



UN HUMAN RIGHTS COMMITTEE

PARTICIPATION IN THE REPORTING PROCESS

Guidelines For Non-Governmental Organisations (NGOs)



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Feedback and comments to improve the guidelines are welcome.
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Reference Documents

“A Guide for NGO Reporting to the Committee of the Rights of the Child (CRC)”
(2006) | NGO Group for CRC | www.childrightsnet.org

“Civil and Political Rights: The Human Rights Committee”
(2005) | Office of the United Nations High Commissioner for Human Rights

“The Treaty Bodies – Bringing Human Rights Home”
DVD (2006) | Office of the United Nations High Commissioner for Human Rights and Association for the Prevention of Torture (APT)

ACRONYMS AND ABBREVIATIONS USED IN THIS DOCUMENT:**CCPR**

The Centre for Civil and Political Rights

CRTF

Country Report Task Force. The group of between four and six Committee members, including the Country Rapporteur, responsible for preparing the List of Issues and following a State through the review process

ICCPR (or Covenant)

The International Covenant on Civil and Political Rights

NGO

Non-Governmental Organisation

OHCHR (or the Secretariat)

The Office of the High Commissioner for Human Rights. In the context of these guidelines reference to the OHCHR or to the Secretariat refers to the Human Rights Committee Secretariat, which is the part of the OHCHR that organises the Human Rights Committee sessions

OP1

The First Optional Protocol to the ICCPR, which establishes an Individual Communication Procedure

OP2

The Second Optional Protocol to the ICCPR, which aims at the abolition of the Death Penalty

FOREWORD

I welcome the publication of these Guidelines which fulfil an outstanding need for clear and comprehensive information on effective strategies for national NGOs wishing to engage with the Human Rights Committee.

NGOs have a critical role to play as outside observers and commentators in the monitoring of the implementation of the ICCPR in States Parties. They can often act as a bridge between the national and international levels and provide the Committee with much valuable information about the situation on the ground during the reporting process. NGOs also make a concrete contribution with regard to the implementation of the Concluding Observations, both by lobbying the State and with their own follow-up activities. The Centre for Civil and Political Rights has identified improving follow up to the Concluding Observations as one of its priorities. This emphasis is reflected throughout these Guidelines which treat follow up as an integral part of the reporting process, which is itself shown to be a continuous cycle in which the recommendations from one review should become the starting point for the next.

These guidelines make readily available to all NGOs the expertise which the Centre for Civil and Political Rights has accrued in the area of the reporting process. The combination of detailed practical and substantive information should make these Guidelines extremely useful in facilitating and honing the work of NGOs in relation to the Human Rights Committee.

These Guidelines are published at an historic moment in the Committee's history; the 100th session. As the Committee reflects on its achievements and the challenges it continues to face it is encouraging to see the enthusiasm and dedication of the NGOs who engage with the Committee. We can be confident that the NGOs will continue to develop their role and improve their contributions to the Committee's work however it evolves over the next hundred sessions.

Zonke Majodina
Member of the Human Rights Committee
NGO Focal Point

STAGES AND DOCUMENTS OF THE REPORTING PROCESS

State Report

The State Report is the foundation of the review. In the Initial Report the State should provide information on the implementation of each provision of the ICCPR. In subsequent (Periodic) reports the State should include information on the measures taken to implement the Committee's previous Concluding Observations, as well as on progress and developments since the previous report.

Adoption of the List of Issues

The List of Issues is a series of questions prepared by the CRTF and sent to the State at least one session before the review. This list highlights issues of concern to the Committee which will be discussed during the review.

State Replies to the List of Issues (Written Replies)

The State is not obliged to reply to the List of Issues in advance of the session, but may do so. The State replies are presented to the Committee at the beginning of the review and are the starting point for the dialogue.

Review (or examination of the State Report)

The Committee meets with State representatives for around six hours during which the State presents the answers to the List of Issues and responds to the Committee's questions.

Concluding Observations

At the end of the session at which the review took place the Committee adopts Concluding Observations. This document highlights the Committee's concerns and makes recommendations to the State on improving the implementation of the ICCPR as well as noting positive developments. The Concluding Obligations are not legally binding for the State, but provide guidance on how to improve the situation. The Concluding Observations also set the deadline for the next State report.

Summary Record

A document produced by the OHCHR containing a summary of the dialogue between the State representatives and the Committee.

Follow-up report

One year after the review the State is asked to send a Follow-up Report detailing the measures taken to implement a limited number of Concluding Observations, selected for their urgency and susceptibility to progress within a year. This report is assessed by the Committee's Special Rapporteur on Follow-up to the Concluding Observations, who may request further information if it is not satisfactory.

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Part I: The International Covenant on Civil and Political Rights and the Human Rights Committee

1. THE ICCPR AND THE OPTIONAL PROTOCOLS

A. THE ICCPR

The International Covenant on Civil and Political Rights was adopted by the General Assembly of the United Nations on 16 December 1966 and entered into force after ratification by the thirty-fifth State, on 23 March 1976. By September 2010, a total 166 States were parties to the Covenant. An up to date list of the States Parties can be found on the Centre for Civil and Political Rights (CCPR) website.¹

The Covenant comprises 53 articles and is divided into six parts:

- i. Parts I and II contain a series of general principles and provisions applicable to all the rights set out in the Covenant.

Article 1, which forms Part I, guarantees the right of self-determination. This differs from the other rights in the Covenant in that it is, explicitly, a right exercised by “peoples” rather than by individuals.

- ii. Part II consists of articles 2 to 5 and sets out the scope of the Covenant and the obligations of the State in relation to the Covenant.

Article 2 provides that a State Party must respect and ensure to all persons within its jurisdiction the rights recognised in the Covenant and provide effective remedies to persons whose rights under the Covenant are violated. States should also ensure that these rights are incorporated into domestic law.

¹ www.ccrprcentre.org/en/status-of-ratification

Article 3 sets out the equality of men and women in relation to the rights guaranteed by the Covenant.

Article 4 allows States to derogate from (i.e. to limit the application of) some of the rights recognised in the Covenant in exceptional situations (such as a state of emergency). However the measures taken must be “strictly required by the exigencies of” the crisis. Articles 6 (right to life), 7 (prohibition of torture), 8 paragraphs 1 and 2 (prohibition of slavery), 11 (prohibition of imprisonment for inability to fulfil a contractual obligation), 15 (prohibition of retroactive criminal proceedings), 16 (recognition as a person before the law) and 18 (freedom of thought, conscience and religion) may not be derogated from under any circumstances.

Article 5 is a savings provision that prohibits the use of the Covenant by the State or any group or individual to justify limiting or destroying the rights of others. It specifies that a State Party whose domestic law provides greater protections than the provisions of the Covenant may not use the Covenant as an excuse to lower the national standards.

iii. **Part III contains all the substantive individual rights and fundamental freedoms guaranteed by the Covenant.**

Articles 6 to 11 may be regarded as core provisions for the protection of the life, liberty and physical security of the individual. These provisions also stipulate the narrow confines within which the death penalty may legitimately be imposed in States Parties which have not abolished this penalty. Specific prohibitions are set out concerning torture and unauthorized medical experimentation (article 7), slavery and forced labour (article 8). The rights of persons deprived of their liberty, usually by arrest, and in detention are also covered (article 10).

Articles 12 and 13 cover movement into, out of, and within a State, with particular rules on the expulsion of non-nationals.

Articles 14 to 16 address the treatment of a person in judicial processes. Article 14 guarantees the right to a fair trial in both criminal and civil cases. It sets out the rights to equality before the courts and to fair adjudication of claims resolved before courts and tribunals. It also lists additional protections for the conduct of criminal trials. Article 15 prohibits retroactive criminal punishment, while article 16 states simply that everyone has the right to be recognized as a person before the law.

Articles 17 to 22 set out fundamental freedoms to be enjoyed without unjustified interference, including the right to privacy (article 17), freedom of thought, conscience and religion (article 18) and freedom of opinion and expression (article 19). Article 20 prohibits advocacy for war or of national, racial or religious hatred.

Article 21 guarantees the right to peaceful assembly and article 22 freedom of association, including in trade unions.

Articles 23 and 24 recognize the particular role of the family unit and address issues around marriage and the rights of children.

Article 25 deals with the right to vote and to be elected at genuine periodic elections by universal suffrage in a secret ballot as well as the rights to take part in public affairs and to have equal access to the public service.

