



Advocates for International Development
Lawyers Eradicating Poverty

AN OVERVIEW OF THE UNITED NATIONS HUMAN RIGHTS SYSTEM

Kate Levine,
Hogan Lovells International LLP

Type:
Published:
Last Updated:
Keywords:

Legal Guide
April 2012

UN, human rights

This document provides general information and comments on the subject matter covered and is not a comprehensive treatment of the subject. It is not intended to provide legal advice. With respect to the subject matter, viewers should not rely on this information, but seek specific legal advice before taking any legal action

Any opinions expressed in this document are those of the author and do not necessarily reflect the position and/or opinions of A4ID

© Advocates for International Development 2012

Introduction

The United Nations (UN) human rights system is a fundamental component of the international human rights framework.

The UN human rights system comprises:

- **Charter-based bodies** (established under the UN Charter (1945)); and
- **Treaty bodies** (created by one of the eight international human rights treaties).

Charter-based bodies seek to uphold international human rights in general, while treaty bodies address compliance with human rights in the particular treaty under which they were established.

This guide provides an overview of the UN human rights system, and in particular:

- (a) The treaties in which the international human rights which are the subject of the UN system are enshrined;
- (b) The role of treaty bodies; and
- (c) The role of Charter-based bodies.

International human rights treaties

The Universal Declaration of Human Rights (1948) (**Universal Declaration**) sets a general common standard for the achievement of human rights, but it is not a legally binding instrument. The rights set out in the Universal Declaration have subsequently been transformed into a legally binding framework of international human rights through the following eight international treaties, namely:

- The International Covenant on Civil and Political Rights (1966) (**ICCPR**), and First (1966) and Second (1990) Optional Protocols;
- The International Covenant on Economic, Social and Cultural Rights (1966) (**ICESCR**), and Optional Protocol (2008);

- The International Convention on the Elimination of All Forms of Racial Discrimination (1966) (**CERD**);
- The Convention on the Elimination of All Forms of Discrimination against Women (1979) (**CEDAW**) and Optional Protocol (1999);
- The Convention on the Rights of the Child (1989) (**CRC**), and First (2000) and Second (2000) Optional Protocols;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (**CAT**) and Optional Protocol (2002);
- The Convention on the Rights of Persons with Disabilities (2006) (**CRPD**) and Optional Protocol (2006); and
- The International Convention for the Protection of All Persons from Enforced Disappearance (2006) (**ICPED**).

In addition to the above treaties, there is also a Convention on the Protection of All Migrant Workers and Members of Their Families (1990) (**ICRMW**).

Treaty bodies

The role of monitoring implementation of and compliance with these treaties by states parties is tasked to committees established by the treaties (and hence referred to as **treaty bodies**), namely:

- The Human Rights Committee (established by the ICCPR) ;
- The Economic, Social and Cultural Rights Committee (established by the ICESCR);
- The Committee on the Elimination of Racial Discrimination (established by CERD);
- The Committee on the Elimination of Discrimination against Women (established by CEDAW);
- The Committee on the Rights of the Child (established by the CRC);
- The Committee against Torture (established by CAT);
- The Committee on the Rights of Persons with Disabilities (established by CRPD); and

- The Committee on Enforced Disappearances (established by the ICPED).

In addition to the above treaty bodies, there is also the Committee on the Protection of All Migrant Workers and Members of Their Families (established by the **ICRMW**).

Treaty bodies are comprised of experts in the particular area of human rights of the relevant treaty. The members of treaty bodies preside in their capacity as experts on the rights in question, and not as state representatives.

Treaty bodies use various mechanisms to achieve their objectives, including:

- Scrutinizing and commenting on periodic reports submitted by states parties every four to five years regarding their efforts to properly implement and comply with the treaty in question;
- Adjudicating complaints submitted by individuals regarding alleged breaches of their rights under the relevant treaty;
- Adjudicating complaints submitted by states parties regarding alleged breaches by another ratifying state of their obligations under the relevant treaty; and
- Inquiries into serious or systematic treaty violations by states parties which are based on reliable information containing well-founded indications.

Not all treaty bodies have the capability to employ each of the above mechanisms. For example, the Economic, Social and Cultural Rights Committee will only be able to hear individual and inter-state complaints provided for in the ICESCR's Optional Protocol when the latter enters into force. Further, there is no provision in the CRC for the Committee on the Rights of the Child to receive individual or inter-state complaints.

Treaty bodies are quasi-judicial bodies; this means that their decisions in response to individual or inter-state complaints are not legally binding, but do have persuasive value.

Treaty bodies can also issue General Recommendations and General Comments in response to issues concerning interpretation of the relevant treaty or arising in state reports or field investigations. General Recommendations and General Comments are also not legally binding but do provide authoritative guidance on the interpretation of the treaty in question. For example, General Comment Number 15 of the Economic, Social and Cultural Rights Committee made a significant contribution to clarifying the content of the right to water as a self-standing human right.

Charter-based bodies

There are numerous bodies established by the UN Charter which have a role in promoting and monitoring compliance with international human rights, namely the Human Rights Council, the Office of the High Commissioner for Human Rights (and the High Commissioner for Human Rights), the Security Council, the General Assembly, the Secretariat (and the Secretary General), and the International Court of Justice. Of these, the Human Rights Council and the Office of the High Commissioner for Human Rights are the most active in enforcing and monitoring compliance with international human rights.

Human Rights Council:

The Human Rights Council replaced the Human Rights Commission in 2006. It is an inter-governmental body. It usually meets three times a year, but can also convene additional Special Sessions to address human rights emergencies (for example, on 2 December 2011, the Council held a Special Session on the human rights situation in Syria).

The Human Rights Council monitors compliance of all 192 UN member states with their international human rights obligations through the Universal Periodic Review (**UPR**). The UPR seeks to:

- Assess member states' human rights records;
- Highlight human rights violations;
- Provide technical assistance to improve member states' abilities to effectively respond to human rights challenges; and
- Share best practices in human rights between states and other stakeholders.

The Human Rights Council responds to human rights violations through:

- The **1503 Procedure** under which the Commission considers complaints relating to consistent patterns of gross and reliably attested human rights violations. The procedure is confidential save as to the parties involved.
- The **Special Procedures** under which either individual Special Rapporteurs or Independent Experts and Working Groups examine,

monitor and report on human rights situations in particular countries or territories, or in relation to significant phenomena of human rights violations. The operation and outcome of the Special Procedures are public (i.e. in contrast to the confidential 1503 Procedure).

Office of the High Commissioner for Human Rights:

The Office of the High Commissioner for Human Rights supports the work of the High Commissioner for Human Rights, who is appointed by the UN Secretary General. The current High Commissioner for Human Rights is Ms Navanethem Pillay, who took up the post in 2008.

The High Commissioner for Human Rights is the official with principal responsibility for human rights within the UN and leads the UN's human rights efforts. Amongst other objectives, the High Commissioner for Human Rights works to:

- Promote universal ratification and implementation of international human rights treaties; and
- Support the efforts of the Human Rights Council and treaty bodies.

The High Commissioner for Human Rights also promotes other human rights which are not yet included in legally binding treaties (for example, the High Commissioner for Human Rights recently adopted economic, social and cultural rights as a strategic priority as part of her efforts to promote the right to development (as set out in the Declaration on the Right to Development (1986)).