

# JUS5710/JUR1710

# Institutions and Procedures

1

UN TREATY BODIES

# UN human rights organization (Smith, 5th ed., p.53)

2

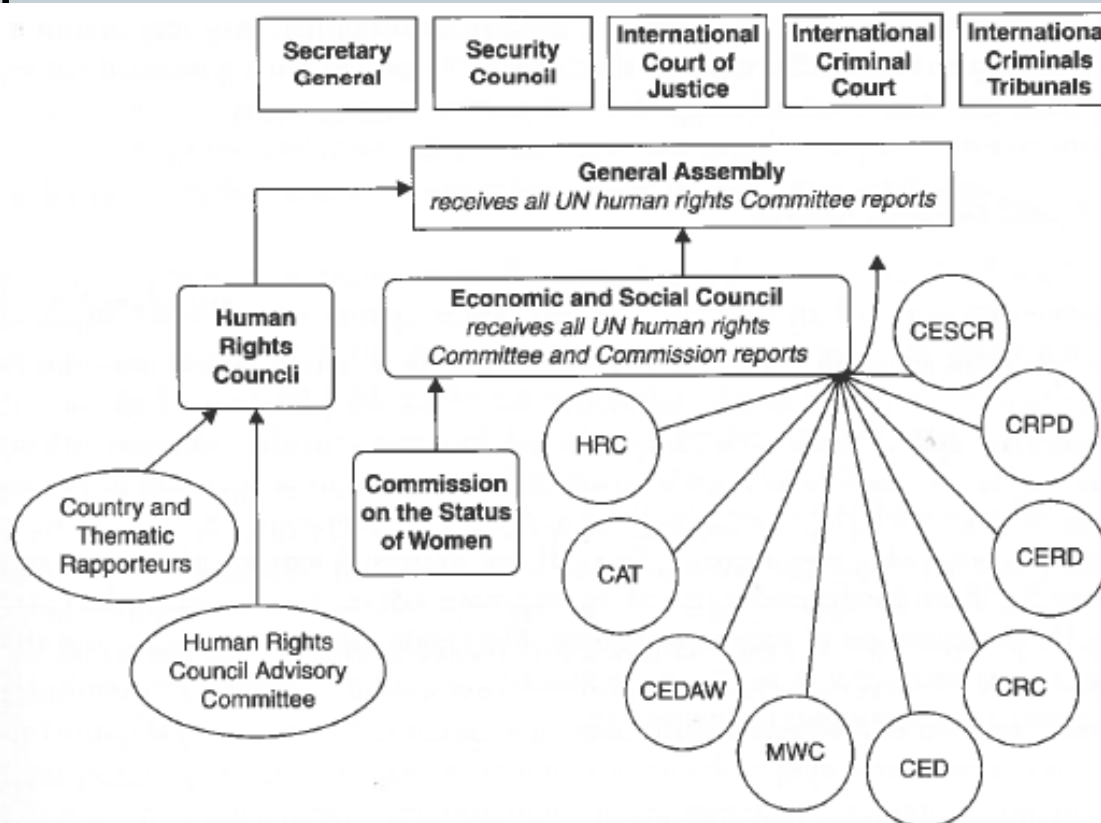


Figure 5.1 United Nations human rights organizational structure.

# Major human rights treaties (1)

3

- **“Treaty bodies”** monitor the implementation of the **major UN human rights treaties**:
- In addition to **the ICCPR** and the **ICESCR**, the major human rights treaties address either specific groups or categories of persons, **or** specific issues:
- **Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)**
- **Convention on the Rights of the Child, 1989 (CRC)**
  - **Optional Protocol to the CRC on a Communication Procedures (UN, 2011) 6**  
State parties – not yet in force
- **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (MWC).**

# Major human rights treaties (2)

4

- **International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (CERD)**
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT)**
  - **Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002 (OPCAT)**
- **Convention on the Rights of Persons with Disabilities, 2006 (CRPD)**
  - **Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006**
- **International Convention for the Protection of All Persons from Enforced Disappearance, 2006 (CIPED)** (in force 23 December 2010)
- **See also:**
  - **Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty, 1989 (CCPR-OP2)**

# Ten treaty bodies

5

- The State parties' compliance with the nine major treaties (their implementation) is monitored by the ten treaty bodies:
- Committee on Racial Discrimination (CERD)
- Human Rights Committee (HRC)
- Committee on Economic, Social and Cultural Rights (CESCR)
- The Committee on the Elimination of Discrimination Against Women (CEDAW)
- Committee Against Torture (CAT)
- Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of the Child (CRC)
  - Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2011
- Committee on Migrant Workers (CMW)
- Committee on the Rights of Persons with Disabilities (CRPD)
- Committee on Enforced Disappearances (CED) (1st meeting on 31 May 2011)

# State obligations (1)

6

- ICCPR Article 2
- 1. Each State Party to the present Covenant undertakes to **respect and to ensure** to all individuals **within its territory and subject to its jurisdiction** the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, **to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**
- 3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined **by competent judicial, administrative or legislative authorities**, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.

