rights Committee, general comment No. 22 (1993) on the right to freedom of thought, conscience and religion
- *#Faith4Rights Toolkit*⁷⁴

⁷³ See OHCHR, “UN review reveals concrete progress on human rights, experts say”.

⁷⁴ See OHCHR, *#Faith4Rights Toolkit* (New York and Geneva, 2020). Available at www.ohchr.org/Documents/Press/faith4rights-toolkit.pdf.

(c) Freedom of opinion and expression (art. 19)



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."*

As stated by the Committee in its general comment No. 34 (2011), States parties must protect the right to hold opinions without any interference, coercion, exception or restriction. This right protects all forms of opinion, including those of a political, scientific, historic, moral or religious nature, and includes the right to change an opinion and the right not to express one's opinion.

Freedom of expression encompasses the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. It protects all forms of expression (spoken, written and sign language, images and objects of art) and the means of their dissemination (books, newspapers, pamphlets, posters and audiovisual and electronic content). It also permits free, independent and diverse press and media to comment on public issues without censorship or restraint and to inform public opinion. The public has a corresponding right to receive information from the media.

The right of access to information includes information held by public bodies. In this respect, States parties should proactively put government information of public interest in the public domain and should make every effort to ensure easy, prompt, effective and practical access to such information.

States parties should not have monopoly control of the media and should promote plurality of opinion, expressed through the media. They should also prevent undue media dominance or concentration by privately controlled media groups. The licensing conditions and fees applied to the broadcast media should not be onerous, and such conditions should be reasonable, objective, clear, transparent and non-discriminatory.

As mentioned in paragraph 3 of article 19, the exercise of the right to freedom of expression carries with it special duties and responsibilities and therefore may be restricted. Any restrictions must be provided for by law. The term “law” may include laws in respect of parliamentary privilege⁷⁵ and contempt of court.⁷⁶ Restrictions may be imposed only (a) to ensure respect for the rights and reputations of others or (b) to protect national security or public order, or public health or morals, and must conform to the strict tests of necessity and proportionality. In its general comment No. 34 (2011), the Committee explained that the test of necessity would be violated if the protection could be achieved in other ways than by restricting freedom of expression. As regards proportionality, restrictions must be appropriate to achieving their protective function; they must be the least intrusive means of achieving their protective function; and they must be proportionate to the interest to be protected. When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in a specific and individualized fashion the precise nature of the threat, the necessity and proportionality of the action taken, and a direct and immediate connection between the expression and the threat.

States parties should protect journalists, human rights defenders and others against attacks intended to silence them and restrict their freedom of expression. They should also investigate any such attack, punish the perpetrator(s), if convicted, and provide redress to victims. Penalization of journalists and media outlets for being critical of the Government is not compatible with the Covenant. Any restrictions on the operation of websites, blogs and other Internet systems should be compatible with the above-mentioned criteria on restrictions.

Libel and defamation laws should allow for defences such as the defence of truth and should not be applied to forms of expression that are not, of their nature, subject to verification. Such laws should not prescribe excessively punitive measures and penalties. States parties should consider the decriminalization of defamation and, in any case, application of the criminal law should be countenanced only in the most serious of cases. Imprisonment is never an appropriate punishment for defamation.

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20 (2) of the Covenant.

Laws that penalize expression of opinion concerning historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to respect for freedom of opinion and expression.

The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.⁷⁷ All public figures, including those exercising the highest political authority, such as heads of State and Government, are legitimately subject to criticism and political opposition. The Committee has expressed concern regarding laws on such matters as lese-majesty, contempt of court, disrespect for authority, disrespect for flags and symbols, defamation of the Head

⁷⁵ See *Gauthier v. Canada* (CCPR/C/65/D/633/95).

⁷⁶ See *Dissanayake v. Sri Lanka*.

⁷⁷ See *Bodrožić v. Serbia and Montenegro* (CCPR/C/85/D/1180/2003).

of State and protection of the honour of public officials. States parties should not prohibit criticism of such institutions as the army or the administration.

CHECKLIST

INFORMATION ON FREEDOM OF OPINION AND EXPRESSION IN STATES PARTIES' REPORTS

- ✓ Provide information on the legal regime that regulates the ownership and licensing of the press and the broadcasting media, as well as statistics on the existence of non-State-controlled media
- ✓ Specify the measures taken to protect journalists, human rights defenders and others against attacks in order to silence them and restrict their exercise of the freedom of expression
- ✓ Provide information on any incidents of violence or threats of violence against journalists, investigations conducted into such cases and their results
- ✓ Indicate the controls exercised with regard to freedom of expression in general and any cases of persons arrested or detained because of their expression of views on political or religious affairs
- ✓ Provide information on the reasons for granting or refusing media licences, and any controls imposed by public authorities upon the press, other media and the activities of journalists
- ✓ Explain how foreign journalists may access information, the circulation of imported foreign newspapers and periodicals, and the reason why their circulation may be restricted or prohibited
- ✓ Provide information on the legislation on libel, defamation and lese-majesty and examples of its application

Links with other articles of the Covenant

Article 19 is frequently mentioned in conjunction with article 18 (freedom of thought, conscience and religion), as the latter can be a component of freedom of opinion and expression. It is also associated with articles 21 (right of peaceful assembly) and 22 (right to freedom of association), since these provisions provide a framework for expressing and manifesting one's opinion.

Freedom of opinion and expression in other international instruments

- Universal Declaration of Human Rights, article 19
- Convention on the Rights of Persons with Disabilities, article 21
- Convention on the Rights of the Child, article 13
- African Charter on Human and Peoples' Rights, article 9
- American Convention on Human Rights, article 13
- European Convention on Human Rights, article 10

EXAMPLES OF RECOMMENDATIONS



Recalling its general comment No. 34 (2011) and its previous concluding observations, the Committee recommends that the State party take effective measures to fully guarantee the right to freedom of opinion and expression in all its forms. It should also conduct effective investigations of reports concerning attacks or violence perpetrated against journalists and bring those responsible to justice. It should also prevent and refrain from using lawsuits against media organizations as a means of intimidation.

The State party should undertake the legislative measures necessary to ensure that any restrictions on the exercise of freedom of expression comply with the strict requirements set out in the Covenant. It should also refrain from prosecuting politicians, journalists and human rights defenders as a means of discouraging them from freely expressing their opinions and take immediate action to investigate attacks against them and to provide them with effective protection. The State party should also consider decriminalizing defamation and the crime of insult and ensure that hate crimes and crimes against State security are defined in a precise and narrow manner.

Reference material

- Beirut Declaration and its 18 Commitments on Faith for Rights
- Human Rights Committee, general comment No. 34 (2011) on the right to freedom of opinion and expression
- Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, annex, appendix)

EXAMPLES OF GOOD PRACTICE



In 2018, the Committee welcomed the decriminalization of defamation in Rwanda.⁷⁸

In 2014, the Committee noted with satisfaction that Malawi had repealed section 46 of the Penal Code that empowered the Minister of Information to ban newspapers (CCPR/C/MWI/CO/1/Add.1, para. 22).

In 2008, the Committee welcomed amendments to the Criminal Code of North Macedonia, decriminalizing the offences of defamation (art. 172), insult (art. 173) and expressing personal or family circumstances (art. 174) as steps in the right direction towards ensuring freedom of opinion and expression, particularly of journalists and publishers (CCPR/C/MKD/CO/2, para. 6).

(d) Prohibition of propaganda for war and advocacy of hatred (art. 20)

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.”

⁷⁸ See OHCHR, “UN review reveals concrete progress on human rights, experts say”.

In accordance with general comment No. 11 (1983), States parties are obliged to adopt legislative measures prohibiting propaganda for war as well as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As a result, such expressions are not protected by the Covenant.

The prohibition in article 20 (1) is broad. It extends to all forms of propaganda threatening or resulting in any act of aggression or breach of the peace contrary to the Charter of the United Nations. The article does not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter.

In order to make article 20 fully effective, there should be a law clearly stating that any propaganda and advocacy as described in article 20 is contrary to public policy and providing for appropriate sanctions in case of violation. States parties should take measures to fulfil this obligation and refrain themselves from any such propaganda or advocacy.

