

HUMAN RIGHTS LAW

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The Nature & Sources of Human Rights

- What are Human Rights?

Human rights are the rights a person has simply because he or she is a human being. (Jack Donnely., 'The concept of Human Rights' (1985)).

They are the basic entitlements or minimum standards to be met for individuals to live with dignity.

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Human rights are rights of individuals in society. Every human being has legitimate, valid, justified claims upon his or her society...to various 'goods' and 'benefits'...These rights are defined and listed in international instruments and are deemed essential for individual well being, dignity, and fulfillment, and that they reflect a common sense of justice, fairness, and decency. (Louis Henkin., 'The Age of Rights'.

Nature of Human Rights

Human rights are formally expressed and legally guaranteed by international human rights law. The law obligates states to ensure and implement human rights and/or restrains states from violating human rights. Their proponents argue that human rights law does not establish human rights, as human rights are inherent entitlements that adhere to individuals even if official laws or actors do not recognize or protect them.

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Every individual (human being) is entitled to some basic rights, without which we cannot live as human beings. All these rights, which are essential for the maintenance of human dignity, may be called as human rights. These are the rights, which no one can be deprived without a grave affront to justice. Therefore, human rights in an older idiom used to be called as natural rights, now they are called basic rights or fundamental rights. Not all the rights held by human beings are 'human rights'; for example, contractual rights are held by humans but are not 'human rights'. Human rights are those held simply by virtue of being a person. To have a human right one need not be or do anything special, other than be born a human being.

Origin, Source and Development of Human Rights

- Students to read various sources to know the origin, source and development of HR
- The importance of human rights was realized and visualized only after the establishment of United Nations Organizations (UN) in 1945. Since the emergence of UN on 24-10-1945 there has been a tremendous growth and development in the field of protection of human rights. *The Charter of the United Nations* (hereinafter “UN Charter” or the “Charter”) itself contains several provisions relating to human rights.

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- Preamble to the UN Charter clearly states that “... to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small”. The preamble continues to state that “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom”.

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- Generally, the Charter aims to maintain international peace and security, by eradicating wars, human suffering and to establish international co-operation in solving international problems of economic, social, cultural, or humanitarian character, and promote and encourage respect for human rights and fundamental freedoms for all (See, Article 1).
- Other relevant articles in the UN Charter are 13(1)(b), 55, 56, 62(2), 68.

The UN and the Universal Declaration of HR

Although there was mentioning of human rights in the Charter, the Charter did not include a bill of rights. Instead, there were proposals for developing one through the work of a special commission that would give separate attention to the issue. That commission was contemplated by the Charter under Article 68, which provides that one of the UN organs, the Economic and Social Council (ECOSOC), “shall set up commissions in economic and social fields and for the promotion of human rights”. In 1946, ECOSOC established the Commission on Human Rights (UN Commission on Human Rights), which has evolved over the decades to become the world’s single most important human rights organ.

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- The Commission first met in 1947. Its members (who were representative members of the Commission) including such distinguished founders of the human rights movement Rene Cassin of France, Charles Malik of the Lebanon, and Eleanor Roosevelt of the United States.
- Some representatives urged that the draft bill of rights under preparation should take the form of a declaration—that is, a recommendation by the General Assembly to Member States (see Article 13 of the Charter) that would exert a moral and political influence on states rather than constitute a legally binding instrument.

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- Other representatives urged the Commission to prepare a draft convention containing a bill of rights that would, after adoption by the UN General Assembly (UN-GA), be submitted to states for their ratification. The first path was followed. In 1948, the UN Commission adopted a draft Declaration, and by its strenuous efforts, in the same year, the General Assembly adopted the *Universal Declaration of Human Rights 1948* (UDHR), with 48 states voting in favour and eight abstaining—Saudi Arabia, South Africa, and the Soviet Union together with four East European states and a Soviet republic

UDHR

- The UDHR seemed to cover most of human rights fields, including economic and social rights (see Articles 22-26) as well as civil and political rights.
- The UDHR was meant to precede more detailed and comprehensive provisions in a single convention that would be approved by the General Assembly and submitted to states for ratification.

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- On 10 December 1948, the UN General Assembly unanimously adopted the Declaration as an enduring international commitment to human rights. Recoiling from the massacres of the Holocaust and desiring peace in the aftermath of World War II, the UDHR represented an unprecedented step as states acknowledged the treatment of individuals was not solely subject to state governance.

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The years of drafting the UDHR was characterized by the struggles of Cold War. The human rights movement was buffeted by ideological conflict and the formal differences of approach in a polarized world. One consequence was the decision in 1952 to build on the UDHR by dividing its provisions between two treaties, one on civil and political rights and the other on economic, social and cultural rights. Thus the two principal treaties, namely, the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) made their ways to the Commission and finally to the General Assembly, where they were approved in 1966. But still, another decade passed before the two Covenants achieved the number of ratifications necessary to enter into force in 1976.

