



Human Rights Law – Overview of the UN Mechanisms

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Introductory Comments

- The age of human rights – usually traced to the Universal Declaration of Human Rights (UN 1948) – ie post WWII; UN Charter sets aims of UN as including promotion of human rights.
Does this via
 - Charter-based bodies – Human Rights Council
 - Various human rights treaties, each of which has a monitoring body:
- UDHR, ICCPR and ICESCR (both 1966) are the International Bill of Rights; but various other core human rights treaties

UN Bill of Rights, Core Treaties and Monitoring Bodies

- ICERD - International Convention on the Elimination of All Forms of Racial Discrimination, 21 Dec 1965; CERD
- ICCPR and Optional Protocols 1, 16 Dec 1966, and 2, 15 Dec 1989; HRC
- ICESCR and Optional Protocol, 10 Dec 2008; CESCR

Further Treaties

- CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, 18 Dec 1979; OP, 10 December 1999; CEDAW
- CAT - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec 1984; OP 18 Dec 2002; CAT
- CRC - Convention on the Rights of the Child, 20 Nov 1989; OP 1 (armed conflict) and OP 2 (trafficking), 25 May 2000; CRC

Further Treaties

- ICRMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 Dec 1990; CMW
- CPED - International Convention for the Protection of All Persons from Enforced Disappearance, 20 Dec 2006; CPED
- CRPD - Convention on the Rights of Persons with Disabilities, and OP, 13 Dec 2006; CRPD

Various other standards

- Numerous other standards, which may have informal promotion mechanisms – eg Declaration on the Rights of Indigenous People
- The following link will take you to a list of the relevant documents:
 - <http://www2.ohchr.org/english/law/>
- Examples – rights of older persons, rights of prisoners, rights of victims of crime

Regional Systems Also

- Various regional treaties and/or mechanisms:
 - Council of Europe
 - Organisation of American States
 - African Union
 - League of Arab States

Value of ECHR and Other Materials

- Heritage of UDHR;
- Significant commonalities between regional and UN conventions – treaties may use similar language or set out substantively equivalent rights; and views of relevant monitoring bodies may amount to *opinio iuris* as to what standards mean;
- The various bodies cite each others views;
- BUT BEWARE – ECHR not always as broad (esp on non-discrimination), so may not go as far

1. UN Treaty Based Bodies

- Human Rights Committee (CCPR)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Elimination of Discrimination against Women (CEDAW)
- Committee against Torture (CAT) & Optional Protocol to the Convention against Torture (OPCAT) - Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)
- Committee on the Rights of Persons with Disabilities (CRPD)
- Committee on Enforced Disappearance (CED)

Types of Work – (i) Individual Complaints

- Complainants – ie claim that rights have under relevant covenant or convention have been violated by a State party. Jurisprudence collated in various places: useful site is www.bayefsky.com
- 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](#);
 - NZ signed and ratified 1989; Australia in 1991;
 - NB some rights under ICCPR not in ECHR – eg much stronger non-discrimination principles

Individual Complaints - ctd

- 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;
 - NZ has NOT; Australia did in 1993
 - Example - Mahali Dawas and Yousef Shava v Denmark, UN Doc CERD/C/80/D/46/2009; 6 March 2012 – under-prosecution of racially-motivated attack breached CERD duty to take effective steps to prevent racial discrimination

Individual Complaints - cntd

- The [CEDAW](#) may consider individual communications relating to States parties to the [Optional Protocol to the Convention on the Elimination of Discrimination Against Women](#);
 - NZ signed and ratified in 2000, Australia in 2008
- The [CAT](#) may consider individual communications relating to States parties who have made the necessary declaration under [article 22 of the Convention Against Torture](#);
 - NZ made the declaration in 1989, Australia in 1993
- The [CRPD](#) may consider individual communications relating to States parties to the [Optional Protocol to the Convention on the Rights of Persons with Disabilities](#).
 - NZ has NOT joined this; Australia DID in 2009

Types of Work – (ii) Country Reports

- Treaty monitoring bodies and country reports: central obligation under the various human rights treaties is to provide regular reports as to progress; this is obligation undertaken on signing relevant treaty
- Note shadow reports – possibility to raise both individual cases (including follow up from individual complaints if permitted) and also systemic complaints on behalf of group or NGO
- Committee then provides comments to govt
- Country reports lead to General Comments – provide a useful summary of what a treaty provision requires

Types of Work – (iii) 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.
- The [Committee on the Elimination of Racial Discrimination](#) has its own process, the Early Warning Measures and Urgent Procedures process, which allows it to investigate systemic problems and recommend action before they get worse.

2. UN Charter Based Bodies

- Human Rights Council
 - Universal Periodic Review – ie general review of manner in which a country lives up to its obligations under international human rights treaties and the UDHR; each state is reviewed every 4 years;
 - Special Procedures of the Human Rights Council – looking at thematic issues around the World, or at the situations in particular countries – UN Special Rapporteurs or Working Groups:
 - NB these mandate holders can consider individual complaints, including in urgent situations, and may be able to investigate. The High Commissioner for Human Rights provides a secretariat

Forthcoming Developments

- Human Rights Council is establishing a complaint procedure
- The ICESCR has a monitoring committee, the CESCR – will be able to consider communications when the Optional Protocol of 2008 comes into force: NZ has NOT signed this; nor has Australia; the Committee does, however, receive country reports
- There is a Third Optional Protocol to the CRC which will establish a complaint mechanism when it has 10 ratifications; and the CRMW has a complaint system provided for in its text, requiring 10 declarations.