Article 20 (2) on advocacy of national, racial or religious hatred requires a high threshold because limitation of the freedom of expression must remain an exception. The Rabat Plan of Action suggests that each of the six parts of the following threshold test needs to be fulfilled in order for a statement to amount to a criminal offence:

- (a) **Context.** Context is of great importance when assessing whether particular statements are likely to incite discrimination, hostility or violence against the target group, and it may have a direct bearing on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated;
- (b) **Speaker.** The speaker's position or status in society should be considered, specifically the individual's or organization's standing in the context of the audience to whom the speech is directed;
- (c) **Intent.** Article 20 anticipates intent. Negligence and recklessness are not sufficient for an act to be an offence under article 20, as this article provides for "advocacy" and "incitement" rather than the mere distribution or circulation of material. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech act, as well as the audience;
- (d) **Content and form.** The content of the speech constitutes one of the key focuses of any court's deliberations and is a critical element of incitement. Content analysis may include the degree to which the speech was provocative and direct, as well as the form, style and nature of arguments deployed in the speech or the balance struck between the arguments deployed;
- (e) **Extent of the speech act.** Extent includes such elements as the reach of the speech act, its public nature, its magnitude and the size of its audience. Other elements to consider include whether the speech is public, what means of dissemination are used, for example using a single leaflet or broadcast in the mainstream media or using the Internet, the frequency, quantity and extent of the communications, whether the audience had the means to act on the incitement, and whether the statement (or work) is circulated in a restricted environment or widely accessible to the general public;
- (f) **Likelihood, including imminence.** Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for the said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified. It means that the courts will have to determine whether there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognizing that such causation should be fairly direct.

It is a matter of concern that the perpetrators of incidents that reach the threshold of article 20 are not prosecuted and punished, whereas members of minorities are de facto persecuted, with a chilling effect on others, through the abuse of vague domestic legislation, jurisprudence and policies. Although political and religious leaders should refrain from using any incitement to hatred, they have a crucial role to play in speaking out firmly and promptly against hate speech: they should make it clear that violence can never be tolerated as a response to incitement to hatred.⁷⁹

CHECKLIST

INFORMATION ON PROHIBITION OF PROPAGANDA FOR WAR AND ADVOCACY OF HATRED IN STATES PARTIES' REPORTS

- ✓ Indicate the legislative measures prohibiting propaganda for war
- ✓ Provide information on the legislative measures taken to prohibit advocacy of national, religious or racial hatred that constitutes incitement to discrimination, hostility or violence
- ✓ Specify the cases in which such legislation has been applied during the reporting period

Links with other articles of the Covenant

Article 20 is often linked with article 19 (freedom of opinion and expression), as it is a way of limiting freedom of expression. It can also be connected with article 18 (freedom of thought, conscience and religion), when violence has been perpetrated on religious grounds.

Prohibition of propaganda for war in other international instruments

- International Convention on the Elimination of All Forms of Racial Discrimination, article 4
- American Convention on Human Rights, article 13

EXAMPLES OF RECOMMENDATIONS



The State party should strengthen its efforts to combat acts or advocacy of racial or religious hatred, including by further enhancing awareness that hate speech, racist propaganda and the incitement of violence against racial or religious groups are prohibited under law, condemning such acts, in particular during election campaigns, and taking prompt action to bring those responsible to justice. The State party should also envisage adopting a national action plan against racism and pursue its efforts to harmonize the crime statistics and judicial statistics.

The State party should take all necessary steps to protect communities against racist, xenophobic, antisemitic and anti-Muslim acts. It should have the above-mentioned bill passed as soon as possible, and consider sterner measures to prevent individuals and groups from seeking to arouse racial hatred and xenophobia, in pursuance of article 20 (2) of the Covenant.

The State party should take urgent measures to address the widespread discriminatory attitudes, social prejudice and stigmatization of lesbian, gay, bisexual and transgender persons in the State party. It should ensure that lesbian, gay, bisexual and transgender persons have access to justice, and that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated.

⁷⁹ See Rabat Plan of Action and the Beirut Declaration and its 18 Commitments on Faith for Rights.

Reference material

- Beirut Declaration and its 18 Commitments on Faith for Rights
- Human Rights Committee, general comment No. 11 (1983) on article 20
- Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence

EXAMPLES OF GOOD PRACTICE



In 2019, the Committee welcomed the actions taken by Sweden to prevent and combat racism, such as the establishment by the National Police Commissioner of a national point of contact on these issues and hate crimes units in the country's three largest cities.⁸⁰

In 2019, the Committee welcomed the measures taken by Czechia to address racism, hate speech and other forms of intolerance, including the annual Concept for Combating Extremism and Prejudiced Hatred, the Campaign against Racism project and the Hate Free media campaign (CCPR/C/CZE/CO/4, para. 16).

Also in 2019, the Committee welcomed the measures taken to combat hate speech and hate crimes, including the creation of web constables to identify and react to online hate speech in Estonia (CCPR/C/EST/CO/4, para. 13).

In 2015, the Committee welcomed the legislative steps taken to improve the criminal-law response to hate speech and to enforce compliance with rules of conduct for the press with regard to racism, xenophobia, antisemitism or intolerance in Austria (CCPR/C/AUT/CO/5, para. 15).

(e) Right of peaceful assembly (art. 21)

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.”

The Committee has confirmed in its jurisprudence that the right of peaceful assembly is a fundamental human right, essential for public expression of one's views and opinions and political participation. It is indispensable in a democratic society.⁸¹ It is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other rights related to political freedom, it also constitutes the very foundation of a system of participatory government based on democracy, human rights and pluralism, in which change is pursued through persuasion rather than force. Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals. In situations in which they are used to air grievances, peaceful assemblies may create opportunities for inclusive participatory and peaceful resolution of differences.

⁸⁰ See OHCHR, “Human Rights Committee gives top grades for follow-up to five countries”.

⁸¹ *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4; *Evzrezov v. Belarus* (CCPR/C/117/D/2101/2011), para. 8.4.



The right of peaceful assembly includes the right to organize and participate in a peaceful assembly with the intention of supporting or expressing disapproval of a particular cause. The right is exercised by a group of persons. The right does not extend to single demonstrators.

Peaceful assemblies may take many forms, including demonstrations, meetings, processions, strikes, rallies, sit-ins and flash mobs. Such gatherings are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches. They may take place outdoors or indoors. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience.

States parties should respect and ensure the right of peaceful assembly. They have the negative duty of no unwarranted interference with participants in peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block or disrupt assemblies without compelling justification, and not to sanction participants without legitimate cause. States parties, moreover, have the positive duty to facilitate peaceful assemblies and to make it possible for participants to achieve their legitimate objectives. States must therefore promote an enabling environment for the exercise of the right of peaceful assembly and put in place a legal and institutional framework within which the right can be exercised effectively. States should also take measures to ensure the protection of persons who hold assemblies, meet to demonstrate, meet to discuss their views in public or manifest any opinion. This may include traffic control, police protection and similar measures to facilitate a peaceful and orderly gathering. In situations in which it is needed, States must also protect participants against possible abuses by non-State actors, such as interference or violence by other members of the public and counterdemonstrators.⁸²

The scope of this particular right extends only to peaceful assemblies. However, even if there is violence, the individual participants must retain their other rights. Peacefulness is not judged according to the opinions expressed at the assembly, but according to the actions of those assembled. However, isolated violence cannot be attributed to all. While States should regulate and protect against violent assemblies, which are outside the scope of protection of article 21, they should do so in accordance with other

⁸² *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6. See also European Court of Human Rights, *Plattform "Ärzte für das Leben" v. Austria* (application No. 10126/82), judgment of 21 June 1988, paras. 32–33.

provisions of the Covenant. Thus any restrictions pursuant to article 20 (2) should be justified in terms of the requirements specified for restrictions under articles 19 or 21, and they should also meet the threshold test for incitement to hatred in the Rabat Plan of Action, as well as the Beirut Declaration and its 18 Commitments on Faith for Rights.⁸³