International Bill of HR

- The International Bill of Human Rights is said to be “a summary statement of the minimum social and political guarantees internationally recognized as necessary for a life of dignity in the contemporary world.” (Donnelly 1998). It consists of UDHR, the ICESCR, and the ICCPR and its two Optional Protocols. The ICCPR has two Optional Protocols. The First Optional Protocol creates an individual complaints mechanism. The Second Optional Protocol abolishes the death penalty.

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- The Universal Declaration of Human Rights (UDHR) is the primary UN document articulating human rights standards and norms. At inception, the declaration was intended to be a nonbinding statement of objectives to be followed by all states. However, now, many if not all of its provisions are accepted as declaratory of customary international law, i.e. law that is binding on all states as it is derived from the consistent conduct of states acting out of the belief that the law requires them to act that way (state practice and opinion juris).

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- The Declaration represents the global consensus or “common standard” of entitlements for all persons. It comprises a broad range of rights that are drafted with sufficient breadth to cover people of all cultures and religions. It does not distinguish between or elevate civil-political versus socio-economic rights. Instead, the Declaration affirms the equality and inalienability of all its codified rights and freedoms.

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- ICCPR and ICESCR translate into legally binding instruments the rights articulated in the UDHR.
- The ICCPR and ICESCR were both adopted in 1966 and entered into force in 1976. Approximately one-quarter of UN Members are not party to the covenants and accordingly are not bound by their provisions.

Historical Sequence and Typology of HR Instruments

The history of human rights instrument globally can be put under a four-tiered normative edifice as follows:

1. The UN Charter, although it relatively has little to say about human rights, the UN Charter has been accorded great significance. Through interpretation and extrapolation, as well as frequent invocation, the Charter has constituted as a basic document through which the human rights movement has been anchored.

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2. The *Universal Declaration of Human Rights* which is viewed by some as a further elaboration of the brief references to human rights in the Charter. It has remained the single most important cited human rights instrument.
3. The two principal covenants, which among the universal treaties have broad coverage of human rights topics. They contain more detailed provisions of human rights

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- 4 A host of multilateral human rights treaties (usually termed 'conventions', as well as resolutions or declarations with a more limited or focused subject than the comprehensive International Bill of Rights.

This fourth tier consists of a network of treaties, most but not all of which became effective after the two Covenants. These include, the *Convention on the Prevention and Punishment of the Crime of Genocide*, effective 1951, the *International Convention on the Elimination of all Forms of Discrimination against Women*, 1979,

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the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, the Convention on the Rights of the Child, 1989, and Convention on the Rights of Persons with Disabilities, 2006, and many other relevant and important treaties have been concluded under the auspices of the ILO, UNESCO, and other UN specialized agencies, as well as various regional organizations e.g. The European Convention on Human Rights, 1950, American Convention on Human Rights, 1969 and the African Charter on Human and People's Rights 1981.

TYPES OF HUMAN RIGHTS

Human Rights are indivisible and interdependent, and therefore precisely there cannot be different kinds of human rights. All Human Rights are equal in importance and are inherent in all human beings. The UDHR did not categorize the different kinds of human rights. It simply enumerated them in different articles. However, the subsequent developments made in the human rights field under the UN system make it clear that human rights are of basically of two kinds namely:

Types of HR

1. Civil (individual rights)

life, liberty, and security of the person; privacy and freedom of movement; ownership of property; freedom of thought, conscience, and religious belief and practice; prohibition of slavery, torture, and cruel or degrading punishment are examples of civil rights.

Civil rights or liberties are referred to as those rights, which are related to the protection of the right to life and personal liberty. They are essential for person so that he may live a dignified life.

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2. Political Rights

freedom of expression, assembly, and association; the right to take part in government; and periodic and meaningful elections with universal and equal suffrage are examples of political rights

Political rights may be referred to those rights, which allow a person to participate in the Government of a State.

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3. Rights related to Rule of Law

equal recognition before the law and equal protection of the law; effective legal remedy for violation of rights; impartial hearing and trial; presumption of innocence; and prohibition of arbitrary arrest are rights related to R.L. In effect they are civil rights. The nature of civil and political rights may be different but they are interrelated and inter-woven.

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4. Economic and Social Rights

an adequate standard of living; free choice of employment; protection against unemployment; "just and favorable remuneration"; the right to form and join trade unions; "reasonable limitation of working hours"; free elementary education; social security; and the "highest attainable standard of physical and mental health" are all economic and social rights

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Economic, Social and Cultural rights are related to the guarantee of minimum necessities of life to human beings. In the absence of those rights the existence of human being is likely to be endangered. Right to adequate food, clothing, housing and adequate standard of living and freedom from hunger, right to work, right to social security, right to physical and mental health and right to education are included in this category of rights.

