

Core International Human Rights Law Instruments

1. The Charter of the United Nations

2. The International Bill of Rights

- Universal Declaration of Human Rights, 1948
- International Covenant on Economic, Social and Cultural Rights, 1966
- International Covenant on Civil and Political Rights, 1966
 - Optional Protocol to the International Covenant on Civil and Political Rights
 - Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
- Covenant on the Elimination of All Forms of Discrimination against Women, 1979
 - Optional protocol to the International Covenant on Elimination of All forms of Discrimination against Women, 1999

3. Treaties and their monitoring bodies

Some treaty bodies may consider complaints or communications from individuals alleging that their rights have been violated by a State party, provided the State has opted into this procedure.

States parties require encouragement and assistance in meeting their international obligations to put in place the necessary measures to ensure the enjoyment of the rights provided in the treaty by everyone within the State. Each treaty therefore has an international committee of independent experts to monitor, by various means, implementation of its provisions. Currently eight human rights treaty-monitoring bodies exist to monitor eight of the core treaties.

What is a Treaty?

A treaty (also referred to as a convention or a covenant) is an international legal instrument which legally binds, in international law, those States who chose to accept the obligations contained within it

How many International Human Rights Treaties are there?

There are nine *core* international human rights treaties, one of which has not yet entered into force. Since the adoption of the Universal Declaration of Human Rights in 1948, all UN Member States have ratified at least one core international human rights treaty, and 80 per cent have ratified four or more. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

What are Treaty Committees/Treaty Monitoring Bodies?

Treaty Committees are bodies that monitor the implementation of national measures to obligations set out by a specific treaty. Each committee is composed of independent experts (ranging in number from 10 to 23 members) of recognised competence in the field of human rights who are nominated and elected for fixed, renewable terms of four years by States parties.

Treaty bodies perform the following functions aimed at monitoring how the treaties are being implemented by States parties:

- All treaty bodies are mandated to receive and consider reports submitted regularly by State parties detailing their implementation of the treaty provisions in the country concerned. They issue guidelines to assist States with the preparation of their reports, elaborate general comments interpreting the treaty provisions and organise discussions on themes related to the treaties
- Some, but not all, of the treaty bodies also perform a number of additional functions aimed at strengthening the implementation of the treaties by their States parties.

How many treaties mention Women?

Including treaties, conventions, covenants, agreements between governments, exchange of letters and notes about a treaty, protocols, optional protocols and amendments to existing treaties, there are 100 United Nations treaties that concern or include women.

Core Treaties

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted 21 December 1965, entry into force 4 January 1969
- International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, entry into force 23 March 1976; 28 March 1979 with provisions for article 41 (Human Rights Committee)
- International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted 16 December 1966, entry into force 3 January 1976
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 December 1979, entry into force 3 September 1981

Core Treaties (continued)

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted 10 December 1984, entry into force 26 June 1987
- Convention on the Rights of the Child (CRC), adopted 20 November 1989, entry into force 2 September 1990
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), adopted 18 December 1990, entry into force 1 July 2003
- Convention on the Rights of Persons with Disabilities, adopted 13 December 2006, entry into force 3 May 2008
- International Convention for the Protection of All Persons from Enforced Disappearance, adopted 20 December 2006, has not yet entered into force.
 - The text was adopted on 20 December 2006, opened for signatories on 6 February 2007, and as of July 2009, 81 states have signed and 16 have ratified.
 - Four more States need to ratify the treaty in order for it to be entered into force in international law
 - New Zealand, United Kingdom and United States all have expressed reservations concerning aspects of the treaty

The 8 treaties that are in force create legal obligations for States parties to promote and protect human rights at the national level. When a country accepts one of these treaties through ratification, accession or succession, it assumes a legal obligation to implement the rights set out in that treaty. But this is only the first step, because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice.