Any restrictions on the right to peaceful assembly must be in conformity with the law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. When a State party imposes restrictions, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations on it. The Committee has also taken the view that the necessity test encompasses proportionality when restrictions are imposed. In all events, the State party is under an obligation to justify the limitation of the right protected by article 21.⁸⁴

CHECKLIST

INFORMATION ON THE RIGHT OF PEACEFUL ASSEMBLY IN STATES PARTIES' REPORTS

- ✓ Indicate the measures taken to guarantee the right of peaceful assembly and to ensure the protection of persons who hold assemblies, meet in public to demonstrate or discuss their views, or manifest any opinion
- ✓ Provide information on any requirements to notify or seek the authorization of public authorities to hold an assembly, the procedures to be followed and the conditions to be fulfilled to obtain such an authorization
- ✓ Provide information on legislative restrictions on the right of peaceful assembly, including criteria for prohibiting an assembly, as well as any cases recorded during the reporting period in which the holding of an assembly was prohibited and the reasons invoked
- ✓ Provide information on the instructions given to public officials, in particular police officials, and their attitude towards public assemblies, as well as statistics regarding any registered allegations that violence was used against peaceful and unarmed demonstrators, whether such allegations were investigated and the eventual results of such investigations

Notification systems require that those intending to organize a peaceful assembly inform the authorities in advance and provide salient details. Such a requirement is permissible to the extent to which it is necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others.⁸⁵ Authorization regimes, under which those wishing to assemble have to apply for permission (or a permit) from the authorities to do so, run counter to the idea that peaceful assembly is a basic right.⁸⁶ In situations in which such requirements persist, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise. Nor should such systems be overly bureaucratic.⁸⁷ Notification regimes, for their part, must not in practice function as authorization systems.

States parties should prevent the use of excessive force by law enforcement personnel in controlling assemblies, as well as penalties and arrests for holding unauthorized meetings.

⁸³ Rabat Plan of Action, para. 29; Beirut Declaration on Faith for Rights, para. 21.

⁸⁴ *Poplavny v. Belarus*, para. 8.4; *Evezrezov v. Belarus*, para. 8.4.

⁸⁵ *Kivenmaa v. Finland* (CCPR/C/50/D/412/1990), para. 9.2. See also African Commission on Human and Peoples' Rights, "Guidelines on Freedom of Association and Assembly in Africa", para. 72.

⁸⁶ CCPR/C/MAR/CO/6, para. 45; CCPR/C/GMB/CO/2, paras. 41–42; and African Commission on Human and Peoples' Rights, "Guidelines on Freedom of Association and Assembly in Africa", para. 71.

⁸⁷ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 8.3.

Links with other articles of the Covenant

Article 21 is generally associated with article 19 (freedom of opinion and expression), since peaceful assembly is a way of manifesting freedom of expression. It is also linked with article 22 (right to freedom of association), as the right of peaceful assembly is a necessary condition for exercising the right of association.

Right of peaceful assembly in other international instruments

- Universal Declaration of Human Rights, article 20
- African Charter on Human and Peoples' Rights, article 11
- American Convention on Human Rights, article 15
- European Convention on Human Rights, article 11

EXAMPLES OF RECOMMENDATIONS



The State party should fully guarantee the right to freedom of assembly in compliance with the Covenant and revise its legislation accordingly. It should adopt procedures and regulations in compliance with human rights standards for the police in controlling large crowds of protestors. It should investigate incidents that occurred in the State party, in particular during the 2012 demonstrations, and prosecute and bring police and defence forces officers responsible to justice.

The State party should take concrete steps to prevent and put a stop to all forms of excessive use of force by State officials by ensuring that they carry out their activities in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other human rights standards. The State party should ensure that reports of excessive use of force and similar violations against persons seeking to exercise the rights to freedom of expression, assembly and association are thoroughly investigated and the responsible persons brought to justice.

The State party should renew its traditional commitment to the promotion and protection of the exercise of freedom of assembly, association and expression. It should take all appropriate measures to avoid unnecessary obstacles and restrictions, legally or in practice, against the activities of civil society organizations. The State party should effectively protect the exercise of the freedom of peaceful assembly and avoid restrictions that are not proportionate. The State party should take measures to ensure that the application of the Income Tax Act does not result in unnecessary restrictions on the activities of non-governmental organizations defending human rights. The State party should consider developing a well-structured dialogue with civil society and indigenous peoples, to restore confidence in the State party's commitment in this area.

EXAMPLES OF GOOD PRACTICE



In 2014, the Committee welcomed the amendments and addition to the Law on Assembly and Demonstrations, in July 2011, in Georgia (CCPR/C/GEO/CO/4, para. 3 (d)). The changes included an explicit reference to the principles of legality, proportionality and necessity in a democratic society and the introduction of a presumption in favour of holding assemblies.

Reference material

- Human Rights Committee, general comment No. 37 (2020) on the right of peaceful assembly

(f) Right to freedom of association (art. 22)**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.”

States parties must protect the right to freedom of association with others, including the right to form and join groups working for the protection of human rights, political parties and trade unions.

Any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be provided for by law; (b) it may only be imposed for one of the purposes set out in paragraph 2 of article 22; and (c) it must be necessary in a democratic society to achieve one of those purposes.

The reference to a “democratic society” in the context of article 22 indicates that the existence and operation of associations, including those that peacefully promote ideas not necessarily favourably viewed by the Government or the majority of the population, is a cornerstone of any democratic society.⁸⁸ Thus, the decisive question is whether the restrictive measure put in place is necessary and proportional for achieving one of the purposes set out in article 22 (2).⁸⁹

The necessity test must be grounded on a precise basis. A vague explanation of national security does not fulfil the requirement. States must show the nexus between the restriction and the risk to be avoided⁹⁰ and demonstrate that this was necessary to avert a real, and not only hypothetical, danger to national security or the democratic order, and that less intrusive measures would be insufficient to achieve this purpose.⁹¹

Restrictions on the exercise of the right to form and join associations for members of the armed forces and police are permissible but must be promulgated by law and may not undermine the essence of the right.

Article 22 applies only to private associations, including for the purposes of membership.⁹² The Committee considers that once the law of a State party establishes organizations, such as chambers of commerce or bar associations, as organizations under public law, these organizations are not precluded by article 22 from imposing annual membership fees on their members, unless such establishment under public law is intended to circumvent the guarantees contained in article 22. The imposition of taxes on such public law organizations does not constitute a violation of article 22.

Concluding observations of the Committee often refer to article 22 in the context of legislation on freedom of association; conditions or restrictions placed on the recognition of associations, including political parties; and the impact of counter-terrorism legislation on freedom of association.

CHECKLIST

INFORMATION ON FREEDOM OF ASSOCIATION IN STATES PARTIES' REPORTS

- ✓ Specify any controls or restrictions imposed on the establishment or activities of political parties, trade unions and associations, as well as penalties imposed, if any, on members of prohibited organizations
- ✓ Indicate the number of political parties, trade unions and associations, in particular human rights groups, in the State party concerned
- ✓ State whether applications for registration of any parties, trade unions or associations (including human rights organizations) were rejected during the reporting period, the reasons for prohibiting their establishment, the possibility of appeal against such rejection, and the outcome of appeals, if any, regarding such cases
- ✓ Provide information on the financial or other controls on non-governmental organizations
- ✓ Provide information on the legislative guarantees of the right to strike, attacks on and threats against members of trade unions, restrictions on forming and joining trade unions for certain categories of workers, restrictions on the percentage of the workforce belonging to a trade union, institutional frameworks for recognizing unions and collective bargaining

⁸⁸ *Pinchuk v. Belarus* (CCPR/C/112/D/2165/2012), para. 8.4.

⁸⁹ *Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), paras. 7.2–7.3.

⁹⁰ *Ibid.*

⁹¹ *Pinchuk v. Belarus*, para. 8.6.

⁹² *Wallmann et al. v. Austria* (CCPR/C/80/D/1002/2001), paras. 9.3–9.5.