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- Economic, social and cultural rights are based fundamentally on the concept of social equality. Realization of these rights, which is generally called the rights of second generation, has been somewhat slow in coming. They are regarded only as general principles and not legally binding specific rules. However, recently they have begun to come of age and implemented.

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5. Collective Rights

In addition to the above rights there is another kind of rights which may be enjoyed by individual collectively such as right to self-determination or the physical protection of the group such as through prohibition of genocide. Such rights are referred to as collective rights which are sometimes called the third generation of human rights. So, self-determination and protection of minority cultures are examples of rights in this category.

3 Generations/Phases of HR

1. Enlightenment (17th-18th Century)

The first tier or "generation" consists of civil and political rights and derives primarily from the seventeenth and eighteenth-century political theories noted earlier which are associated with the English, American, and French revolutions. Think "life, liberty, and the pursuit of happiness." This approach favors limiting government by placing restrictions on state action. The rights set forth in Articles 2-21 of the [Universal Declaration of Human Rights](#) include: freedom from discrimination; freedom from slavery; freedom from torture and from cruel, inhuman, or degrading treatment; freedom from arbitrary arrest and detention; the right to a fair and public trial; freedom of thought, conscience, and religion; freedom of opinion and expression; and the right to participate in government through free elections fall under this phase.

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2. Socialist tradition (19th century)

The second generation of rights broadens the primarily political focus of earlier views to include economic, social, and cultural rights. This view originates primarily in the socialist traditions of Marx and Lenin. According to this view, rights are conceived more in positive rather than negative terms, and thus encourage the intervention of the state. Illustrative of these rights are Articles 22-27 of the Universal Declaration of Human Rights. They include the right to social security; the right to work; the right to a standard of living adequate for the health and well-being of self and family; and the right to education.

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3 The third generation of "solidarity rights" (20th century)

These views are a product of the rise and decline of the nation-state in the last half of the twentieth century. These rights have been championed by the Third World and remain somewhat controversial and debated. The specific rights include the right to political, economic, social, and cultural self-determination; the right to economic and social development; and the right to participate in and benefit from "the common heritage of mankind."

Environmental, cultural and developmental rights. These include the rights to live in an environment that is clean and protected from destruction, and rights to cultural, political and economic development.

Characteristics of HR

- Human rights do not have to be bought, earned or inherited; they belong to people simply because they are human. Human rights are inherent to each individual.
- Human rights are the same for all human beings regardless of race, sex, religion, political or other opinion, national or social origin. We are all born free, and equal in dignity and rights—human rights are universal.

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- Human rights cannot be taken away; no one has the right to deprive another person of them for any reason. People still have human rights even when the laws of their countries do not recognise them, or when they violate them - for example, when slavery is practiced, slaves still have rights even though these rights are being violated. Human rights are inalienable.
- To live in dignity, all human beings are entitled to freedom, security and decent standards of living concurrently. Human rights are indivisible.

HR Principles

- Human rights are **universal** and **inalienable**; **indivisible**; **interdependent** and **interrelated**.
- They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural or ethnic background.
- Inalienable because people's rights can never be taken away.
- Indivisible and interdependent because all rights – political, civil, social, cultural and economic – are equal in importance and none can be fully enjoyed without the others. They apply to all equally, and all have the right to participate in decisions that affect their lives. They are upheld by the rule of law and strengthened through legitimate claims for duty-bearers to be accountable to international standards.

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- ***Universality and Inalienability:*** Human rights are *universal* and *inalienable*. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the *Universal Declaration of Human Rights*: “All human beings are born free and equal in dignity and rights.”

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- ***Indivisibility:*** Human rights are *indivisible*. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.

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- ***Interdependence and Interrelatedness:***
Human rights are *interdependent* and *interrelated*. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information.

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- ***Equality and Non-discrimination:*** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.

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- ***Participation and Inclusion:*** All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.

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- ***Accountability and Rule of Law:*** States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. Individuals, the media, civil society and the international community play important roles in holding governments accountable for their obligation to uphold human rights.

WHO IS BOUND BY IHR LAW

- Unlike individual sovereign states, the community of nations has no international legislature empowered to enact laws that are directly binding on all countries. As we have already noted, resolutions or declarations adopted by the UN General Assembly are not binding. Of course the declaration will have solemn effects as the formal act of a deliberative body of global importance. Its subject matter, like that of UDHR, may be of greatest significance. But when approved or adopted it is hortatory and aspirational, recommendatory rather than, in a formal sense, binding.

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However, decisions of the UN Security Council adopted under Chapter VII Mandate are legally binding on all UN Members, and a number of such decisions in the past decades have been directly relevant to human rights concerns.