# State obligations (2)

7

- ICESCR Article 2 :
  - 1. Each State Party to the present Covenant undertakes **to take steps**, individually and through international assistance and co-operation, especially economic and technical, **to the maximum of its available resources**, with a view to **achieving progressively the full realization** of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
  - 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
  - 3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

# State obligations under the two Covenants

8

## ICCPR

- **Article 2.1**
- Each State Party to the present Covenant undertakes **to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant**, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## ICESCR

- **Article 2.1**
- 1. Each State Party to the present Covenant undertakes **to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources**, with a view to **achieving progressively the full realization of the rights** recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.



# State obligations - common interpretation

- A common interpretation of State obligations has evolved in the practice of the treaty bodies and literature (General Comment 12: The right to adequate food (Art.11) (U.N. Doc. E/C.12/1999/5, and Civil and Political Rights: The Human Rights Committee Fact Sheet No. 15 (Rev.1))
- **to respect the rights**, which most obviously requires Governments to refrain from violating human rights. This is often also called a “negative” obligation, or an obligation not to engage in a particular act or practice.
- **to protect enjoyment of the rights**, goes further: the State party must not only refrain from violating an individual’s rights itself, but it must also protect an individual from a violation of his or her rights by third parties, be they private individuals, corporations, or other non-State actors.
- a State party must **promote or fulfil** an individual’s rights, that is take the required steps to create a necessary and conducive environment within which the relevant rights can be fully realized.

# The treaty bodies

10

- Established by the treaty in question
- See Article 28.1 ICCPR:
  - There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee).
- An exception:
  - The Committee on Economic, Social and Cultural Rights was established by ECOSOC Res. 1985/17 taking over the functions of the ECOSOC (see ch. IV of the ICESCR)

# Composition

11

- Independent experts, serving in their personal capacity, nominated and elected by the State Parties.
- “The Committee shall be composed of nationals of the State Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal expertise.” (ICCPR Art. 28.2)
- Represent an equitable geographical distribution and different forms of civilizations and principal legal systems (ICCPR Art 31.2, CEDAW Art. 17)

# The methods

12

- The treaties include a number of methods for the monitoring of the State parties' compliance with the treaty:
- A. State reporting (all)
- B. Interstate communications
  - HRC. (ICCPR art. 41, optional). (CERD - not optional Art. 11, CESCR and CRC (3<sup>rd</sup> optional protocol)
- C. Individual communications
  - (CERD, HRC, CAT, CEDAW, CMW, CRPD, CECR and CRC (3<sup>rd</sup> Optional Protocol )
- D. Inquiries/investigations
  - (CAT, CEDAW, CRPD, CECR and CRC (3<sup>rd</sup> Optional Protocol )

# Reservations

13

- Reservations (VCLT Art. 19: incompatible with object and purpose)
- The ICCPR:
  - The Committee considers that reservations relating to the required procedures under the first Optional Protocol would not be compatible with its object and purpose. (General Comment 24, para. 14)
- Article 2.1 Second Optional Protocol ICCPR provides:
  - "No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime". Paragraphs 2 and 3 provide for certain procedural obligations.

# State reporting procedures (1)

14

- States shall submit reports on measures which give effect to the treaty (Article 40.1 ICCPR)
  - Initial and periodical, and upon request
- Procedure involving both written and oral exchange between the State party and the treaty body – “***a constructive dialogue***”
- Reports shall indicate the factors and difficulties, if any, affecting the implementation of the treaty in question. (Article 40.2 ICCPR)
- Available information from State parties and NGOs etc.