Links with other articles of the Covenant

Article 22 is frequently linked with articles 19 (freedom of opinion and expression) and 21 (right of peaceful assembly), as these provisions are a condition for fully exercising the right to freedom of association. In its general comment No. 25 (1996), the Committee highlighted the importance of the right to freedom of association for exercising the rights enshrined in article 25 (political participation).⁹³

Right to freedom of association in other international instruments

- Universal Declaration of Human Rights, article 20
- Convention on the Rights of the Child, article 15
- African Charter on Human and Peoples’ Rights, article 10
- American Convention on Human Rights, article 16
- European Convention on Human Rights, article 11

Given the importance of the right to freedom of association for labour unions, a number of international instruments adopted under the auspices of the International Labour Organization also address this issue.

EXAMPLES OF RECOMMENDATIONS



The State party should adopt a new act governing the exercise of the freedom of association that complies with international standards and provides the necessary protection for human rights defenders. The State party should, furthermore, take specific measures to ensure the protection of members of non-governmental organizations against any retaliation and the protection of peaceful demonstrations organized on its territory; in the case of violations, it should conduct investigations with a view to the prosecution of those responsible.

The State party should revise its legislation to ensure that any limitations on the right to freedom of association and assembly are in strict compliance with articles 21 and 22 of the Covenant, and in particular it should reconsider the funding restrictions on local non-governmental organizations in the light of the Covenant and it should authorize all non-governmental organizations to work in the field of human rights. The State party should not discriminate against non-governmental organizations that have some members who reside outside of its borders.

The Committee recommends that the State party amend the conditions governing trade union membership to bring them into line with articles 22 and 26 of the Covenant and to allow foreign nationals to form trade unions.

The State party should strictly limit the notion of “illegal organizations” to ensure its full compliance with article 22 of the Covenant.

⁹³ See general comment No. 25 (1996).

4. RIGHTS RELATED TO THE FAMILY AND CHILDREN (ARTS. 23–24)

(a) Protection of the family (art. 23)



UN Photo/Albert González Farran

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."*

In its general comment No. 19 (1990), the Committee confirmed that, as the natural and fundamental unit of society, the family was entitled to protection by society and the State. Such protection requires the States parties to adopt legislative, administrative and other measures to ensure protection of the family. As stated by the Committee in the same general comment, States parties should prohibit discrimination and provide for equality of rights and responsibilities of spouses as to marriage, during marriage (including the choice of residence, running of the household, education of children and administration of assets) and when a marriage is dissolved (including child custody, maintenance, visiting rights and loss and recovery of parental rights). The prohibition of discrimination also applies to the acquisition or loss of nationality due to marriage and the right of each spouse to use their original family name.

The Committee also stated that the concept of the family may differ from State to State, even from region to region within a State, and therefore it was not possible to give the concept a standard definition. States recognize various forms of family, such as unmarried couples and their children, single parents and their children, “nuclear” or “extended” families, same-sex families and so on. When a group of persons is regarded as a family under the legislation and practice of a State party, it must be given protection under article 23. Any family planning policy of a State party should be compatible with the Covenant and should not be discriminatory or compulsory. Although to date the Committee has not

required States parties to allow for same-sex marriage under law, it expects them to afford same-sex couples equivalent services and benefits to those afforded to heterosexual couples and relevant legal rights, for instance in respect of inheritance, separation arrangements and custody of children.

As stated by the Committee in its general comment No. 19 (1990), no marriage should be entered into without the free and full consent of the intending spouses. The Covenant does not stipulate a minimum marriageable age, but the age should be such as to enable each of the intending spouses to give their free and full personal consent in a form and under the conditions prescribed by law.⁹⁴ The Committee systematically recommends that the minimum legal age for marriage be set at 18 years, for both girls and boys, without exception.⁹⁵

In paragraph 4 of its general comment No. 19 (1990), the Committee confirmed that the legislation of a State party should provide for the possibility of both religious and civil marriage. However, the requirement of affirmation or registration of a religious marriage under civil law is compatible with the Covenant.

According to the Committee, polygamy is not consistent with the Covenant and where polygamy still exists, States parties are requested to take measures towards its elimination.⁹⁶ The same would apply to early or forced marriages, bride abductions and other practices, such as the unilateral repudiation of a marriage by a man. In addition, States parties should organize awareness-raising programmes and campaigns to change traditional attitudes detrimental to women's enjoyment of their human rights and to show the negative effects of polygamy on women.⁹⁷

CHECKLIST

INFORMATION ON THE PROTECTION OF FAMILY, THE RIGHT TO MARRIAGE AND EQUALITY OF SPOUSES IN STATES PARTIES' REPORTS

- ✓ Provide information on the treatment of men and women with regard to marriage, the minimum marriageable age and any consequences resulting from marriage, such as the nationality of spouses, and the rights and duties of spouses towards each other and towards their children
- ✓ Provide information on the rights and responsibilities of spouses, including choice of residence, running of the household, education of the children and administration of assets
- ✓ Provide information on the treatment of requests for divorce, the granting of a divorce, child custody and visiting rights, in particular with regard to non-discrimination between men and women
- ✓ Indicate if the protection of children born in or out of wedlock is ensured in the event of dissolution of a marriage and with regard to the best interests of the children
- ✓ Provide information on the rules concerning acquisition or loss of nationality as a result of marriage
- ✓ Provide information on the measures taken to ensure the effective protection of the family, including families formed by the permanent cohabitation of partners without formal marriage
- ✓ Indicate the rules governing family reunification
- ✓ Provide information on polygamy and forced marriages, if relevant

⁹⁴ According to the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, this age should be 18 years old. The Committee refers to "international norms" in recommending the minimum legal age of 18.

⁹⁵ CCPR/C/BGD/CO/1, para. 14; CCPR/C/PAK/CO/1, para. 42; CCPR/C/LBN/CO/3, para. 16; CCPR/C/LTU/CO/4, para. 30.

⁹⁶ CCPR/C/UZB/CO/4, para. 8; CCPR/C/BFA/CO/1, para. 16; CCPR/C/MDG/CO/4, para. 20.

⁹⁷ CCPR/C/DJI/CO/1, para. 7.

Links with other articles of the Covenant

Article 23 is commonly associated with article 24 (rights of the child) and article 3 (equal rights of men and women), since protection of the family implies protection of children and equality of the spouses in a marriage.

Protection of the family in other international instruments

- Universal Declaration of Human Rights, article 16
- International Covenant on Economic, Social and Cultural Rights, article 10
- Convention on the Elimination of All Forms of Discrimination against Women, article 16
- Convention on the Rights of the Child, article 9
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- African Charter on Human and Peoples' Rights, article 18
- American Convention on Human Rights, article 17
- European Convention on Human Rights, articles 8 and 12
- European Social Charter, article 16

EXAMPLES OF RECOMMENDATIONS



The State party should, in full compliance with the Covenant, expedite the amendment of its Personal and Family Code and all relevant legislation with a view to guaranteeing equality between men and women and decriminalizing adultery. The State party should also set the same minimum age of marriage for men and women, in accordance with international standards. Furthermore, the State party should step up its public awareness campaigns to help bring about a change in traditional attitudes that impede women's ability to exercise their fundamental human rights.

The State party should guarantee equality between men and women in matters relating to family law, in particular by ensuring, de jure and de facto, the right of women to inherit property on an equal basis with men.

The State party should ensure the strict application of its legislation banning early marriages. It should carry out campaigns to publicize the legislation and inform girls, their parents and community leaders of the harmful effects of early marriage.

EXAMPLES OF GOOD PRACTICE



In 2016, the Committee welcomed the fact that the new Family Code of Rwanda, which would remove the remaining legal provisions that discriminated against women, would soon be transmitted by Parliament for promulgation (CCPR/C/RWA/CO/4, para. 11).