Nevertheless, states establish legally binding obligations among themselves in other ways, principally by expressly consenting to an obligation by ratifying a treaty or other international agreement, or

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or through wide acceptance of a rule as binding customary international law. Thus, the covenants and conventions bind the states parties in accordance with its terms, subject to such formal matters as reservations under the doctrine of *pacta sunt servanda*. So, international law, including human rights law, is applicable to states rather than to individuals. Consequently, these international rules generally can become a source of domestic legal obligations for a state's officials and of domestic rights for that nation's citizens only through their incorporation in some manner into the state's own internal law.

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- In practice, therefore, the most important sources of international human rights law is international treaties, which directly create international obligations for the parties. But treaties are binding only when they are in force and only with respect to the nations that have expressly agreed to become parties to them.

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Thus, in determining whether a treaty is legally relevant to the human situation in a particular country, it is important to ascertain the following issues:

- Whether the treaty contains express language requiring the parties to respect the particular human rights at issue;
- Whether the treaty is in force, since multilateral treaties typically do not take effect until a certain number of nations have deposited their ratifications (formal instruments indicating their intent to be bound);
- Whether the nation involved has in fact ratified the treaty, since signature alone may not legally bind a nation to the obligations of a multilateral treaty; and
- Whether the nation in question has filed any reservation that expressly modifies its treaty obligations.

State Obligation

Human rights instruments have been jointly drafted by the world community, and the associated obligations have been voluntarily undertaken by each State Party as a result of signing particular treaties. States are thus bound by their own consent to a set of obligations concerning their treatment of individuals, without discrimination, within their jurisdiction.

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The precise obligations of states vary from treaty to treaty but in general, States Parties can be regarded as obliged to 'respect', 'protect' and 'fulfil' the rights contained within the treaty. The latter includes the obligations to facilitate, promote and provide those rights.

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- **Respect**

States are obliged to ensure that human rights are fully respected in the context of state policies, laws and actions. This obligation requires states to ensure that none of its ministries or public servants violate or impede enjoyment of human rights by their policies or actions.

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- **Protect**

States are obliged to ensure that enjoyment, by everyone without discrimination, of all their human rights is protected from abuse by third parties – ie from the actions of individuals and groups at all levels of society, including corporations, institutions and public and private bodies. This protection should be through the introduction of laws to protect human rights, and the provision of affordable and accessible redress procedures in the event of abuse of the rights.

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- **Fulfil**

States are obliged to take the necessary steps to ensure the realisation of human rights in practice through the adoption of legislative and other measures, such as the provision of education and other public services and policies designed to ensure access for everyone to basic needs. The obligation to fulfil includes the obligations to facilitate, promote and provide. In the context of economic, social and cultural rights, states are obliged to take all measures to achieve the progressive realisation of the rights.

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In practice, human rights laws require states to:

- Incorporate into national law the rights enshrined in international human rights instruments
- Undertake a review of national law, policies and actions to ensure that they adequately protect and respect the equal rights of everyone and protect against discrimination in enjoyment of rights
- Analyse the realisation of the rights within all sectors of the community (best achieved in partnership with representatives of civil society including people living in poverty and social disadvantage) in order to identify any groups not adequately enjoying their rights
- Develop policies and programmes in line with international human rights law and the introduction of all appropriate measures to ensure realisation of the human rights by all people without discrimination; this may include providing support for those unable to meet their own needs
- Promote the observance of human rights through education and training in human rights and responsibilities.

Debate on Universality of HR

- Until to date almost half a century since UDHR was adopted, there is still a debate whether or not human rights are universal. Critics are still asking whether anything in our multicultural, diverse world can be truly universal. Some do ask, isn't human rights an essentially Western concept and thus does not take into account different cultural, economic and political conditions of other parts of the world, particularly the South? Another question posed is Can the values of the consumer society, e.g. civil and political rights, be applied to societies that have nothing to consume? Isn't talking about universal rights rather like saying that the rich in the North and the poor in the South have the same right to fly first-class and to sleep under bridges? The fact is that there are serious objections to the concept of universality of human rights.
- **Students are advised to read various literature concerning this debate and form their own views.**

Core IHR instruments

The seven core human rights treaties

- The **International Covenant on Civil and Political Rights**, adopted in 1966 and entered into force 23 March 1976
- The **International Covenant on Economic, Social and Cultural Rights**, adopted in 1966, entered into force 3 January 1976
- The **International Convention on the Elimination of All Forms of Racial Discrimination**, adopted in 1965, entered into force 4 January 1969
- The **Convention on the Elimination of All Forms of Discrimination Against Women**, adopted in 1979, entered into force 3 September 1981
- The **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, adopted in 1984, entered into force 26 June 1987
- The **Convention on the Rights of the Child**, adopted in 1989, entered into force 2 September 1990
- The **Convention on the Rights of Persons with Disabilities**, adopted by UN General Assembly on 13 December 2006; opened for signature on 30 March 2007. Following ratification by the 20th party, it came into force on 3 May 2008.