Article 26 sets out the rights to equality before the law and to equal protection of the law, as well as a wide guarantee of non-discrimination.

To conclude Part III, **article 27** guarantees persons belonging to ethnic, religious or linguistic minorities the right, in community with other members of the group, to enjoy and practise their own culture, religion or language.

- iv. **Parts IV, V and VI deal with the establishment of the Human Rights Committee, the Committee's monitoring functions, and a variety of technical matters.**

Part IV, **articles 28 to 45**, sets up the Committee and provides for its functions and procedures (see section 2 on the Human Rights Committee, p.8).

Part V, in **articles 46 and 47**, includes savings provisions with respect to the United Nations Charter and, linking with article 1, to the inherent right of peoples freely to enjoy and utilize their natural wealth and resources.

Part VI, **articles 48 to 53**, contain the standard treaty provisions dealing with the mechanics for becoming a party, notification and amendments.

By September 2010 the ICCPR had been ratified by 166 States parties.

B. THE FIRST OPTIONAL PROTOCOL

The First Optional Protocol authorises the Committee to receive complaints (Individual Communications) from individuals alleging that their rights under the ICCPR have been violated. Communications may only be submitted against a State that has ratified the First Optional Protocol and after domestic remedies have been exhausted.

If the Committee finds that a State Party has failed in its obligations under the ICCPR, it will require that the violation be remedied and ask that the State Party provide follow-up information in this regard.

The Human Rights Committee's decisions and its follow-up activities are made public and included in the Committee's Annual Report to the General Assembly.

As of September 2010, there were 113 States parties to the First Optional Protocol.

C. THE SECOND OPTIONAL PROTOCOL

The Second Optional Protocol aims at the abolition of the death penalty. Under Article 1, no-one within the jurisdiction of a State Party to the Protocol may be executed. However, under article 2 States are permitted to enter a reservation allowing the application of the death penalty in time of war for serious crimes of a military nature committed during wartime.

As of September 2010 this Optional Protocol has been ratified by 72 States.

2. THE HUMAN RIGHTS COMMITTEE

A. MEMBERSHIP

The 'Human Rights Committee' was established by Article 28 of the ICCPR. Its functions are outlined in Part IV of the Covenant. It has the role of monitoring and supervising the implementation by States Parties of their obligations under the ICCPR.

The Human Rights Committee is composed of 18 members, often called 'Experts'. Members "shall be persons of high moral character and recognized competence in the field of human rights" (article 28). Each member is nominated by his or her State Party, and is elected by the States Parties in a secret ballot. Each member serves a four year term, and may be re-elected if he or she is re-nominated. States Parties should ensure that there is an "equitable geographical distribution" of Human Rights Committee members (article 31). A member serves in his or her personal capacity, not as a representative of his or her State.

B. SESSIONS

The Human Rights Committee meets three times a year, once at the main UN headquarters in New York City (usually in March) and twice at the UN headquarters in Geneva (usually in July and October). Each meeting lasts for three weeks.

Each session of the Committee is preceded by a one-week meeting of the Committee's Working Group. The functions of the Working Group have evolved over the years and are currently devoted solely to handling, as an initial chamber, decisions on the admissibility of Individual Communications under the First Optional Protocol.

C. FUNCTIONS OF THE HUMAN RIGHTS COMMITTEE

The Human Rights Committee performs its function of supervising and monitoring the implementation of the ICCPR in four ways:

- i. [Reporting](#) (See Part II (p.12))
- ii. [Considering Individual Communications](#)

Under the First Optional Protocol the Committee can receive Individual Communications from any individual under the jurisdiction of a State that is party to the First Optional Protocol who claims that his or her rights under the Covenant have been violated by the State Party.

To be admissible the communication must:

- Be submitted by the individual whose rights have been violated or with the written consent of the individual. In exceptional cases where the individual is unable to give consent this requirement may be ignored. The Communication cannot be anonymous.
- Show that domestic remedies have been exhausted.
- Not be under consideration by another international investigation or settlement procedure.

The Committee considers Individual Communications in closed session, but its Views (decisions) and the follow-up are public.

Detailed information on the process and how to use it is available from the OHCHR website.²

2 <http://www2.ohchr.org/english/bodies/petitions/index.htm#communications> and <http://www2.ohchr.org/english/bodies/petitions/individual.htm>

iii. Issuing General Comments

Article 40 establishes the possibility of producing General Comments. By the end of 2009 the Committee had issued 33 General Comments³. These clarify the scope and meaning of various articles and the obligations of States Parties. All the General Comments can be found on the OHCHR website.⁴

List of General Comments

No.	Subject	Date
33	Obligations of States Parties under the Optional Protocol	2008
32	Right to equality before courts and tribunals and to a fair trial [Replaced General Comment 13]	2007
31	The nature of the general legal obligation imposed on States Parties [Replaced General Comment 3]	2004
30	Reporting obligations of States Parties under Article 40 [Replaced General Comment 1]	2002
29	Article 4 (Derogations during a State of Emergency) [Replaced General Comment 5]	2001
28	Article 3 (The Equality of Rights between Men and Women) [Replaced General Comment 4]	2000
27	Article 12 (Freedom of Movement)	1999
26	Continuity of Obligations	1997
25	Article 25 (Participation in Public Affairs and the Right to Vote)	1996
24	Reservations to the Covenant or the Optional Protocols or Declarations under Article 41 of the Covenant	1994

3 In 2010 the Committee was working on a 34th General Comment dealing with Article 19 (Freedom of Expression).

4 <http://www2.ohchr.org/english/bodies/hrc/comments.htm>

No.	Subject	Date
23	Article 27 (Rights of Minorities)	1994
22	Article 18 (Freedom of Thought, Conscience or Religion)	1993
21	Article 10 (Humane Treatment of Persons Deprived of their Liberty) [Replaced General Comment 9]	1992
20	Article 7 (Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment) [Replaced General Comment 7]	1992
19	Article 23 (The Family)	1990
18	Non-Discrimination	1989
17	Article 24 (Rights of the Child)	1989
16	Article 17 (Right to Privacy)	1988
15	The Position of Aliens under the Covenant	1986
14	Article 6 (Nuclear Weapons and the Right to Life)	1984
13	Article 14 (Administration of Justice) [Replaced by General Comment 32]	1984
12	Article 1 (Right to Self-Determination)	1984
11	Article 20 (Prohibition of Propaganda for War and Inciting National, Racial, or Religious Hatred)	1983
10	Article 19 (Freedom of Opinion)	1983
9	Article 10 (Humane Treatment of Persons Deprived of their Liberty) [Replaced by General Comment 21]	1982
8	Article 9 (Right to Liberty and Security of Persons)	1982
7	Article 7 (Prohibition of Torture or Cruel, Inhuman, or Degrading Treatment or Punishment) [Replaced by General Comment 20]	1982

No.	Subject	Date
6	Article 6 (Right to Life)	1982
5	Article 4 (Derogations) [Replaced by General Comment 29]	1981
4	Article 3 (Equal Enjoyment of Civil and Political Rights by Men and Women) [Replaced by General Comment 28]	1981
3	Article 2 (Implementation at the National Level) [Replaced by General Comment 31]	1981
2	Reporting Guidelines	1981
1	Reporting Obligations [Replaced by General Comment 30]	1981

iv. Considering Inter-State Complaints

Under article 41 of the ICCPR a State Party may submit a communication to the Committee alleging that another State Party is not fulfilling its obligations under the Covenant. This provision is applicable only when both States Parties have specifically recognized the competence of the Committee in this area. To date, however, no Inter-State complaint has been submitted to the Committee.

Part II: The Reporting Process

A State Party to the ICCPR should submit an initial report one year after the Covenant comes into force for that State (three months after ratification). Thereafter, the State Party must submit periodic reports at intervals dictated by the Human Rights Committee, usually every three, four or five years ([article 40](#)). The date is given in the Concluding Observations and the Committee's Annual Report includes a list of the States Parties and the date at which the next report of each is due.

The State Party Report should detail the measures adopted to give effect to the rights guaranteed by the Covenant and the progress made in ensuring the enjoyment of those rights. The Initial Report should comprehensively cover all substantive articles of the Covenant, including information on the State's constitutional and legal framework and the legal and practical measures taken to implement the Covenant. The subsequent (Periodic) reports are usually shorter and should focus on the Committee's previous Concluding Observations and significant developments since the previous report.