Reference material

- Human Rights Committee, general comment No. 19 (1990) on the family

(b) Rights of the child (art. 24)



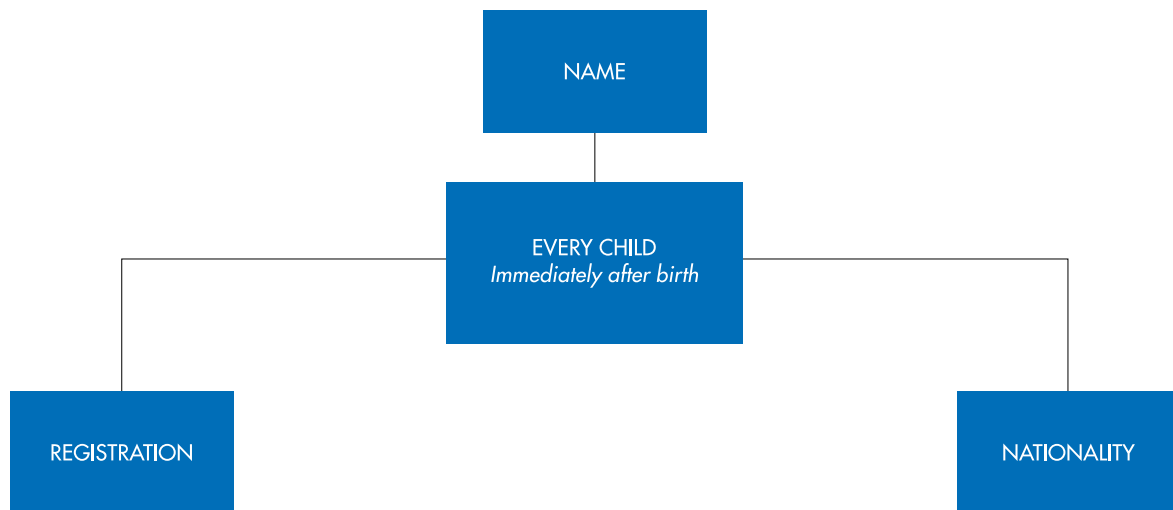
Article 24

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."*

As stated by the Committee in its general comment No. 17 (1989), States parties should protect all children without discrimination because of their status as minors. Every child must be registered immediately after birth and be given a name. States parties are also required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that all children have a nationality when they are born.

The Covenant does not stipulate the age of majority, criminal responsibility or entitlement to work under labour law. The legislation of States parties should specify the age(s) at which a child attains a majority in civil matters, assumes criminal responsibility, is legally entitled to work and is treated as an adult under labour law, and is considered a juvenile offender. While the age for these purposes is to be determined in the light of the relevant social and cultural conditions of each State party, it should not be unreasonably low and should not detract from the rights of the child under the Covenant and under relevant international instruments.

As stated by the Committee in its general comment No. 17 (1989), States parties should also take special measures to protect children who are unaccompanied, abandoned, deprived of their family, ill-treated or neglected, so that they can develop under conditions that most closely resemble a family environment. States parties should also take measures to protect children against trafficking, child labour and economic exploitation, and all forms of discrimination between children who are nationals and those without citizenship and between children born within and outside marriage, including in matters of inheritance.



CHECKLIST

INFORMATION ON CHILDREN'S RIGHTS IN STATES PARTIES' REPORTS

- ✓ Provide information on the law and practice concerning the right to be registered immediately after birth, the right to have a name and the right to acquire a nationality
- ✓ Indicate the age at which children attain their majority in civil matters
- ✓ Specify the minimum age below which children and juveniles may not be put on trial for criminal offences
- ✓ Indicate the age at which a child is considered adult in the context of deprivation of liberty (art. 10 (2)–(3) of the Covenant) and due process rights (art. 14)
- ✓ Provide information on the legislation and practice to ensure that children are not discriminated against in any field, including inheritance, particularly as between children who are nationals and those who are non-citizens, and as between children born within and outside marriage
- ✓ Indicate the special measures of protection taken to protect children who are deprived of their family environment
- ✓ Specify the measures of protection against trafficking
- ✓ Provide information on the measures taken to eliminate child labour and the economic exploitation of children, including the age at which a child is legally entitled to work and at which a child is treated as an adult under labour law

Links with other articles of the Covenant

This article is mainly quoted in conjunction with article 23 (protection of the family), since the rights of the child are heavily dependent on family life. It is also commonly associated with articles 2 (equality), 3 (equal rights of men and women) and 26 (non-discrimination), as children as a category are particularly vulnerable to discrimination.

Rights of the child in other international instruments

- Universal Declaration of Human Rights, article 25 (2)
- Convention on the Rights of the Child
- African Charter on the Rights and Welfare of the Child
- American Convention on Human Rights, article 19

EXAMPLES OF RECOMMENDATIONS



The State party should continue its efforts to ensure that all children born in its territory are registered and receive an official birth certificate and it should conduct campaigns to register all adults not yet registered.

The State party should ensure that legal aid and representation of adequate quality are systematically made accessible throughout the entire asylum procedure. It should also ensure that unaccompanied minors are systematically and without undue delay appointed a guardian trained in child counselling, from the outset and throughout their entire stay in the State party. Finally, the best interest of the child should be given primary consideration by all relevant State authorities throughout the asylum procedure.

Reference material

- Human Rights Committee, general comment No. 17 (1989) on the rights of the child

EXAMPLES OF GOOD PRACTICE



Under the follow-up procedure for Angola, the Committee welcomed the adoption of Presidential Decree 80/13 and Executive Decree 309/1 on free birth registration and the issuance of a free identification card for all children and adults and expressed hope that the measure would continue beyond 31 December 2016 (CCPR/C/118/2, p. 4).

THE SUDAN – AN EXAMPLE OF IMPLEMENTATION OF THE RECOMMENDATIONS OF THE COMMITTEE

Legislative reforms to criminalize female genital mutilation and to protect the rights of girls and women – steps in implementing the Committee's recommendations

In April 2020, the Sudan criminalized female genital mutilation, making it punishable by imprisonment and a fine. Other legislative changes include provisions for alternatives to detention measures for pregnant women and increasing the age of criminal responsibility from 7 to 12 years. Earlier, in November 2019, the Sudan had repealed the restrictive public order law that controlled how women acted and dressed in public.

These milestones for the enjoyment of human rights and fundamental freedoms by Sudanese women and girls are important steps in the implementation of some of the Committee's recent recommendations. In its concluding observations on the fifth periodic report on the Sudan, adopted on 25 October 2018, the Committee had requested that the Sudan "ensure that the necessary amendments to the Criminal Code are adopted swiftly to criminalize female genital mutilation throughout its territory, with sanctions commensurate with the gravity of the offence and adequate compensation for victims. The State party should guarantee that victims of these practices have access to rehabilitation services" (CCPR/C/SDN/CO/5, para. 26).

5. POLITICAL PARTICIPATION (ART. 25)



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.”*

As stated by the Committee in its general comment No. 25 (1996), article 25 protects the political rights of every citizen, including the right to take part in the conduct of public affairs, the right to vote and be elected and the right to have access to public service. In contrast to other rights protected by the Covenant, article 25 guarantees the rights of citizens only. Any conditions that apply to the rights protected by article 25 should be based on objective and reasonable criteria. The exercise of these rights may not be suspended or excluded except on objective and reasonable grounds established by law.

The term “conduct of public affairs” relates to the exercise of political power, including legislative, executive and administrative power. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The exercise of the right to participate in the conduct of public affairs should be established by the constitution and other laws.

The right to vote and be elected at genuine periodic elections must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. States parties must take effective measures to ensure that all persons entitled to vote are able to exercise that right, including measures to overcome specific difficulties, such as illiteracy, disability, language barriers, poverty and impediments to freedom of movement. The Committee has taken the position that a blanket ban on prisoner voting is incompatible with article 25.

Elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Voters should be free to vote for any candidate, for or against any proposal, and to form their opinion independently, free of violence, threat, compulsion or manipulative interference of any kind. Criteria for equal access to public service (appointment, promotion, suspension and dismissal) must be objective and reasonable.

EXAMPLES OF DIRECT PARTICIPATION IN THE CONDUCT OF PUBLIC AFFAIRS

- Member of legislative body or municipal council
- Holding of executive office
- Participation in referendum and electoral processes
- Participation in popular assemblies

Links with other articles of the Covenant

Article 25 is commonly associated with articles 2 (equality), 3 (equal rights of men and women), 26 (non-discrimination) and 27 (rights of minorities), as the Committee usually considers communications involving discrimination regarding political participation.