Monitoring the core IHR Instruments

- Each of the seven core human rights treaties has its own monitoring body (known collectively as the treaty bodies), established to oversee compliance by States Parties with their obligations under that treaty. These bodies comprise committees of independent experts elected by UN Member States. They are created in accordance with the provisions of the treaty that they monitor. There are eight human rights treaty bodies including [The Committee on Migrant Workers \(CMW\)](#)

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The [Human Rights Committee \(CCPR\)](#) monitors implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols;

The [Committee on Economic, Social and Cultural Rights \(CESCR\)](#) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966);

The [Committee on the Elimination of Racial Discrimination \(CERD\)](#) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965);

The [Committee on the Elimination of Discrimination Against Women \(CEDAW\)](#) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999);

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The Committee Against Torture (CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984);

The Committee on the Rights of the Child (CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000); and

The Committee on Migrant Workers (CMW) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) which was signed on 18 Dec 1990 and entered into force 1 July 2003.

The Committee on the Right of Persons with Disabilities (CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006).

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- Each treaty body receives secretariat support from the Human Rights Treaties Branch of OHCHR in Geneva. CEDAW, which was supported until 31 December 2007 by the Division for the Advancement of Women (DAW), meets once a year in New York at United Nations Headquarters. Similarly, the Human Rights Committee usually holds its session in March/April in New York. The other treaty bodies meet in Geneva, either at Palais Wilson or Palais des Nations.

Main Functions of the Committees

The treaty bodies perform a number of functions in accordance with the provisions of the treaties that created them. These include:

- Consideration of State parties' reports
- Consideration of individual complaints or communications
- They also publish general comments on the treaties and organize discussions on related themes.

How this is done?

- **Consideration of State parties' reports**

When a country ratifies one of these treaties, it assumes a legal obligation to implement the rights recognized in that treaty. But signing up is only the first step, because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice. So the country incurs an additional obligation to submit regular reports to the monitoring committee set up under that treaty on how the rights are being implemented. This system of human rights monitoring is common to most of the UN human rights treaties.

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To meet their reporting obligation, States must report/submit an initial report usually one year after joining (two years in the case of the CRC) and then periodically in accordance with the provisions of the treaty (usually every four or five years). In addition to the government report, the treaty bodies may receive information on a country's human rights situation from other sources, including non-governmental organizations, UN agencies, other intergovernmental organizations, academic institutions and the press. In the light of all the information available, the Committee examines the report together with government representatives. Based on this dialogue, the Committee publishes its concerns and recommendations, referred to as “concluding observations”.

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- **Consideration of individual complaints or communications**

In addition to the reporting procedure, some of the treaty bodies may perform additional monitoring functions through three other mechanisms: the inquiry procedure, the examination of inter-state complaints and the examination of individual complaints.

Four of the Committees (CCPR, CERD, CAT and CEDAW) can, under certain conditions, receive petitions from individuals who claim that their rights under the treaties have been violated.

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Complaining about human rights violations

The ability of individuals to complain about the violation of their rights in an international arena brings real meaning to the rights contained in the human rights treaties.

There are three main procedures for bringing complaints of violations of the provisions of the human rights treaties before the human rights treaty bodies:

- [individual communications](#);
- [state-to-state complaints](#); and
- [inquiries](#).

Note: not all committees have the right to consider such complaints. See next slides.

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- **General Comments**

The Committees also publish their interpretation of the content of human rights provisions, known as general comments on thematic issues or methods of work.

Individual Communications

Five of the human rights treaty bodies ([CCPR](#), [CERD](#), [CAT](#), [CEDAW](#) and [CRPD](#)) may, under particular circumstances, consider individual complaints or communications from individuals:

- The [Human Rights Committee](#) may consider individual communications relating to States parties to the [First Optional Protocol to the International Covenant on Civil and Political Rights](#);
- The [CEDAW](#) may consider individual communications relating to States parties to the [Optional Protocol to the Convention on the Elimination of Discrimination Against Women](#);

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- The [CAT](#) may consider individual communications relating to States parties who have made the necessary declaration under [article 22 of the Convention Against Torture](#);
- The [CERD](#) may consider individual communications relating to States parties who have made the necessary declaration under [article 14 of the Convention on the Elimination of Racial Discrimination](#); and
- The [CRPD](#) may consider individual communications relating to States parties to the [Optional Protocol to the Convention on the Rights of Persons with Disabilities](#).