The State also submits a Common Core Document, which contains information relevant to all the Treaty Bodies. This includes factual and statistical information about the State, the general framework for the protection and promotion of human rights, non-discrimination, and effective remedies. The State should not repeat information from the Common Core Document in the treaty-specific report, but refer to the information already provided, and, if appropriate, provide more details.

Fig 1: **The stages of the reporting process**



1. PRE-SESSIONAL ACTIVITIES: IDENTIFICATION OF THE MAIN DIFFICULTIES IN THE IMPLEMENTATION OF THE ICCPR AND DRAFTING OF THE LIST OF ISSUES

The report is assigned to a group of between four and six Committee members known as a Country Report Task Force (CRTF). Among the CRTF, one member is the designated ‘country rapporteur’, whose main responsibility is to accompany the report through the reporting process. The names of the Committee members on the CRTF and of the Country Rapporteur are confidential.

With the assistance of the Committee secretariat, the CRTF draws up a List of Issues. The List of Issues is a series of questions for the State, which aims to identify the most crucial matters for the implementation of the ICCPR. It is sent to the State Party in advance of the session at which the report will be examined.

The State is requested to provide written answers to the List of Issues. Some do so in advance, others only at the beginning of the Committee’s public examination of

the report. During the review these answers are presented to the Committee and form the starting point for the dialogue with the State representatives.

Both the List of Issues and the replies provided by the State are public and accessible online.⁵

2. EXAMINATION OF THE STATE REPORT AND DIALOGUE WITH THE STATE PARTY

The State Report is examined by the Human Rights Committee in a public session through a dialogue with representatives of the State Party. During this dialogue, the Committee will seek clarifications and explanations from the State representatives on the content of the report.

It usually takes one and a half days for the Committee to examine an Initial Report and two half-day meetings to review subsequent (Periodic) reports. The examination begins with a presentation by the State delegation, including responses to the List of Issues.

The Committee members then put questions to the representatives, seeking to clarify or deepen their understanding of issues around the implementation and enjoyment of the rights guaranteed by the Covenant. This often includes questions that have not been fully answered in the responses to the List of Issues.

3. ADOPTION OF THE CONCLUDING OBSERVATIONS

Concluding Observations provide the Committee's assessment of the implementation of the ICCPR, identifying both positive developments and areas of concern, as well as providing recommendations on improving the situation. Only issues raised in the course of the dialogue may be included in the Concluding Observations. The Concluding Observations aim to help States to better implement the ICCPR. They also identify the Committee's key areas of concern and should form a basis for future reports and discussions.

1 <http://www2.ohchr.org/english/bodies/hrc/sessions.htm> and <http://www.ccpcentre.org/en/next-sessions>

At the end of the dialogue, the President of the Committee concludes the meeting, identifying key difficulties, which will usually be included in the Concluding Observations. These are adopted by the Human Rights Committee in a closed meeting and are transmitted to the relevant State Party. Concluding Observations are made public at the end of the session and are available on the OHCHR and CCPR websites.⁶

Concluding Observations are divided into three parts: introduction; positive developments; and subjects of concern and recommendations. The final paragraph gives the date by which the next report should be submitted to the Committee. The final paragraph also identifies a limited number of recommendations selected for the follow-up procedure and requests that the State submit information on the measures taken to implement these within one year of the review.

4. FOLLOW-UP PROCEDURE

In 2001 the Human Rights Committee decided to develop a follow-up procedure related to the Concluding Observations. In this context the Committee asks the State Party to provide information within a year of the review on the measures it has taken to implement a limited number of Concluding Observations. The recommendations selected for this procedure are ones that the Committee considers of particular priority and susceptible to some improvement within a year.

A new position of ‘Special Rapporteur on Follow-up to Concluding Observations’ has been created to develop this procedure. It is the role of the Special Rapporteur to assess the follow-up information submitted by the State and make a recommendation to the Committee on any further steps that may be appropriate. These further steps often include the Special Rapporteur writing to the State to ask for further information and clarifications of the responses in the follow-up report. These letters are made public.⁷

If States fail to submit follow-up information, the Special Rapporteur sends reminders and seeks to meet with representatives of the State in order to pursue the issue.

The State is asked to include information on the implementation of all the recommendations in its next report.

6 <http://www2.ohchr.org/english/bodies/hrc/sessions.htm>
and <http://www.ccprcentre.org/en/select-your-country>

7 <http://www2.ohchr.org/english/bodies/hrc/followup-procedure.htm>

5. OPTIONAL REPORTING PROCESS: LIST OF ISSUES PRIOR TO REPORTING (LOIPR)

From November 2010 the Human Rights Committee will begin implementing an alternative reporting process for periodic reports: the ‘List of Issues Prior to Reporting’ (LOIPR).

This will be an optional process in which the Committee prepares a List of Issues before receiving the State Report. This List of Issues will be based on the Committee’s previous Concluding Observations and other available information, including UN documents and NGO reports. The List of Issues will be sent to the State, which will prepare and submit a focussed report responding to the concerns raised in the List of Issues. This report will be examined in an interactive dialogue between the Committee and the State representatives as usual.

In this procedure the focussed report by the State replaces both the State report and the replies to the List of Issues in the standard reporting procedure. This should help to reduce the burden of reporting for the State and so encourage the timely submission of reports.

Since the List of Issues will provide the structural basis for the entire review, including the State Report, it is especially important that NGOs submit information before the List of Issues is drafted.

NGO reports submitted at this stage will help to ensure that key points are not left out of the List of Issues and so ignored during the review. The Committee Secretariat will announce which States are being reviewed under this procedure at least nine months before the session at which the List of Issues will be adopted, so that there is time for NGOs to prepare and submit reports.

Key points about the LOIPR:

- The new procedure will not be available to States submitting initial reports (those must still be full reports covering all aspects of the ICCPR).
- This is an optional procedure. The State can always choose to submit a full report.
- The Committee can ask a State to submit a full report rather than using this process.

- The Committee may raise points not included in the List of Issues during the review.
- The States to be reviewed in this process will be listed on the OHCHR website nine months before the session at which the List of Issues will be adopted.
- From November 2010 the Committee will start inviting States whose next periodic reports are due in 2013 or later to use the new procedure.
- The Committee plans to examine the first reports under this procedure in 2014.

The Centre for Civil and Political Rights will follow the development of the new procedure closely and provide NGOs will guidance on effective engagement as it evolves.

6. WHAT HAPPENS IF A STATE PARTY FAILS TO SUBMIT A REPORT

Some States have been chronically late in submitting their reports (initial or periodic). This has meant that their implementation of the ICCPR has not been examined by the Committee for many years (and some States which have failed to submit their initial reports have never been examined). In 2001, the Committee decided to start examining the implementation of the ICCPR in States that have failed to submit a report for a considerable period.

In these circumstances, the Committee notifies the State of their intention and gives them a chance to submit the overdue report. If the State still does not submit the report the Committee drafts a list of issues and then sets a date for the review and invites the State to send a delegation. The Committee will consider the State in a closed session, either in dialogue with a delegation or on the basis of information that it has available concerning the implementation of the ICCPR. At the end of the review the Committee adopts (confidential) Provisional Concluding Observations which are sent to the State. These will usually include a request that the State responds to the concerns in the Concluding Observations by a certain date. If the State fails to cooperate the Concluding Observations may be made final and public.

Part III: The Role of NGOs in the Reporting Process

The Human Rights Committee stresses that the reporting process should be an opportunity to review all aspects of the implementation of the Covenant. In particular the State should assess the compatibility of its legislation and administrative procedures with the requirements of the ICCPR. The State should also consult with civil society as these organisations often have valuable comments to make on the success of implementation measures on the ground.