CHECKLIST

INFORMATION ON POLITICAL PARTICIPATION IN STATES PARTIES' REPORTS

- ✓ Indicate the legal provisions that define citizenship in the context of the rights protected by article 25
- ✓ Specify whether any groups, such as permanent residents, enjoy these rights on a limited basis
- ✓ Indicate the conditions that apply to the exercise of the rights protected by article 25, including grounds invoked for the suspension of those rights or the exclusion of citizens from their enjoyment
- ✓ Provide information on the electoral system and the measures adopted to guarantee genuine free and periodic elections and their practical implementation during the reporting period
- ✓ Provide information on the rules governing the right to vote and the application of those rules during the reporting period
- ✓ Indicate the factors that impede citizens from exercising their right to vote, such as illiteracy, language barriers, poverty or impediments to the freedom of movement of voters, as well as the measures adopted to overcome these factors
- ✓ Specify any legislative provisions depriving citizens of their right to vote
- ✓ Provide information on restrictions on the right to stand for election, including the legislative provisions excluding any group or category of person from elective office, and grounds for the removal of elected office holders

- ✓ Explain the legal provisions that establish the conditions for holding elective public office, including conditions for nomination, such as age limits, and any other qualifications or restrictions that apply to particular offices
- ✓ Specify the conditions for access to public service positions, any restrictions that apply, and the processes for appointment, promotion, suspension and dismissal or removal from office, as well as the judicial or other review mechanisms that apply to these processes
- ✓ Indicate how the requirement for equal access to public service is met, whether positive measures have been introduced and, if so, to what extent and with what results

Political participation in other international instruments

- Universal Declaration of Human Rights, article 21
- Convention on the Elimination of All Forms of Discrimination against Women, article 7
- Convention on the Rights of Persons with Disabilities, article 29
- International Convention on the Elimination of All Forms of Racial Discrimination, article 5 (c)
- African Charter on Human and Peoples’ Rights, article 13
- American Convention on Human Rights, article 23

EXAMPLES OF RECOMMENDATIONS



The State party should bring its electoral legal framework into compliance with the Covenant, including with article 25, inter alia, by:

- (a) Fostering a culture of political pluralism and refraining from arbitrarily denying registration to opposition political parties and preventing their participation in elections;
- (b) Ensuring freedom of genuine and pluralistic political debate;
- (c) Revising the limitations on the right to stand for election and on the right to vote, with a view to ensuring compatibility with the Covenant;
- (d) Ensuring that the constitutional requirement limiting presidential terms is respected when registering candidates for presidential elections.

The State party should ensure transparency in the legislative process and consider making public all draft legislation to facilitate public debate and dialogue by citizens with their representatives, taking due account of the Committee’s general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service.

The State party should revise its legislation to ensure that it does not discriminate against persons with intellectual or psychosocial disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable and objective relationship to their ability to vote, taking account of article 25 of the Covenant and article 29 of the Convention on the Rights of Persons with Disabilities.

The State party should review its legislation denying all convicted prisoners the right to vote, in the light of paragraph 14 of the Committee’s general comment No. 25 (1996) on article 25 of the Covenant (participation in public affairs and the right to vote).

Reference material

- Human Rights Committee, general comment No. 25 (1996) on political participation in public affairs and the right to vote

6. RIGHTS OF MINORITIES (ART. 27)



UN Photo/John Isaac

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.”

As stated by the Committee in its general comment No. 23 (1994), members of ethnic, religious and linguistic minorities that exist in the States parties shall not be denied the right to enjoy their own culture, to profess and practise their own religion or to use their own language. The mere existence of minority persons in the State party is sufficient to entail the application of article 27. Such members of minorities do not need to be nationals, citizens or permanent residents of the State party. The protection would also apply, for example, to migrant workers or visitors to the State party.⁹⁸ The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but is a factual matter established by objective criteria.

The States parties are under an obligation to ensure that the existence and exercise of these rights are protected against their denial or violation by the acts of the State party itself, as well as by other persons within the State party. Positive measures by States parties may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language, and to practise their religion.⁹⁹

⁹⁸ General comment No. 23 (1994), para. 5.2.

⁹⁹ Ibid., para. 6.2.

CHECKLIST

INFORMATION ON MINORITIES IN STATES PARTIES' REPORTS

- ✓ Indicate which ethnic, religious or linguistic minorities exist on the territory of the State party, including indigenous communities constituting a minority and minorities constituted of non-citizens, such as migrant workers
- ✓ Explain the measures, including positive measures of protection, taken to ensure that members of such minorities enjoy the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language
- ✓ Specify the measures taken to ensure that indigenous peoples present on the territory of the State party can exercise their cultural rights and lead their particular way of life, which may be associated with the use of land resources and traditional activities, such as fishing or hunting
- ✓ Indicate the measures taken to ensure the effective participation of members of minority communities in decisions that affect them
- ✓ Indicate whether, and in which numbers, members of minority groups are represented in central and local government and hold elective offices, participate in the conduct of public affairs and have access to public service

Culture manifests itself in many forms, including a particular way of life that may be linked with land resources or traditional activities, such as fishing and hunting, particularly in the case of indigenous peoples (recognized as minorities for the purpose of the Covenant). In such cases, the State must ensure that development projects potentially threatening their customary way of life are not implemented before all efforts have been made to secure their free, prior and informed consent (see article 1 above on self-determination).

Links with other articles of the Covenant

Article 27 is frequently quoted in conjunction with articles 2 (equality) and 26 (non-discrimination), as discrimination is the main issue faced by minorities.

Reference material

- Beirut Declaration and its 18 Commitments on Faith for Rights
- Human Rights Committee, general comment No. 23 (1994) on the rights of minorities

Rights of minorities in other international instruments

- International Convention on the Elimination of All Forms Racial Discrimination
- European Charter for Regional or Minority Languages
- European Convention on Human Rights, article 14
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
- United Nations Declaration on the Rights of Indigenous Peoples

EXAMPLES OF RECOMMENDATIONS



The State party should: (a) take measures to promote tolerance and an environment inclusive of persons belonging to ethnic, national, racial, religious and other minorities; (b) use legislative, policy and educational measures, including sensitization and awareness-raising, to counter stigmatization of Roma, Muslim and other minorities; (c) take measures to prevent racist attacks and to ensure that the alleged perpetrators are thoroughly investigated and prosecuted and, if convicted, punished with appropriate sanctions, and that the victims have access to adequate compensation; and (d) prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

The State party should ensure that the existing legal framework providing for informed prior consultations with indigenous communities for decisions relating to projects that affect their rights is implemented in a manner consistent with article 27 of the Covenant, including by ensuring that all affected indigenous communities are involved in the relevant consultation processes and that their views are duly taken into account. The State party should also ensure that the free, prior and informed consent of indigenous communities is obtained before adopting measures that substantially compromise or interfere with their culturally significant economic activities.

EXAMPLES OF GOOD PRACTICE



Under the follow-up procedure for Finland, the Committee welcomed the information regarding the measures taken to facilitate education in their own language for all Sami children in the territory of Finland (CCPR/C/115/2, p. 18).





UN Photo/Mark Garten

G. OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The first Optional Protocol to the Covenant does not directly relate to reporting but to individual complaints. However, States parties are required to provide information on the implementation of the Views of the Committee, if relevant, as well as the mechanisms that they have in place to ensure such implementation.

The Optional Protocol provides for a mechanism for the Committee to receive and consider individual complaints of alleged violations of the Covenant. Any person claiming a violation of their rights stipulated in the Covenant by the State party to the Optional Protocol may submit a complaint (called a “communication”). The complaint need not be submitted in a particular format; however, it is strongly recommended that complainants use the model complaint form. The complaint may be submitted by the victim of an alleged violation or by another person with the written consent of the victim (no specific form is required). In some situations, consent is not required (for example, in the case of a victim who is in prison without access or a victim of enforced disappearance).

While the complaint procedure is confidential, the decisions (Views) are public. Should complainants wish not to disclose their identity to the public, they should indicate this to the Committee as soon as possible.