# State reporting procedure (2)

15

- Concluding observations:
- Assessment of the State parties' compliance with the treaty based on information during the consideration of the report
- Transmitted to the State party
- State reports and the concluding observations made by the treaty body are made public
- Failure of the State party to submit a report:
  - The treaty body includes information in its annual report (Article 45 ICCPR)
  - The treaty body may set a date for consideration of the report
  - The treaty body may proceed to consideration of the implementation despite failure to report
  - The treaty body may adopt provisional concluding observations
  - The UPR of the Human Rights Council

# General Comments

16

- The Committee shall study the reports submitted by the State Parties to the present Covenant. It shall submit its reports, and such general comments as it may consider appropriate, to the State Parties (Article 40.4 ICCPR).
  - Cf. Article 38.1 ICJ Statutes



# Interstate communications

17

- State parties may complain about the compliance of another State party to the relevant treaty
- Aim at finding a “friendly solution of the matter on the basis of respect for human rights” (Article 41.1(e) ICCPR) (Cf. Article 21 CAT with Article 11 ICERD)
- The ICJ may be resorted to, if, States cannot reach an agreement under the procedures provided for in ICERD (Art. 22 ICERD)

# Individual Communications

18

- Individuals, or groups of individuals (Article 14.1 ICERD and Article 2 Optional Protocol to the CEDAW)
- Victims or on behalf of (Article 2 Optional Protocol to the CEDAW, Art. 77 CMW)
- Individual complaints about violations of rights with regard to the following treaties (ICERD, ICCPR, CAT, CEDAW, CRPD, CESC, CRC, CED).
- This procedure addresses individual cases and not the general situation in a country.
- Not legally binding (Article 5.4 Optional Protocol ICCPR)

# Admissibility

19

- Optional Protocol to the ICCPR:
- Victim of a violation or sufficient link to the victim (Art.1)
  - Sufficiently substantiated claim
  - Individuals or collectives? (Lubicon Lake Band v. Canada)
    - ✦ Cf. Person, NGO or group of individuals (Art. 34 ECHR)
- State is a party to the convention (Art. 1)
  - Continuing nature (Lovelace v. Canada)
  - Outside jurisdiction of the state (Ng v. Canada)
- All available domestic remedies shall be exhausted – if not unreasonably prolonged (Art. 2, 5.2(b))
  - Effective remedies available to the alleged victim
  - Reasonable prospect of success (Lovelace v. Canada)
- Not anonymous (Art. 3)
- Abuse of the “right of submission” or incompatible with the provisions of the ICCPR (Art. 3)
- If the matter is being examined under another procedure of “international investigation or settlement” (Art. 5.2(a))
  - The same claim by the same individuals
    - ✦ Cf. Substantially the same matter and contains no relevant new information (Art. 35.2(b))

# Inquiries/investigative mechanisms

20

- CAT (Article 20) and the Optional protocol to the CEDAW (Article 8)
- “reliable information which appears to contain well-founded indications that torture is being systematically practiced in the territory of a State party, the Committee shall invite that State Party to cooperate in the examination of the information” which may include “a visit to its territory” (Article 20.1 and 20.3 CAT, cf. Article 8.1 CEDAW)
- Cooperation of the State Party at all stages and confidential (CEDAW Art. 8.5)
- State Parties may opt-out of this procedure by a declaration at the time of signature or ratification (CEDAW Art. 10.1) Despite the fact that reservations are not permitted (CEDAW Art. 17)

# Reform of Treaty Bodies.

21

- **Background.**

<i>Treaty body</i>	<i>Year established</i>	<i>Number of States parties in 2000</i>	<i>Number of States parties as at 1 September 2013</i>	<i>Number of members in 2000</i>	<i>Number of members in 2013</i>
CERD	1969	156	176	18	18
HRCtee	1976	136	167	18	18
CESCR	1985 <sup>b</sup>	142	160	18	18
CEDAW	1981	165	187	23	23
CAT	1987	123	153	10	10
Convention	1990	190	193		
CRC OP (armed conflict)	2002	–	152	10	18
OP (sale of children)	2002	–	164		
CMW	2003	–	47	–	14
SPT	2006	–	69	–	25
CRPD	2008	–	133	–	18
CED	2010	–	40	–	10

# Review of Treaty Bodies

22

- The Treaty Body system has grown in an ad hoc manner since the establishment of the first TB in 1969. Since 2004, the system has doubled in size.
- The number of ratifications increased from 912 in 2000 to 1641 in September 2013.
- For more details, see report A/68/606.

# Outcome of the review

23

- A/RES/68/268. Calls for additional meeting time and human and financial resources from the regular budget.
- Also, a capacity building package was agreed upon to assist States in fulfilling their treaty obligations. In addition, it recommended the harmonization by the ten treaty bodies of their working methods. The independence of the treaty bodies was reaffirmed. The resolution condemns intimidation and reprisals against individuals or groups for their contribution to the work of the treaty bodies.