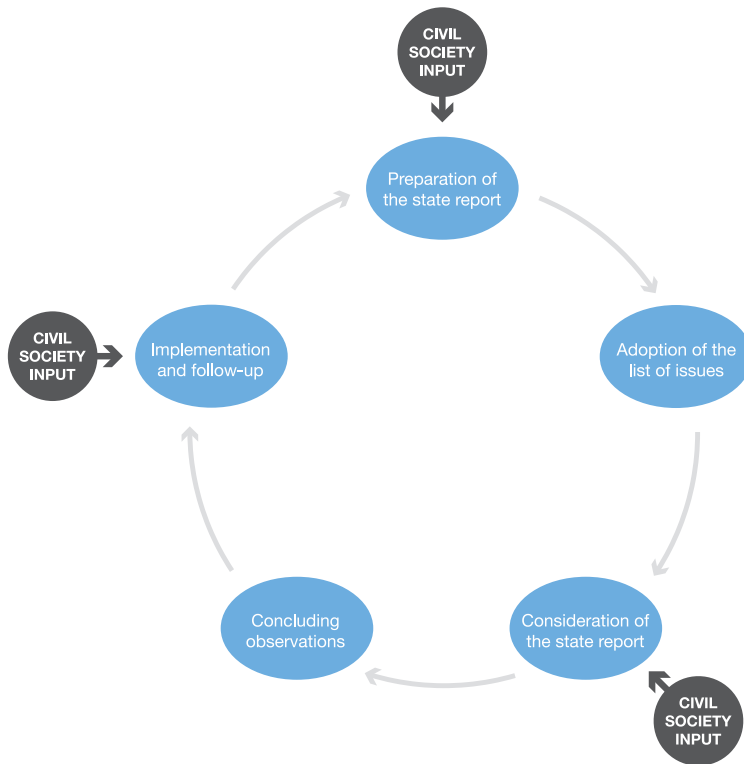
However, in many countries, the participation of civil society in the drafting process is a challenge, and their views may not be fully taken into account in the State Report. In this context, NGOs should be prepared to participate in the reporting process on their own.

State Party Reports often focus on legislation and provide little or no information on the implementation of these laws and the ICCPR in practice. State Reports also frequently lack an honest evaluation of the situation and the measures put in place as well as the difficulties the State faces in implementing the ICCPR.

If the Committee is to carry out a complete and effective review it therefore needs information which fills these gaps in the State Report. NGOs are often able to provide this information, as well as presenting a view from outside the government and administrative systems.

NGOs have a major role to play throughout the reporting process of the Human Rights Committee. In order to do this, it is crucial that they get organized and be ready to participate in all the stages of the process.

Fig 2: **Civil Society Input in the Reporting Process**



1. PRE-SESSIONAL ACTIVITIES: PREPARATION OF AN NGO REPORT

The Committee seeks information that deals with all the different areas covered by the ICCPR. It is especially interested in receiving information on those issues that the State Report does not cover in sufficient detail. NGOs may also provide information on areas of concern which are not addressed in the State Report as long as they fall within the scope of the Covenant.

A. WHEN TO SUBMIT INFORMATION?

i. Before the Drafting of the List of Issues

NGO reports should be submitted in the very early stages of the reporting process. More precisely, it is important that the Committee has access to NGO information before the drafting of the List of Issues (usually adopted two ses-

sions before the examination of the State report. i.e. the List of Issues for States examined at the October session will usually have been adopted in March).

The List of Issues is drafted by the Country Report Task Force with the support of the OHCHR between six and eight weeks before the session at which it is scheduled to be adopted. NGO information should be available for the CRTF before they start to draft the List of Issues.⁸

When the Human Rights Committee introduces the new reporting process with the List of Issues Prior to Reporting (see p.14) it will become even more important that NGOs submit information early in the reporting process.

ii. After the Adoption of the List of Issues

Additional information may be submitted after the adoption of the List of Issues. At this point, the information sent to the Committee should ideally follow the structure of the List of Issues and provide replies to the questions raised therein. Concerns which are not addressed in the List of Issues may also be raised by NGOs.

2. LOBBYING DURING THE SESSION

NGOs may attend the Committee sessions at which State reports are under review as observers, although they may not speak during the review of States. Attendance is not limited to NGOs with ECOSOC accreditation, but is open to all interested people, as long as they apply to the Secretariat for accreditation.

A. NGO BRIEFINGS

There are two possibilities for NGOs wishing to address the Committee during the session.

i. Formal NGO Briefings

NGOs and civil society representatives have the opportunity to address the Committee on subjects of concern related to any State being reviewed at that session during the official NGO briefing. This meeting usually takes place on the first day of the session (typically scheduled on Monday morning between 11.00 and 13.00). It is chaired by the Committee's President and is closed, which means

8 See the CCPR website for deadlines: www.ccrprcentre.org/en/next-sessions

that only Committee members and NGOs are allowed to attend and participate. The meeting is conducted in the Committee's working languages (English, French and Spanish) and interpretation between these languages is provided.

The President invites the NGOs to deliver brief statements and afterwards time is allocated for Committee members to ask questions and for NGOs to reply.

If national NGOs are not in a position to take part in the NGO briefing, the Centre can address the Committee on their behalf.

ii. Informal Lunch Briefings

NGOs also have the possibility of organising informal meetings with the Committee. These informal meetings (also called informal lunch briefings) are usually scheduled over lunchtime and last up to 90 minutes. They are not held in the Committee room and no interpretation is provided.

Although not all Committee members attend these meetings, they are a unique opportunity for NGOs to raise their concerns and to highlight the key points of the NGO reports submitted to the Committee. Lunch briefings should also allow time for Committee members to ask questions and seek clarification on issues mentioned by the NGOs or other concerns the Committee may have.

Requests to organise such meetings should be made to the Secretary of the Human Rights Committee at least one month before the session. It is the responsibility of the NGOs organising the meeting to print invitations and provide sandwiches and refreshments. It is important to note that interpretation is not available during such meetings. It may be possible to organise informal interpretation on an ad hoc basis, although there are no facilities or interpretation booths.

The Centre provides support to NGOs that wish to organise informal lunch briefings.

B. ADDITIONAL INFORMATION PROVIDED BY NGOS DURING THE SESSION

Attendance at the session at which the State report is reviewed by the Committee is very important. Not only does this enable the NGOs to monitor what the State says and to ensure that it is accurately reflected after the session and to lobby for the implementation of any commitments, but it also creates the possibility of reacting to the information provided. If necessary NGOs should be ready to provide short written submissions to the Committee members when assertions made by State representatives seem to be irrelevant or inaccurate. Although NGOs are not allowed to take the floor in the plenary

session Committee members can be approached and lobbied at the end of the meetings or before the meeting starts the following day. NGOs should not hesitate to suggest additional questions or clarifications that the Committee might find it helpful to ask the State representatives.

3. NGOS AND THE FOLLOW-UP PROCEDURE

The adoption of the Concluding Observations by the Committee is often seen as the last step in the reporting process. However, the implementation of the recommendations is both the most important and the most challenging part of the process.

There are three main areas where NGOs might be involved in the follow-up to the Concluding Observations.

A. RAISING AWARENESS ABOUT THE CONCLUDING OBSERVATIONS

i. Issuing press releases and organising press conferences

One of the key areas for NGOs is engaging national interest to ensure that the Concluding Observations are widely disseminated, discussed, and implemented. One way of doing this is through press releases as soon as the Concluding Observations are available to make sure that the national media are aware of the Committee's recommendations. Press releases should also integrate the findings and the concerns of the NGOs.

NGOs may also organise press conferences at the national level or take advantage of their presence at the United Nations Offices to meet press and agencies' correspondents based in New York or Geneva.

ii. Making the Concluding Observations available in the national languages

It is the duty of the State to translate the Concluding Observations into national languages and disseminate them. However, in practice, States often do not take action to ensure that Concluding Observations are available to the public.

It is therefore an important task for NGOs to translate the Concluding Observations into the national languages and to ensure that they are accessible to all the national, regional and local authorities and other interested parties.

B. LOBBYING FOR THE IMPLEMENTATION OF THE CONCLUDING OBSERVATIONS

The implementation of the Concluding Observations should be the ultimate objective of the reporting process and the NGOs since this will result in a direct improvement of the situation on the ground. However this is probably the most challenging aspect of the follow-up process as the results depend on the willingness of the State and authorities to cooperate and be actively involved in implementation.

NGOs can nevertheless play a role, particularly in starting a national dialogue on the recommendations and lobbying the authorities to ensure that concrete steps are taken towards implementation.

Round tables or special events on the implementation of the Concluding Observations can be very useful in engaging the State authorities in dialogue; Parliamentarians and the bodies or ministries responsible for implementing and monitoring human rights should be targeted in particular. The National Human Rights Institutions should also be involved in this process, as well as the national offices of the United Nations, such as UNDP or OHCHR field offices.

C. REPORTING BACK TO THE HUMAN RIGHTS COMMITTEE

NGOs have an active role to play in the Follow-up to the Concluding Observations procedure established by the Committee in 2001 (see above, p.14).

The Special Rapporteur on Follow-up to Concluding Observations is in charge of assessing the replies provided by States on the measures taken to implement the Concluding Observations selected for the follow-up procedure. He is helped in this task by information from NGOs objectively evaluating what steps have in fact been taken.