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- The Convention on Migrant Workers also contains provision for allowing individual communications to be considered by the CMW; these provisions will become operative when 10 states parties have made the necessary declaration under article 77.

Who can Complain?

- Any individual who claims that her or his rights have under the covenant or convention have been violated by a State party to that treaty may bring a communication before the relevant committee, provided that the State has recognized the competence of the committee to receive such complaints. Complaints may also be brought by third parties on behalf of individuals provided they have given their written consent or where they are incapable of giving such consent.
- For further information please visit:
<http://www2.ohchr.org/english/bodies/petitions/individual.htm>

Inter-State Complaints

Several of the [human rights treaties](#) contain provisions to allow for State parties to complain to the relevant treaty body about alleged violations of the treaty by another State party.

Note: these procedures have never been used.

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- CAT and CMW: Article 21 [CAT](#) and article 74 [CMW](#) set out a procedure for the relevant Committee itself to consider complaints from one State party which considers that another State party is not giving effect to the provisions of the Convention. This procedure applies only to States parties who have made a declaration accepting the competence of the Committee in this regard.

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- CERD and CCPR: Articles 11-13 [ICERD](#) and articles 41-43 [ICCPR](#) set out a more elaborate procedure for the resolution of disputes between States parties over a State's fulfillment of its obligations under the relevant Convention/Covenant through the establishment of an *ad hoc* Conciliation Commission. The procedure normally applies to all States parties to ICERD, but applies only to States parties to the ICCPR which have made a declaration accepting the competence of the Committee in this regard.

Resolution of inter-State disputes concerning interpretation

- Resolution of inter-State disputes concerning interpretation or application of a convention is as follows: CEDAW, CAT and CMW: Article 29 CEDAW, article 30 CAT and article 92 CMW provide for disputes between States parties concerning interpretation or application of the Convention to be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the [International Court of Justice](#) if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other States parties.

Inquiries

The Committee Against Torture and the Committee on the Elimination of Discrimination Against Women may, on their own initiative, initiate inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.

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- Inquiries may only be undertaken with respect to States parties who have recognized the competence of the relevant Committee in this regard. States parties to CAT may opt out, at the time of ratification or accession, by making a declaration under article 28; States parties to the CEDAW Optional Protocol may similarly exclude the competence of the Committee by making a declaration under article 10.

Inquiry procedure

- Article 20 of the Convention Against Torture and articles 8 to 10 of the Optional Protocol to CEDAW set out the following basic procedure for the relevant Committee to undertake urgent inquiries:

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1. The procedure may be initiated if the Committee receives reliable information indicating that the rights contained in the Convention are being systematically violated by the State party. In the case of CAT, the information should contain well-founded indications that torture is being systematically practised in the territory of the State party; in the case of CEDAW, the information should indicate grave or systematic violations of the rights set forth in the Convention by a State party.

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2. The first step requires the Committee to invite the State party to co-operate in the examination of the information by submitting observations.

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3. The Committee may, on the basis of the State party's observations and other relevant information available to it, decide to designate one or more of its members to make a confidential inquiry and report to the Committee urgently. The CEDAW procedure specifically authorizes a visit to the territory of the State concerned, where warranted and with the State's consent.

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4. The findings of the member(s) are then examined by the Committee and transmitted to the State party together with any appropriate comments or suggestions/recommendations.
5. The CEDAW procedure sets a six-month deadline for the State party to respond with its own observations on the Committee's findings, comments and recommendations and, where invited by the Committee, to inform it of the measures taken in response to the inquiry.

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6. The Committee may decide, in consultation with the State party, to include a summary account of the results of the proceedings in its annual report.
- In both cases, the procedure is confidential and the cooperation of the State party must be sought throughout.

Non-treaty body monitoring

There are also procedures for complaints which fall outside of the treaty body system - through the special procedures and the Human Rights Council Complaint Procedure and through the Commission on the Status of Women.

Special Procedures

- "Special procedures" is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Currently, there are 31 thematic and 8 country mandates. The Office of the High Commissioner for Human Rights provides these mechanisms with personnel, policy, research and logistical support for the discharge of their mandates.

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- Special procedures' mandates usually call on mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. Various activities are undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities.

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- Special procedures are either an individual (called "Special Rapporteur", "Special Representative of the Secretary-General" or "Independent Expert") or a working group usually composed of five members (one from each region) . The mandates of the special procedures are established and defined by the resolution creating them. Mandate-holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. The independent status of the mandate-holders is crucial in order to be able to fulfill their functions in all impartiality.

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- Most Special Procedures receive information on specific allegations of human rights violations and send urgent appeals or letters of allegation to governments asking for clarification. In 2008, a total of 911 communications were sent to Governments in 118 countries. 66% of these were joint communications of two or more mandate holders.