CHECKLIST

ADMISSIBILITY CRITERIA

- ✓ *Ratione personae* – a complainant must be subject to the jurisdiction of the State party to the Covenant and Optional Protocol
- ✓ *Ratione temporis* – an alleged violation must have occurred after the entry into force of the Optional Protocol in the respective State party
 - Exception: if the violation continues or has continuing effects that the State party has endorsed
- ✓ *Ratione materiae* – the alleged violation must refer to rights stipulated in the Covenant and be sufficiently substantiated
 - Check the reservations and declarations concerning substantive rights
- ✓ Exhaustion of domestic remedies
 - Exception: ineffective or unreasonably prolonged domestic remedies
- ✓ The same matter is not being considered by another international complaint mechanism
 - Check the reservations and declarations concerning the Optional Protocol
- ✓ The complaint should not constitute an abuse of the right of submission
 - Example: unjustified late submission of a complaint submitted more than five years after the last domestic decision

Complaints should contain basic information on the alleged victims, specify the State party that allegedly violated their rights under the Covenant, provide an account of the facts and explain why the facts constitute violations of the Covenant. It is recommended that the alleged victims suggest the specific remedies that they wish to obtain.

The authors of the complaints should provide copies of all the documents of relevance to their complaints, especially judicial and administrative decisions and medical reports. If the documents are not in an official language of the United Nations, a full or summary translation should be provided.

It is recommended that the complaint be submitted as soon as possible after the exhaustion of domestic remedies. While there is not a deadline for submission of a complaint, unjustified submission after five years from exhaustion of domestic remedies or three years from the conclusion of the procedure of international settlement or investigation may be considered by the Committee as an abuse of the right to submit a complaint.

Interim measures

In order to prevent serious irreparable harm, the author may request that the Committee issue a request for interim measures. Such requests relate to actions that cannot be later undone, for example the execution of a death sentence or the deportation of an individual facing the risk of torture or deprivation of life. A decision to request interim measures does not imply a decision on the admissibility of the complaint. Interim measures, if granted, can be subsequently withdrawn by the Committee in the light of information provided by the State party or the author.

The Committee cannot consider a complaint if the same matter is being considered simultaneously by another mechanism of international investigation or settlement. Some States parties have reservations excluding the competence of the Committee to handle cases that have already been decided by another international mechanism. Another international mechanism might be, for example, the European

Court of Human Rights, the Inter-American Court of Human Rights or another treaty body, such as the Committee against Torture. This does not include complaints submitted under the Human Rights Council complaint procedure or to the Council's special procedures.

THE "SAME MATTER" MEANS

- The same author
- The same facts
- The same substantive rights

Procedure

A complaint fulfilling prima facie the admissibility criteria is transmitted to the Special Rapporteur on new communications and interim measures (a member of the Committee), who decides on registration of the case. If the case is registered, it is sent to the State party for its observations on admissibility and the merits (six-month deadline). The State party may challenge the complaint's admissibility (two-month deadline) and request a separate decision on admissibility (a "split" request). The Special Rapporteur decides whether to grant the split request. The observations of the State party are sent to the author for comments. Each party can comment on the submission of the other party and/or send additional relevant information and documents. When two rounds of submissions have been received from both parties, the case is generally ready for decision. If the State party fails to respond, even after receiving several reminders, the Committee decides the case on the basis of the information in the file. Once the Committee decides on the case, the decision is submitted to the author and the State party simultaneously. The decision is posted on the OHCHR website and forms part of the Committee's jurisprudence.

THE PAGE LIMIT OF A COMPLAINT

- 50 pages maximum (without annexes)
- More than 20 pages (short summary of up to 5 pages)

If the Committee decides that the complaint is inadmissible or that there is no violation, the case is closed. If the Committee decides that the facts before it amount to a violation of the rights guaranteed under the Covenant, it requests the State party to provide information (within 180 days) on the steps that it has taken to give effect to its findings and recommendations. If the State party fails to take appropriate action, the case is kept under consideration by the Committee under the follow-up procedure. A dialogue is pursued with the State party and the case remains open until satisfactory measures are taken or the Committee records a finding of non-compliance. Information related to follow-up is not confidential and the meeting during which it is discussed is public.

Reference material

- OHCHR, *Individual Complaint Procedures under the United Nations Human Rights Treaties*, Fact Sheet No. 7/Rev.2 (New York and Geneva, 2013)
- For jurisprudence emanating from the United Nations treaty bodies that receive and consider complaints from individuals, see <https://juris.ohchr.org>
- A comprehensive guide on petitions to United Nations treaty bodies is currently being drafted by OHCHR



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

The Second Optional Protocol aims at abolishing the death penalty. Its single substantive provision (art. 1) stipulates that no person within a State party's jurisdiction shall be executed, and each State party shall take all necessary measures to abolish the death penalty within its jurisdiction. The Second Optional Protocol prohibits reservations, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime (art. 2). The provisions of the Second Optional Protocol are non-derogable and apply as additional substantive provisions to the Covenant (art. 6). The Second Optional Protocol is subject to the same reporting procedure as the Covenant and the complaint procedure for States that have accepted the competence of the Committee under the first Optional Protocol (arts. 3–5).



UN Photo/Evan Schneider

I. THE COVENANT AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

What are the Sustainable Development Goals?

In September 2015, the General Assembly adopted resolution 70/1, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”. In the resolution, the General Assembly set 17 Sustainable Development Goals divided into 169 specific targets to be achieved by all countries by 2030. The 2030 Agenda seeks to “realize human rights for all” and 90 per cent of its targets relate to human rights. The expertise of the United Nations human rights treaty bodies is therefore highly relevant to achieving progress on the realization of the Sustainable Development Goals. Similarly, the goals’ national review implementation processes should support the implementation of the recommendations of the human rights treaty bodies on the ground.

The Sustainable Development Goals are universally applicable to all countries, while taking account of different national circumstances, capacities and levels of development and respecting national policies and priorities. The universal commitment to leaving no one behind means a shared concern for reaching everyone, including the most vulnerable, marginalized and excluded populations. While the Sustainable Development Goals are more general, the targets set objectives that are more specific and give a better understanding of their relationship to the provisions of the human rights treaties, including the Covenant.

Treaty bodies can raise human rights issues covered by the Sustainable Development Goals in the context of consideration of States parties' reports, including during the constructive dialogue. Treaty bodies may also recommend that States take account of specific human rights obligations in their national action plans and implementation processes on Sustainable Development Goals, including their voluntary national reviews. States can use the dialogue with the treaty bodies and draw on their expertise to bridge national gaps in implementation.

Sustainable Development Goals most relevant to Covenant rights

While most of the targets address cultural and economic issues, there are also strong correlations with civil and political rights, since the Sustainable Development Goals are also concerned with democratic governance, the rule of law, accountable and inclusive institutions, access to justice and personal security. In particular, Goal 16 touches on important human rights standards and principles, access to information and protecting fundamental freedoms; participation in decision-making; non-discriminatory laws and policies; and access to justice. The inclusion of these commitments is an acknowledgement of the crucial role that civil and political rights play in realizing sustainable and equitable development.



GOAL 16 (PEACE, JUSTICE AND STRONG INSTITUTIONS)

The most relevant goal for a number of civil and political rights is Goal 16, which refers to the aim of promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels.



OHCHR Photo

Its specific targets include the following:

- (a) Reduce significantly all forms of violence and related death rates everywhere (target 16.1). Indicators include: (i) the number of victims of intentional homicide; (ii) the proportion of the population subjected to physical, psychological and sexual violence; and (iii) conflict-related deaths. The relevant articles of the Covenant are 6, 7 and 9;
- (b) Ensure public access to information and protect fundamental freedoms (target 16.10). Indicators include the number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates. The relevant articles of the Covenant are 6, 7, 9 and 19;
- (c) Strengthen relevant national institutions to prevent violence and combat terrorism and crime (target 16.a) and develop effective, accountable and transparent institutions at all levels (target 16.6). Indicators include the existence of independent national human rights institutions in compliance with the Paris Principles. The relevant article of the Covenant is article 2 (2);
- (d) Promote and enforce non-discriminatory laws and policies for sustainable development (target 16.b). Indicators include the proportion of the population reporting having personally felt discriminated against or harassed on the basis of a ground of discrimination prohibited under international human rights law. The relevant articles of the Covenant are 2 and 26;
- (e) End abuse, exploitation, trafficking and all forms of violence against and torture of children (target 16.2). Indicators include: (i) the percentage of children who experienced any physical punishment and/or psychological aggression by caregivers; (ii) the number of victims of human trafficking; and (iii) the proportion of young women and men who experienced sexual violence. The relevant articles of the Covenant are 7, 8 and 9;
- (f) Promote the rule of law at the national and international levels and ensure equal access to justice for all (target 16.3). Indicators include: (i) unsentenced detainees as a proportion of the overall prison population; and (ii) the proportion of victims of violence who reported their victimization to competent authorities. The relevant articles of the Covenant are 2, 14 and 16;
- (g) Ensure responsive, inclusive, participatory and representative decision-making at all levels (target 16.7). Indicators include: the proportion of positions in national and local institutions, including legislatures, the public service and the judiciary, compared with national distributions, by sex, age, persons with disabilities and population groups. The relevant article of the Covenant is article 25.