NGO progress reports should focus on the Concluding Observations selected for the follow-up procedure. They should contain comprehensive information on the actions taken by the authorities and assess their effectiveness. The failure to take measures necessary for the implementation of the recommendations should also be mentioned. NGOs may also wish to comment on the replies provided by the State.

All documents relating to the follow-up procedure can be found on the OHCHR and CCPR websites.⁹

9 <http://www2.ohchr.org/english/bodies/hrc/followup-procedure.htm> and <http://www.cccprcentre.org/en/select-your-country>

Part IV: Guidelines for NGO Written Submissions to the Human Rights Committee

1. GENERAL CONSIDERATIONS

A. WHY IT IS IMPORTANT FOR NGOS TO MAKE WRITTEN SUBMISSIONS?

In order to undertake a complete and effective review of the implementation of the ICCPR in the State Party the Human Rights Committee routinely seeks information from other stakeholders, particularly NGOs, to complement the information received in the State Party report. This additional information should provide an independent assessment of the implementation of the Covenant. It should not repeat the information provided in the State report but complement, correct, amplify or corroborate it.

If it is to carry out its monitoring role the Human Rights Committee needs information on all the provisions of the Covenant. NGO information is, therefore, particularly welcome when the State report does not cover all the provisions of the ICCPR, is superficial and lacking adequate documentation, or is biased.

To ensure that the Committee members have a full picture of the implementation of the ICCPR, the NGO information should ideally review and analyse how far the national laws, policies and other measures comply with the ICCPR. Specific attention should be paid to gaps between the laws and their implementation.

The reporting process may also provide a good opportunity for NGOs to assess the Human Rights situation at the national level and identify particular problems and priorities in the implementation of the rights enshrined in the ICCPR. The process can provide an opportunity and structure for meetings with the authorities and facilitate discussions at the national level on implementing the ICCPR.

B. WHEN TO SEND NGO WRITTEN SUBMISSIONS

i. Why it is important to submit NGO reports before the adoption of the List of Issues

Submitting NGO reports in the early stages of the reporting process is strongly recommended. NGOs may ask the Secretariat of the Human Rights Committee or the Centre for a list of the countries that will be reviewed in the coming sessions. A list is also available from the OHCHR and CCPR websites.¹⁰ In order to be considered in the drafting of the List of Issues reports should be sent to the Secretariat at least two months before the session at which the List of Issues will be adopted.

It is important to submit information before the drafting of the List of Issues as subjects of concern raised at this stage may be included in the List of Issues, which forms the basis of the interactive dialogue with the State. This early submission of information therefore provides an opportunity to ensure that important issues are addressed throughout the reporting process.

ii. Submitting information after the adoption of the List of Issues

NGOs may still send additional information to the Human Rights Committee after the adoption of the List of Issues. This should take the form of replies to the List of Issues or a short update to the report submitted before the adoption of the List of Issues.

If issues of concern are missing from the List of Issues, NGOs should provide additional information with a view to getting them appropriately addressed during the dialogue with the State.

If NGOs have not been in a position to send reports prior to the adoption of the List of Issues, they can, of course, send their contribution afterwards. NGO reports sent later may be taken into account during the interactive dialogue.

Information should be submitted no later than two weeks before the start of the session at which the State report will be examined.

C. COMPREHENSIVE REPORTS OR THEMATIC REPORTS

Comprehensive reports usually cover all the provisions of the ICCPR. They are preferred by the Human Rights Committee. Such comprehensive reports

10 <http://www2.ohchr.org/english/bodies/hrc/sessions.htm> and <http://www.cccprcentre.org/en/next-sessions>

are usually structured ‘article by article’ or by ‘clusters’ of articles dealing with related issues. This structure allows the Committee members to quickly find the relevant information and to compare the NGO information with the State report.

There is no limitation on the length of the report, although an average of 30 – 50 pages is advised. NGOs should bear in mind that the Committee members are often very busy and have a large number of documents to read, so clarity and conciseness are much appreciated. Reference can be made to other reports produced by the NGO which provide more detail or evidence on a particular issue if this will be more helpful than including a long explanation in the report.

It is however common for NGOs, particularly specialized NGOs, to prefer to submit shorter thematic reports on their area of expertise and related provisions of the ICCPR. Obviously, these reports should clearly identify the issue or issues dealt with and the relevant provisions of the Covenant. These reports should be significantly shorter than the comprehensive reports.

What to do if NGOs do not have the capacity to prepare a report for the Human Rights Committee

Writing an NGO report is time consuming and expensive, especially when the objective is to provide a complete picture of the implementation of the ICCPR at the national level. NGOs may not have the capacity to do this.

NGOs may compile recent documents already available. These compilations should however only contain information within the scope of the provisions of the ICCPR, and be duly updated.

NGOs working as a coalition

NGOs are strongly encouraged to work in coalition to draft their reports. Such reports are usually taken very seriously by the Human Rights Committee as they represent the views of several stakeholders from civil society. Moreover it is more difficult for State delegations to dismiss their evidence.

In addition, working in a coalition allows NGOs to coordinate their work and so avoid duplication. NGOs can also share the workload (research and drafting) as well as the related costs. In the end, coalitions of NGOs are usually in a better position to produce comprehensive reports covering all the provisions of the ICCPR.

2. STRUCTURE AND CONTENT OF THE NGO REPORTS

A. STRUCTURE OF THE REPORT

NGO reports usually include three main parts:

i. Introduction

The introduction should include a presentation of the NGO (including contact details) submitting the report, as well as the methodology of work. The introduction may also include information about the general context, such as historical context, specific situations (e.g. armed conflict, socio-economic context, etc.), and the situation concerning human rights defenders. However this background information should not be too extensive or duplicate that provided by the State.

ii. Substantive Part

The substantive part should provide an overview of the legal framework and a critical analysis, supported by specific information, of the implementation of the provisions in the ICCPR. For each article the report should analyse the relevant legislation and assess how this complies with the Covenant.

All the information in the report should be specifically linked to the articles of the Covenant. It is particularly important to indicate which provisions have been breached and the practical consequences of these violations. It may be useful to refer to the Human Rights Committee's own jurisprudence on what constitutes a violation of the Covenant, established in their **General Comments** (see p.10).¹¹

NGO written submissions should be objective and include information on progress, such as the positive measures taken by the State to implement the Covenant.

It is useful to provide information on the situation in practice; this may include cases or incidents which demonstrate the authorities' failure to implement the ICCPR. Case law should be updated with the latest judicial process and other relevant information such as dates and sources. NGOs should be sure that the credibility of the information cannot be called into question.

11 www2.ohchr.org/english/bodies/hrc/comments.htm

iii. Conclusions and recommendations

NGO reports may include a conclusion and should provide a set of recommendations. Recommendations should be concrete, realistic, and action oriented. It may also be relevant to prioritise those concerns and recommendations. It is useful to suggest practical and realistic solutions and, where appropriate, time frames for their implementation and the particular body that should be responsible for implementation.

Recommendations could also be made with regard to the role of the NGO in the implementation of the ICCPR and the Concluding Observations.

iv. Other elements

It can also be very useful to include an **executive summary** (2 or 3 pages) at the beginning of the report, highlighting the main issues raised and the most important conclusions and recommendations.

As mentioned earlier, the substantive part of global reports should follow the same structure as the State report, which means ‘article by article’ or grouped by related issues. However, many issues involve more than one article. In these instances reference should be made to all relevant articles, but they should be included under the article that seems most central to the issue, with references under other articles if this seems helpful. It might be appropriate to organise thematic reports in a different way, however clear reference to the relevant articles of the ICCPR should be made.

B. REFERENCE TO THE STATE REPORT AND THE PREVIOUS CONCLUDING OBSERVATIONS

i. The State Report

The Government has a duty to make their reports widely available to civil society, and NGOs are entitled to ask for a copy of such a document. If NGOs have difficulties obtaining a copy of the State Report, it can be found on the OHCHR or CCPR websites.¹²

References to the State Report are very important, particularly if it merely consists of a description of the legislation in place to protect human rights, or if the NGOs consider that it lacks information or provides biased information. NGOs

12 <http://www2.ohchr.org/english/bodies/hrc/sessions.htm> and <http://www.ccprcentre.org/en/select-your-country>

should not duplicate the information in the State Report, but comment on the information or provide complementary facts. Direct references to the State Report should include the paragraph number in the report, allowing the Committee to quickly and easily identify the specific points which the NGOs are commenting on. The paragraph number should be used rather than page numbers because the page numbers are liable to change in the different language versions while the paragraph numbers remain the same.

ii. The Human Rights Committee's previous Concluding Observations

The Concluding Observations adopted by the Human Rights Committee after the examination of the previous State Report should also be taken into account by NGOs. It is important to assess if any progress has been made by the authorities with regard to the previous Concluding Observations. The State is also asked to include information on the implementation of the previous Concluding Observations in their report, but this is often not done in detail. When NGOs consider that no improvement has been made with regard to the recommendations, this should be clearly stated. Particular attention should be devoted to the Concluding Observations selected for the Follow-up Procedure (see section II.4 (p.14)).