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- Mandate holders also carry out [country visits](#) to investigate the situation of human rights at the national level. They typically send a letter to the Government requesting to visit the country, and, if the Government agrees, an invitation to visit is extended. Some countries have issued "[standing invitations](#)", which means that they are, in principle, prepared to receive a visit from any special procedures mandate holder. As of 30 June 2010, 72 States had extended standing invitations to the special procedures. After their visits, special procedures' mandate-holders issue a mission report containing their findings and recommendations.

Human Rights Council Complaint Procedure

On 15 March 2006, the General Assembly adopted resolution A/RES/60/251 to establish the Human Rights Council and abolish Human Rights Commission which was established in 1946.

On 18 June 2007, the Human Rights Council adopted the President text entitled "UN Human Rights Council: Institution Building" (resolution 5/1) by which a new Complaint Procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

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- The new Complaint Procedure is established in compliance with the mandate entrusted to the Human Rights Council by General Assembly resolution 60/251 of 15 March 2006, in which the Council was requested to review and, where necessary, improve and rationalize, within one year after the holding of its first session, all mandates, mechanisms, functions and responsibilities of the former Commission on Human Rights, including the 1503 procedure, in order to maintain a system of special procedures, expert advice and a complaint procedure.

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- Accordingly, ECOSOC resolution 1503 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000, served as a working basis for the establishment of a new Complaint Procedure and was improved where necessary to ensure that the complaint procedure be impartial, objective, efficient, victims-oriented and conducted in a timely manner.

Review of *the 1503 procedure*

- In compliance with the mandate entrusted to it by the General Assembly, the Council decided on 30 June 2006 to establish the Working Group on the implementation of operative paragraph 6 of General Assembly resolution 60/251 (decision 1/104), to formulate concrete recommendations on the issue of reviewing and when necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities of the former Commission on Human Rights, including the 1503 procedure.

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How does the complaint procedure work?

Pursuant to Council resolution 5/1, the Complaint Procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

It retains its confidential nature, with a view to enhancing cooperation with the State concerned. The procedure, inter alia, is to be victims-oriented and conducted in a timely manner.

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- Two distinct working groups - the Working Group on Communications and the Working Group on Situations (Confidential 1503 procedure) - are established with the mandate to examine the communications and to bring to the attention of the Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.

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- Manifestly ill-founded and anonymous communications are screened out by the Chairperson of the Working Group on Communications, together with the Secretariat, based on the admissibility criteria. Communications not rejected in the initial screening are transmitted to the State concerned to obtain its views on the allegations of violations.

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- The Working Group on Communications (WGC) is designated by the Human Rights Council Advisory Committee from among its members for a period of three years (mandate renewable once). It consists of five independent and highly qualified experts and is geographically representative of the five regional groups. The Working Group meets twice a year for a period of five working days to assess the admissibility and the merits of a communication, including whether the communication alone or in combination with other communications, appears to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. All admissible communications and recommendations thereon are transmitted to the Working Group on Situations.

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- The Working Group on Situations (WGS) comprises five members appointed by the regional groups from among the States member of the Council for the period of one year (mandate renewable once). It meets twice a year for a period of five working days in order to examine the communications transferred to it by the Working Group on Communications, including the replies of States thereon, as well as the situations which the Council is already seized of under the complaint procedure. The Working Group on Situations, on the basis of the information and recommendations provided by the Working Group on Communications, presents the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and makes recommendations to the Council on the course of action to take.
- Subsequently, it is the turn of the Council to take a decision concerning each situation thus brought to its attention.

The criteria for a communication to be accepted for examination?

A communication related to a violation of human rights and fundamental freedoms is admissible, unless:

- It has manifestly political motivations and its object is not consistent with the UN Charter, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law; or
- It does not contain a factual description of the alleged violations, including the rights which are alleged to be violated; or
- Its language is abusive. However, such communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language; or

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- It is not submitted by a person or a group of persons claiming to be the victim of violations of human rights and fundamental freedoms or by any person or group of persons, including NGOs acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the UN Charter and claiming to have direct and reliable knowledge of those violations. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual author is second hand, provided they are accompanied by clear evidence; or
- It is exclusively based on reports disseminated by mass media; or

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- It refers to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights; or
- The domestic remedies have not been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.
- The National Human Rights Institutions (NHRIs), when they are established and work under the guidelines of the Principles Relating to Status of National Institutions (the Paris Principles) including in regard to quasi-judicial competence, can serve as effective means in addressing individual human rights violations.

Commission on the Status of Women

- The Commission on the Status of Women (“CSW” or “the Commission”) is a functional commission of the United Nations Economic and Social Council (ECOSOC), dedicated exclusively to gender equality and advancement of women. It is the principal global policy-making body. Every year, representatives of Member States gather at United Nations Headquarters in New York to evaluate progress on gender equality, identify challenges, set global standards and formulate concrete policies to promote gender equality and advancement of women worldwide.