Treaty Committees/Monitoring Bodies

- The *Human Rights Committee* promotes participation with the standards set out in the International Covenant on Civil and Political Rights
- The *Committee on Economic, Social and Cultural Rights* (formed 1985) monitors the International Covenant on Economic, Social and Cultural Rights
- The *Committee on the Elimination of Racial Discrimination* monitors the Covenant on the Elimination of Racial Discrimination
- The *Committee on the Elimination of Discrimination against Women* (formed 1982) monitors the Convention on the Elimination of All forms of Discrimination against Women
- The *Committee Against Torture* monitors the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Treaty Committees/Monitoring Bodies (continued)

- The *Committee on the Rights of the Child* (formed 1991) monitors the Convention on the Rights of the Child
- The *Committee on Migrant Workers* (formed 2004) monitors the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- The *Committee on the Rights of Persons with Disabilities* (formed 2008) monitors the Convention on the Rights of Persons with Disabilities

How does a State become party to a treaty?

In order to become a party to a treaty, a State must express, through a concrete act, its consent to be bound by the treaty. A State can express its consent in several ways: through signature, ratification, acceptance, approval, or accession. Many treaties require a minimum number of States parties before they can enter into force in international law.

- *Signature*
 - Although only ratification of a treaty makes it legally binding, a signature can also create some obligation to refrain in good faith from acts that would defeat the purpose of the treaty. This takes place before the ratification stage. Providing a signature to a treaty that is subject to ratification allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, before undertaking the legal obligations under the treaty at the international level.
- *Ratification, acceptance or approval*
 - Ratification, acceptance and approval all refer to the point in which a State establishes its consent at the international level to be bound by a treaty which it has already signed. To ratify a treaty, the State must have first signed the treaty; but a State may also express its consent to be bound without first having signed the treaty, which is called *accession*.

States parties are obliged to submit regular reports (Periodic National Reports) to the Committee indicating the measures they have adopted to give effect to the provisions of the Convention. Non-government organisations (NGOs) can also submit reports to these UN committees. These reports (called Shadow Reports) give an alternative view about the state's compliance with its treaty obligations.

What are the implications of ratifying a treaty?

Upon ratification, the State becomes legally bound by the treaty as one of its States parties and must put its provisions into practice by giving effect to the treaty domestically. The States parties are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

Which treaties have been ratified by Australia?

Australia is a party to 7 out of the 8 key human rights treaties in force, namely:

- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Covenant on Civil and Political Rights (ICCPR) and its two optional protocols (complaint mechanism and abolition of death penalty);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of Discrimination against Women (CEDAW) and its optional protocol (complaint and inquiry mechanism);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child (CRC) and its optional protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography; and
- Convention on the Rights of Persons with Disabilities (CRPD)

Australia has publicly committed to ratifying the Optional Protocol to the Convention against Torture (CAT), which establishes monitoring mechanisms for places of deprivation of liberty. It should, therefore, take on the responsibilities encompassed by this instrument.

Australia has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and their families (ICRMW).

What are Reservations?

A reservation is a statement made by a State by which it asks to exclude or alter the legal effect of certain provisions of a treaty in their application to that State, provided that the reservations are not incompatible with the object and purpose of the Convention. A reservation may enable a State to participate in a multilateral treaty in which it would otherwise be unable or unwilling to do so. Reservations may be withdrawn completely or partially by the State party at any time.

An example of this would be Australia's reservation with the Convention on the Elimination of All Forms of Discrimination against Women. The Government of Australia had reservations with article 11 (2), which seeks to prevent discrimination against women on the groups of marriage or maternity and to ensure their effective right to work.

"The Government of Australia states that maternity leave with pay is provided in respect of most women employed by the Commonwealth Government and the Governments of New South Wales and Victoria. Unpaid maternity leave is provided in respect of all other women employed in the State of New South Wales and elsewhere to women employed under Federal and some State industrial awards. Social Security benefits subjects to income tests are available to women who are sole parents.

"The Government of Australia advises that it is not at present in a position to take the measures required by article 11 (2) to introduce maternity leave with pay or with comparable social benefits throughout Australia."

Resources and References

Human rights bodies, 2009, Office for the High Commissioner for Human Rights, United Nations
Submission to the National Human Rights Consultation, Australia, May 2009, United Nations Office of the High Commissioner for Human Rights, Regional Office for the Pacific

United Nations Treaty Collection, 2009, United Nations
UN Treaties and Women's Rights, 2008, UNIFEM Australia