It may also be useful to consult the summary records of the discussions that had taken place during the consideration of the previous report by the Committee as well as the written replies or comments (if any) provided by the State in response to the previous recommendations of the Committee. Both of these as well as the Concluding Observations are available on the OHCHR web site as well as on the CCPR website.

iii. NGO Reports drafted after the adoption of the List of Issues

If NGOs begin to draft their reports after the List of Issues has been adopted, references to the questions included in that list should be integrated in the NGO report. Clear reference should be made to the List of Issues, indicating which question the NGOs are replying to. If the State has provided Written Replies reference should also be made to these. Replies to the questions raised in the List of Issues will be very useful to the Human Rights Committee in conducting the dialogue with the State representatives as these replies can be directly compared with the information provided by the State and will suggest additional questions the Committee might raise on the selected issues. If there are important issues that are not included in the List of Issues the NGOs should note these as well.

3. PRACTICAL INFORMATION

A. GENERAL INFORMATION

i. Confidentiality of the NGO information

Usually, NGO information submitted to the Human Rights Committee is made public and posted on the OHCHR website. This means that the reports are also available to the States Parties. This should be kept in mind especially for NGOs coming from countries where civil society cannot work freely and is harassed by the authorities.

Under exceptional circumstances, the information sent by NGOs may be kept confidential and not posted on the OHCHR website. However if the State Party learns that such information has been submitted to the Human Rights Committee and requests a copy, the Secretariat is not in a position to refuse.

NGOs should state clearly at the time of submission whether or not they wish their reports to be posted on the OHCHR website.

ii. Language of submission and translation of NGO information

NGO reports should be submitted in one (or more) of the Human Rights Committee's working languages (English, French and Spanish). No editing work or translation into other UN working languages is done by the Secretariat. If possible it is therefore best to submit NGO information in all three working languages. Alternatively, NGOs can submit their information in one of the working languages and prepare executive summaries in the other two languages.

B. WHEN TO SUBMIT NGO INFORMATION

i. NGO information for the List of Issues

NGO information for the List of Issues should be available before the Human Rights Committee and the OHCHR staff start drafting the List of Issues. In practice this means that NGO information should be submitted at least two months before the session at which the List of Issues will be adopted (see the schedule below).

ii. NGO information for the examination of the State report

NGO information sent for the examination of the State report (dialogue between the State representatives and the Human Rights Committee) should be available at least two weeks before the beginning of the session at which the review is scheduled.

iii. Schedules for standard reporting

These time-lines apply to standard reporting process. Exceptions are frequent, but the latest information on scheduling should be available from the OHCHR and CCPR websites.

At the moment there is usually a gap of one session between the adoption of the List of Issues and the review (e.g. the List of Issues for a State reviewed in March will have been adopted in July of the previous year).

State reports are considered in the order in which they are received by the Secretariat, this may lead to delays in reviewing a report if there is a backlog of reports awaiting consideration.

State report scheduled for the March session:

When	February - April	May - June	July Session	August - February	March Session
Who	NGO	Human Rights Committee / OHCHR	Human Rights Committee	NGO	Human Rights Committee / OHCHR
What	Drafting of information to be submitted to the List of Issues	Drafting of the List of issues	Adoption of the List of issues	Drafting of the information for the examination of the State report	Examination of the State report
Deadlines	30th April			At least 2 weeks before the session	

State report scheduled for the July session:

When	May - July	August - September	October Session	November – June	July Session
Who	NGO	Human Rights Committee / OHCHR	Human Rights Committee	NGO	Human Rights Committee / OHCHR
What	Drafting of information to be submitted to the List of issues	Drafting of the List of issues	Adoption of the List of issues	Drafting of the information for the examination of the State report	Examination of the State report
Deadlines	31st July			At least 2 weeks before the session	

State report scheduled for the October session:

When	October - December	January - February	March Session	April - September	October Session
Who	NGO	Human Rights Committee / OHCHR	Human Rights Committee	NGO	Human Rights Committee / OHCHR
What	Drafting of information to be submitted to the List of Issues	Drafting of the List of issues	Adoption of the List of issues	Drafting of the information for the examination of the State report	Examination of the State report
Deadlines	31st December			At least 2 weeks before the session	

iv. Where to send NGO information

NGOs should send their documents electronically to the Secretariat of the Human Rights Committee as well as providing 25 hard copies which will be distributed to the Committee members. If needed, the Centre provides support to NGOs in the transmission of the documents to the Secretariat.

NGO information should be sent to by post to:

Kate Fox
Secretary of the Human Rights Committee (A. I.)
Human Rights Council and Treaty Bodies Division
Office of the High Commissioner for Human Rights
UNOG-OHCHR
CH-1211 Geneva 10
Switzerland

An electronic copy should be sent to:

Kate Fox
Secretary of the Human Rights Committee (A. I.)
Email: kfox@ohchr.org

Part V: Overview of the substantive provisions of the ICCPR and related issues raised by the Human Rights Committee

This section presents the substantive provisions of the ICCPR and the Committee's jurisprudence on these issues as shown in the reporting process and explored in the General Comments. Under each provision, the main issues raised by the Human Rights Committee in relation to that article are indicated. The aim of this section is to give an overview of the different aspects of each provision, and the way they are addressed by the Human Rights Committee. Information about each of these issues is therefore welcome in the NGO reports, although not all aspects may be relevant in every State.

ARTICLE 1 (RIGHT OF PEOPLES TO SELF-DETERMINATION)

- 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
- 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
- 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

This article is rarely addressed by the Human Rights Committee and only in the context of specific situations where self-determination is already under discussion. When the issues concern indigenous peoples it is sometimes linked to article 27 (rights of minorities).

Issues addressed under this article include:

- Legislation (including draft legislation) on the right of non-self-governing territories to succeed
- Organisation of referenda on self-governance or secession in non-self-governing territories
- Self-governance agreements with indigenous peoples
- Indigenous land rights, and consultation with indigenous peoples on the use of tribal land (article 27)
- Representation of indigenous peoples in government (articles 25 and 27)
- The State's relationship and agreements with indigenous peoples (article 27)

General Comment 12 explains in greater detail what the Human Rights Committee considers the State's obligations, including reporting obligations, under article 1 to be. It highlights that States should report in detail on this provision and notes the positive obligation under paragraph 3 to promote the realisation of the right of self-determination.

General Comment 11 (article 20 - prohibition of propaganda for war and advocacy of national, racial or religious hatred) is careful to clarify that the prohibitions of article 20 do not prohibit advocacy of the right of peoples of self-determination.

General Comment 25 (article 25 - participation in public affairs and the right to vote) indicates the connection with article 25 as it provides for individual participation in public affairs which is necessary for the exercise of the rights to "freely determine their political status and to enjoy the right to choose the form of their constitution or government" required by article 1.

General Comment 23 (article 27 - rights of minorities) notes that while articles 1 and 27 overlap with regard to the culture and way of life, particularly of indigenous peoples, they differ in that article 1 is explicitly a right of 'peoples' while article 27 is concerned with the rights of individuals belonging to a minority.

It is also important to note that the rights guaranteed by article 1 (because they are ascribed to peoples) cannot be grounds for a complaint under the first Optional Protocol, whereas the related (individual) rights in articles 25 and 27 are admissible under the individual communications procedure.

ARTICLE 2 (NON-DISCRIMINATION, CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED, AND ACCESS TO REMEDIES)

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.*
-

Article 2 paragraph 1 is closely linked with articles 3 (equal rights of men and women) and 26 (equality before the law) and these three articles are often mentioned together when dealing with discrimination. The three articles differ slightly in their scope and implications: article 2 only covers the rights guaranteed in the Covenant, but requires positive measures to guarantee these rights as well as respect for them without discrimination; article 3 is limited to discrimination on grounds of gender; and article 26 requires protection against any discrimination (not limited to the rights in the Covenant), but does not include the positive aspects of the other two articles. It is therefore important to read these three provisions in conjunction. **General Comment 18** (non-discrimination) lays out the connections and differences between these articles and the references to non-discrimination in other provisions as well as providing the Human Rights Committee's working definition of discrimination (see below). Since discrimination may affect the exercise of all rights these articles are frequently invoked and may be linked with any other article.