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- The Commission was established by ECOSOC resolution 11(II) of 21 June 1946 with the aim to prepare recommendations and reports to the Council on promoting women's rights in political, economic, civil, social and educational fields. The Commission also makes recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights.

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- The Commission's mandate was expanded in 1987 by ECOSOC resolution 1987/22 to include the functions of promoting the objectives of equality, development and peace, monitoring the implementation of measures for the advancement of women, and reviewing and appraising progress made at the national, subregional, regional and global levels. Following the 1995 [Fourth World Conference on Women](#), the General Assembly mandated the Commission to integrate into its programme a follow-up process to the Conference, regularly reviewing the critical areas of concern in the [Beijing Platform for Action](#) and to develop its catalytic role in [mainstreaming a gender perspective](#) in United Nations activities. The [Economic and Social Council \(ECOSOC\)](#) again modified the Commission's terms of reference in 1996, in its resolution 1996/6, to include, inter alia, identifying emerging issues, trends and new approaches to issues affecting equality between women and men.

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- Forty-five Member States of the United Nations serve as members of the Commission at any one time. The Commission consists of one representative from each of the 45 Member States elected by the Council on the basis of equitable geographical distribution: thirteen members from Africa; eleven from Asia; nine from Latin America and Caribbean; eight from Western Europe and other States and four from Eastern Europe. Members are elected for a period of four years.

Universal Periodic Review (UPR)

- The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.

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As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground. To achieve this, the UPR involves assessing States' human rights records and addressing human rights violations wherever they occur. The UPR also aims to provide technical assistance to States and enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights among States and other stakeholders.

Ban Ki-moon, UN Secretary-General said that -The Universal Periodic Review "has great potential to promote and protect human rights in the darkest corners of the world."

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- The UPR was created through the UN General Assembly on 15 March 2006 by resolution [60/251](#), which established the Human Rights Council itself. It is a cooperative process which, by 2011, will have reviewed the human rights records of every country. The UPR is one of the key elements of the new Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this new mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.

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Who conducts the review?

- The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however any UN Member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three States, known as “troikas”, who serve as rapporteurs. The selection of the troikas for each State review is done through a drawing of lots prior for each Working Group session.

UPR Sessions

- According to the Human Rights Council's "institution-building package", the Universal Periodic Review Working Group will hold three two-week sessions per year. During each session 16 countries will be reviewed, therefore 48 countries per year and 192 countries by 2011, or the entire UN membership over the course of the first UPR cycle (2008-2011). On 21 September 2007, the Human Rights Council adopted a calendar detailing the order in which the 192 UN Member States will be considered during the first four-year cycle. Each review is facilitated by groups of three States, or "troikas", who act as rapporteurs.

UPR documentation

In accordance with the Human Rights Council's "institution-building package", the documents on which the reviews are based are:

- Information prepared by the State concerned, which can take the form of a national report, and any other information considered relevant by the State concerned, which could be presented either orally or in writing.
- Information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents, compiled in a report prepared by the OHCHR.
- Information provided by "other relevant stakeholders" to the universal periodic review, which will be summarized by the OHCHR in a document. Stakeholders include, inter alia, NGOs, NHRIs, Human rights defenders, Academic institutions and Research institutes, Regional organizations, as well as civil society representatives.

Summary

- **What are the reviews based on?**
- The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups, known as the [Special Procedures](#), human rights [treaty bodies](#), and other UN entities; 3) information from other stakeholders including non-governmental organizations and national human rights institutions.

How are the reviews conducted?

- Reviews take place through an interactive discussion between the State under review and other UN Member States. This takes place during a meeting of the UPR Working Group. During this discussion any UN Member State can pose questions, comments and/or make recommendations to the States under review. The troikas may group issues or questions to be shared with the State under review to ensure that the interactive dialogue takes place in a smooth and orderly manner. The duration of the review will be three hours for each country in the Working Group.

NGO's involvement

- NGOs can submit information which can be added to the “other stakeholders” report which is considered during the review. Information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting. NGOs can attend the UPR Working Group sessions and can make statements at the regular session of the Human Rights Council when the outcome of the State reviews are considered. OHCHR has released “[Technical guidelines for the submission of stakeholders](#)”.

What human rights obligations are addressed?

- The UPR will assess the extent to which States respect their human rights obligations set out in: (1) the [UN Charter](#); (2) the [Universal Declaration of Human Rights](#); (3) human rights instruments to which the State is party (human rights treaties ratified by the State concerned); (4) voluntary pledges and commitments made by the State (e.g. national human rights policies and/or programmes implemented); and, (5) applicable international humanitarian law.