GOALS 5 (GENDER EQUALITY) AND 10 (REDUCED INEQUALITIES)



Goals 5 and 10 correlate with the Covenant's provisions on equality and non-discrimination. Goal 5 calls upon States to achieve gender equality and empower all women and girls. Similarly, article 3 of the Covenant obliges States parties to ensure the equal right of men and women to the enjoyment of the rights of the Covenant. Goal 5 targets include the elimination of all forms of discrimination against women and girls everywhere (target 5.1 and article 3 of the Covenant) and the elimination of all forms of violence against women and harmful practices, such as child, early and forced marriage and female genital mutilation (targets 5.2 and 5.3 and article 7 of the

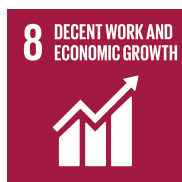
Covenant), ensuring women's full participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life (target 5.5 and articles 2, 25 and 26 of the Covenant) and universal access to sexual and reproductive health and reproductive rights (target 5.6 and articles 6, 7 and 17 of the Covenant).

Goal 10 aims at reducing inequalities, which is closely linked with the prohibition of discrimination and the provisions related to equality under the Covenant. Target 10.2 refers to empowering and promoting the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status (see article 2 of the Covenant). Target 10.3 aims to ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.

Target 10.7 requests that States facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. This target relates to the right to liberty and security of persons, prohibiting arbitrary detention of asylum seekers and irregular migrants (see article 9 of the Covenant); conditions of migrant detention centres with respect to the rights of persons deprived of their liberty (article 10 of the Covenant); freedom of movement (article 12 of the Covenant); and restrictions on the arbitrary expulsion of aliens (article 13 of the Covenant).



UN Photo/Eskinder Debebe



GOAL 8 (DECENT WORK AND ECONOMIC GROWTH)

While Goals 16, 5 and 10 are the main reference points for the Covenant, there are specific targets that are also closely connected with the articles of the Covenant. Goal 8 states the aim of promoting inclusive and sustainable economic growth, full and productive employment and decent work for all. According to target 8.7, this includes taking immediate and effective measures to eradicate forced labour, end modern slavery and trafficking in persons and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 ending child labour in all its forms. This target is linked with the prohibition of slavery and slavery-like practices (article 8 of the Covenant), as well as with the special protection of children (article 24 of the Covenant). Target 8.8, calling for the protection of labour rights and the promotion of safe and secure working environments, addresses the right to freedom of association (article 22 of the Covenant).



GOAL 3 (GOOD HEALTH AND WELL-BEING)

Goal 3 calls on States to ensure healthy lives and promote well-being for citizens of all ages, including by reducing the global maternal mortality ratio and child mortality (targets 3.1 and 3.2). This is directly relevant to the right to life (article 6 of the Covenant), which also requires that States parties take positive measures to protect their citizens' lives. Similarly, Goal 3 calls for measures to reduce mortality from non-communicable diseases (target 3.4), deaths and injuries from road traffic accidents (target 3.6), as well as deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination (target 3.9).



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17 PARTNERSHIPS
FOR THE GOALS**GOAL 17 (PARTNERSHIPS FOR THE GOALS)**

Lastly, it is important to mention Goal 17, which states the aim of strengthening the means of implementation of and revitalizing the global partnership for sustainable development. Its targets include strengthening domestic and international resources; enabling technology transfer and capacity-building; promoting trade; enhancing policy and institutional coherence; respecting countries' policy space; promoting multi-stakeholder partnerships; and measuring progress based on disaggregated data, all of which are relevant to article 2 of the Covenant.

ANNEXES

ANNEX I

REFERENCE MATERIAL

Human Rights Committee, general comment No. 11 (1983) on article 20

_____ general comment No. 12 (1984) on the right to self-determination

_____ general comment No. 15 (1986) on the position of aliens under the Covenant

_____ general comment No. 16 (1988) on the right to privacy

_____ general comment No. 17 (1989) on the rights of the child

_____ general comment No. 18 (1994) on non-discrimination

_____ general comment No. 19 (1990) on the family

_____ general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment

_____ general comment No. 21 (1992) on humane treatment of persons deprived of their liberty

_____ general comment No. 22 (1993) on the right to freedom of thought, conscience and religion

_____ general comment No. 23 (1994) on the rights of minorities

_____ general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to the declarations under article 41 of the Covenant

_____ general comment No. 25 (1996) on participation in public affairs and the right to vote

_____ general comment No. 27 (1999) on freedom of movement

_____ general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency

_____ general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant

_____ general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial

_____ general comment No. 34 (2011) on the freedoms of opinion and expression

_____ general comment No. 35 (2014) on liberty and security of person

_____ general comment No. 36 (2018) on the right to life

_____ general comment No. 37 (2020) on the right of peaceful assembly

The above general comments are available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11.

- United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (original rules adopted in 1957; revised rules adopted in 2015). Available at www.ohchr.org/Documents/ProfessionalInterest/NelsonMandelaRules.pdf.
- Code of Conduct for Law Enforcement Officials (1979). Available at www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx.
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982). Available at www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx.
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (1985). Available at www.ohchr.org/documents/professionalinterest/beijingrules.pdf.
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988). Available at www.ohchr.org/en/professionalinterest/pages/detentionorimprisonment.aspx.
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). Available at www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx.
- Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (1999; revised 2004). Available at www.ohchr.org/documents/publications/training8rev1en.pdf.
- OHCHR, *Civil and Political Rights: The Human Rights Committee*, Fact Sheet No. 15 (Rev.1) (New York and Geneva, 2005). Available at www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf.
- Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012). Available at www.ohchr.org/en/issues/freedomofopinion/articles19-20/pages/index.aspx.
- Beirut Declaration and its 18 Commitments on Faith for Rights (2017). Available at www.ohchr.org/Documents/Press/21451/BeirutDeclarationonFaithforRights.pdf.
- OHCHR, *#Faith4Rights Toolkit* (New York and Geneva, 2020). Available at www.ohchr.org/Documents/Press/faith4rights-toolkit.pdf.

ANNEX II

REFERENCE DOCUMENTS

I. 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 within 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 capital 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 sub-paragraph (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 explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
 - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (d) The Committee shall hold closed meetings when examining communications under this article;

- (e) Subject to the provisions of sub-paragraph (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 sub-paragraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in sub-paragraph (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 sub-paragraph (b), submit a report:
 - (i) If a solution within the terms of sub-paragraph (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 sub-paragraph (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 sub-paragraph (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 sub-paragraph (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.

II. Optional Protocol to the International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with article 9

The States Parties to the present Protocol,

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

Have agreed as follows:

Article 1

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

Article 2

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

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.
2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
2. The Committee shall not consider any communication from an individual unless it has ascertained that:
 - (a) The same matter is not being examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
3. The Committee shall hold closed meetings when examining communications under the present Protocol.
4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

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

Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

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

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

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

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

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

- (a) Signatures, ratifications and accessions under article 8;
- (b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;
- (c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

III. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

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

The States Parties to the present Protocol,

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

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

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

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

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

Have agreed as follows:

Article 1

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

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

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

Article 4

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

Article 5

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

Article 6

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

Article 7

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 8

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 9

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

Article 10

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

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under article 8 thereof.

Article 11

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.



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