Counter-terrorism legislation is sometimes considered under article 2, paragraph 2 and article 4 (derogations) as the complexity of the issues and scope of some counter-terrorism laws have an impact on the exercise of a number of rights and affect the general conditions for implementing the Covenant. States may also be asked about counter-terrorism measures under other articles, particularly articles 9 (prohibition of arbitrary detention), 10 (conditions in detention) and 14 (judicial guarantees), when the rights in question are affected.

Article 2, paragraph 3 is closely linked with article 14 (right to equality before courts and tribunals and to a fair trial) as the guarantees and procedures provided for in that article are a necessary part of providing effective remedies.

Issues addressed under this article include:

2.1 (Non-discrimination)

- Implementation of the Covenant throughout the State (including overseas territories)
- Implementation of the Covenant in areas under the State's jurisdiction when troops or law enforcement personnel are deployed abroad
- Legislation prohibiting discrimination
 - Practical implementation of non-discrimination legislation
 - Training of police and law enforcement personnel and judges
- Equal pay for equal work
- Legislation allowing discrimination or exceptions to non-discrimination provisions
- Equality between members of the National Church and other religions (article 18)
- Representation and participation of minorities in public affairs (articles 25 and 27)
- Specific groups mentioned in the context of discrimination include:
 - Women (article 3)
 - Homosexuals

- Trans-gender (including the right to have the new gender recognised)
- Ethnic or national minorities (article 27)
- Indigenous peoples (article 27)
- Illegal migrants and undocumented immigrants
- Refugees and asylum seekers
- Non-citizens/nationals
- Persons with disabilities
- Children born out of wedlock

2.2 (Constitutional and legal framework within which the Covenant is implemented)

- Reservations and Interpretive Declarations. The Human Rights Committee routinely asks States Parties to review and consider withdrawing any reservations or interpretive declarations
- Incorporation of the Covenant in domestic legislation
- Compatibility of counter-terrorism legislation with the Covenant (articles 4, 9, 10, and 14)
- Compatibility of customary law with the Covenant
- Measures to ensure that new legislation is compatible with the Covenant and to revise non-compatible legislation
- The status of the Covenant in domestic legislation (its precedence over domestic legislation, including the Constitution)
- Case law on the invocation and use of the Covenant in domestic courts, including customary courts
- Existing or potential restrictions of the rights guaranteed in the Covenant due to a state of emergency or to “public welfare” (article 4)
- The establishment and/or mandate of an independent National Human Rights

Institution in accordance with the Paris Principles

- Dissemination of and training on the Covenant
- Implementation of previous Concluding Observations

2.3 (Access to Effective Remedies)

- Ratification of the First Optional Protocol to the ICCPR (on Individual Communications)
- Follow-up to the Human Rights Committee's Views on Individual Communications
- Ability of the National Human Rights Institution to investigate individual human rights violations
- Independence of the judiciary (article 14)
- Measures to ensure access to judicial processes for all (articles 14 and 27)
- Measures to enforce judgements (article 14)
- Procedures and cost of judicial remedies (article 14)
- Suspension of sentence for those condemned to death while appeals, including appeals to international mechanisms, are heard (articles 6 and 14)
- War Crimes trials, including cooperation with regional and/or international mechanisms
- Investigations and prosecutions of those responsible and compensation for victims of human rights violations during disturbed periods (armed conflict/coup d'état/military dictatorships/etc.)
- Impunity or amnesty laws covering human rights violations
- Accountability of the armed forces and law enforcement personnel within the State and if deployed abroad

General Comment 31 (the nature of the general legal obligation imposed on States Parties) covers all three paragraphs of article 2 and elaborates the Human Rights Committee's understanding of the obligations of States in implementing the Covenant as well as the relationship between article 2 and the other provisions of

the Covenant. In particular it stresses that States must “respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party”. It clarifies that power and effective control includes “within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation”. This General Comment reiterates the observation of **General Comment 15** (the position of aliens under the Covenant) that, except for specific provisions which explicitly limit their rights to citizens, the State is obliged to respect and ensure the rights guaranteed under the Covenant to all individuals “regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party”.

It also discusses in detail the working of the right to an effective remedy, how this relates to the individual communications procedure established by the First Optional Protocol and how the granting of amnesties or indemnities for violations of human rights negatively impacts and may be a violation of this right. Paragraph 58 of **General Comment 32** (right to equality before courts and tribunals and to a fair trial) discusses the relationship between the right to an effective remedy and the right to have a conviction and sentence reviewed by a higher tribunal under article 14, paragraph 5, establishing that the right to a remedy requires the right to appeal in criminal cases, but that this is not the only element of an effective remedy, which may be invoked independently if the proceedings violate specific rights under the Covenant.

Paragraph 14 of **General Comment 29** (article 4 - derogations during a state of emergency) emphasises that the right to an effective remedy is, in practice, non-derogable since it “constitutes a treaty obligation inherent in the Covenant as a whole. Even if a State Party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State Party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective.”

General Comment 18 (non-discrimination) gives the Human Rights Committee’s working definition of discrimination as “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms” and emphasises the positive aspects of the non-discrimination provisions, stating

that “the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination” and that the “enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance”.

General Comment 23 (article 27 - rights of minorities) carefully distinguishes between the specific rights for minorities in that article and the non-discrimination provisions. The Human Rights Committee notes that the absence of discrimination on the grounds of ethnicity, language or religion does not mean that there are no ethnic, linguistic or religious minorities.

ARTICLE 3 (EQUAL RIGHTS OF MEN AND WOMEN)

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 3 is routinely linked with articles 2 (non-discrimination) and 26 (equality before the law) when dealing with discrimination. The three articles differ slightly in their scope and implications: article 2 only covers the rights guaranteed in the Covenant, but requires positive measures to guarantee these rights as well as respect for them without discrimination; article 3 is limited to discrimination on grounds of gender; and article 26 requires protection against any discrimination (not limited to the rights in the Covenant), but does not include the positive aspects of the other two articles. **General Comment 18** lays out the connections and differences between these articles and their interaction with the references to non-discrimination in other provisions as well as giving the Human Rights Committee’s working definition of discrimination. Since discrimination may affect the exercise of all rights these articles are frequently invoked and may be linked with any other article.

This article is commonly associated with articles 23 (right to a family) and 24 (rights of the child) for issues around equality in relation to marriage and family life. It is linked with article 7 (prohibition of torture) when dealing with domestic violence and with article 8 (prohibition of slavery) when discussing trafficking.

Issues addressed under this article include:

- Discrimination between men and women in legislation
- Status of women under customary or tribal law

- Steps to eliminate stereotypes which discriminate against women
- Equal pay for equal work
- Legislation on sexual harassment
- Protection and assistance for victims of gender based violence
- Legislation on rape (article 7)
 - Definition of rape, including spousal rape
- Domestic violence (article 7)
 - Statistics on cases, penalties and compensation
 - Encouragement for women to report violence
 - Training for law enforcement officers not to dismiss this as a private matter
- Female Genital Mutilation (article 7)
- Trafficking (article 8)
- Measures to enhance access to justice for women (article 14)
- Discrimination in minimum age for marriage and in marriage arrangements (article 23)
- Unequal rights and privileges within marriage (article 23)
- Equality in divorce/separation arrangements, including on custody of children (article 23)
- Transmission of nationality to children (articles 16 and 24)
- School attendance by girls (article 24)
- Proportion of women in positions of responsibility in all levels of government and in private companies (article 25)
 - Measures to address the under-representation of women in these positions

The relationship between article 3 and articles 2, paragraph 2 (non-discrimination) and 26 (equality before the law) is discussed in **General Comment 18** (non-discrimination). This General Comment gives the Committee's working definition of discrimination "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms". The Committee emphasises the State's obligation to take affirmative action where this is necessary to diminish or eliminate conditions which cause or help to perpetuate discrimination.

General Comment 28 (replacing **General Comment 4**) deals specifically with article 3. This also stresses the obligation to take "positive measures in all areas so as to achieve the effective and equal empowerment of women" and the need to consider traditional, historical, religious and cultural attitudes which may jeopardise the equality of the sexes. This General Comment goes on to discuss in detail some factors which may affect the enjoyment by women of specific rights guaranteed in the Covenant.

ARTICLE 4 (DEROGATIONS)

- 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.*
- 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.*
- 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.*

Article 4 is discussed alone or in connection with article 2 (constitutional and legal framework for the implementation of the Covenant) in the context of domestic legislation to guarantee non-derogable rights even in a state of emergency. When

addressing States in which a state of emergency has been (or might have been) declared the Human Rights Committee asks more specific questions about the protection of rights and links these questions to the relevant articles.

Counter-terrorism legislation is often mentioned in the context of article 4 when the legislation affects non-derogable rights or it is treated as an emergency situation and leads to greater restriction on the exercise of rights.

Issues addressed under this article include:

- Constitutional or other legal measures to limit potential derogations to those permissible under article 4
- Impact of counter-terrorism legislation on the rights guaranteed under the Covenant, including the definition of terrorism and terrorist acts
- Necessary conditions for declaring a state of emergency
- The process for declaring a state of emergency
- Limits and controls on the powers of the Head of State in an emergency
- Occasions on which an emergency has been declared

When a state of emergency has been declared the Human Rights Committee may ask about:

- The scope of any derogations
- Safeguards to protect the rights guaranteed under the Covenant
- Cases where non-derogable (or non-derogated) rights have been violated and the investigation into these violations and punishment of the perpetrators

General Comment 29 (replacing **General Comment 5**) elaborates the Human Rights Committee's understanding of the conditions in which a state of emergency may be declared. It stresses that any derogations and the measures taken following the derogations have to be justified as strictly required by the exigencies of the situation and only to the extent necessary. This General Comment lists the provisions which the Human Rights Committee considers effectively non-derogable due to the requirements of the non-derogable provisions or to their status as norms of international law. These include: non-discrimination (re-enforced by article 4 paragraph 1); access to judicial or other remedies (article 2, paragraph 3); prohibitions on the tak-

ing of hostages, abduction or unacknowledged detention (article 9); that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person (article 10); deportation or forcible transfer of population (article 12); procedural and judicial guarantees (articles 14 and 15); propaganda for war or advocacy of national, racial or religious hatred (article 20); and protection of the rights of minorities (article 27).

Although not directly relevant, **General Comment 24** (reservations to the Covenant or Optional Protocols or declarations under article 41 of the Covenant) is also of interest, particularly paragraph 10 which considers the legitimacy of reservations to article 4 itself and to the non-derogable provisions of the Covenant.

General Comment 28 (article 3 - the equality of rights between men and women), paragraphs 6 and 7 note the particular vulnerability of women and stress the need to protect their fundamental rights to the same extent as those of men during a state of emergency.

ARTICLE 5 (SAVINGS PROVISION)

- 1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*
- 2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.*

The Human Rights Committee has not recently asked States about this article in the List of Issues. It is however touched upon in **General Comment 29** (article 4 - derogations during a state of emergency). Paragraph 3 deals with article 5, paragraph 1 and paragraph 9 with article 5, paragraph 2, explaining the impact of this article on derogations from the Covenant under article 4 and the State's continuing obligations during a state of emergency.

ARTICLE 6 (RIGHT TO LIFE)

- 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
 - 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*
 - 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*
 - 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
 - 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*
 - 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*
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This article is frequently linked with articles 7 (prohibition of torture) and 9 (prohibition of arbitrary detention), since the same set of circumstances may lead to violations of these different provisions. The same is true of extrajudicial executions which may violate various provisions of the ICCPR, in particular articles 6, 7, 9 and 10 (conditions of detention).

Article 14 (right to equality before courts and tribunals and to a fair trial) is mentioned in the context of the use of the death penalty and the right to appeal a death sentence. Article 26 (equality before the law) is mentioned when an element of discrimination is present.

Issues addressed under this article include:

- Death Penalty

- Ratification of the Second Optional Protocol to the Covenant on the abolition of the death penalty
- Statistics on the number of death sentences (including those issued in absentia) disaggregated by age, gender, ethnicity and crime, the number carried out, the method of execution, number of sentences commuted or suspended and the number of convicts awaiting execution
- Crimes for which death can be the sentence (article 14)
- Possibility of imposing the death penalty for crimes committed under eighteen (articles 14 and 24)
- Authority of customary courts to impose the death penalty (article 14)
- Deportations or returns to countries where the returnee may face the death penalty
- Extrajudicial executions
- Investigations and their outcomes , including into deaths during past disturbances
- Compensation for the families of victims
- Particular vulnerability of street children (article 24)
- Practical measures to prevent extrajudicial executions
- Deaths in detention or police custody (article 10)
- Investigations into all deaths in custody (including suicides)
- Outcome of investigations
- Excessive use of force by law enforcement personnel or armed forces
- Disappearances
- Investigations and compensation
- Policing of blood feuds and vendetta violence

- Abortions
 - Exceptions to a prohibition of abortion for medical reasons or when the pregnancy results from rape
 - The impact of a complete prohibition on the maternal mortality rate
 - Availability of contraceptives and sex education to combat abortion and infectious disease
- Living conditions of vulnerable groups, including refugees, minorities and internally displaced persons (articles 12 and 27)

General Comment 6 stresses that the right to life should not be interpreted too narrowly. It asserts the State's "supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life" (re-iterated in **General Comment 14** which discusses article 6 in the context of nuclear weapons) connecting this with the prohibition of advocacy for war in article 20.

General Comment 6 repeatedly emphasises the necessity of taking positive measures (for instance to reduce infant mortality and eliminate epidemics).

This General Comment also mentions the need to take specific and effective measures to prevent disappearances (since these are often associated with arbitrary deprivation of life). It highlights the extension of the prohibition of arbitrary deprivation of life to the State's security forces and the safeguards that this necessitates.

With regard to the death penalty, the Committee stresses that the article "refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable". It emphasises that in States which retain the death penalty, its use must be exceptional and restricted to the "most serious crimes" and that all the procedural guarantees of the law and the ICCPR must be assured as well as the specific right to seek pardon or commutation of the sentence.

Paragraph 10 of **General Comment 28** (article 3 - the equality of rights between men and women) notes the importance of including information on birthrate, infant mortality rate (disaggregated by gender), birth and pregnancy related deaths, measures to prevent unwanted pregnancies and ensure that women do not have to undergo life-threatening clandestine abortions as well as providing information on practices violating the right to life for women and the impact of poverty and deprivation when reporting on this article.

General Comment 32 (article 14 - right to equality before the courts and tribunals and to a fair trial) discusses the procedural guarantees of article 14 and notes their particular importance in relation to trials which may result in a death sentence.

ARTICLE 7 (PROHIBITION OF TORTURE)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

This article is closely linked with articles 6 (right to life) and 9 (prohibition of arbitrary detention), since the same set of circumstances may lead to violations of these different provisions. Articles 9 and 10 (conditions of detention) are connected to this provision because the safeguards they provide are necessary for the effective implementation of the prohibition of torture. Articles 2 (non-discrimination) and 26 (equality before the law) are mentioned when there is an element of discrimination or targeting of one group.

Issues addressed under this article include:

- Legislation specifically prohibiting torture
- Availability of rehabilitation and compensation for victims
- Prohibition of the use of statements obtained through torture or ill-treatment in judicial processes (articles 10 and 14)
- Torture or ill-treatment of detainees (article 10)
- Statistics on the number of incidents, disaggregated by age, gender, and ethnic origin of the victims and resulting prosecutions and punishment of perpetrators
- Independent investigations into all allegations of torture and ill-treatment of detainees
- Problems which discourage victims from reporting torture and ill-treatment and measures to address these problems and encourage reporting
- Use of solitary confinement for extended periods
- Interrogations procedures including the permissible duration of interrogations

- Indefinite detention
- Guarantees against deportation to a country where the individual may be exposed to violations of article 7, including by non-state actors
- Reliance on diplomatic assurances when returning suspected terrorists to states where torture is alleged to occur
- Controls on excessive use of force by law enforcement personnel and armed forces
- Domestic violence (article 3)
- Legislation
- Training so that this is not dismissed as a purely private matter
- Measures to encourage reporting of violence
- Measures to protect and assist victims of gender based violence (article 3)
- Female Genital Mutilation (article 3)
- Coercive sterilisation (article 3)
- Corporal punishment
- Ill-treatment of elderly people in some long term care homes
- Non-therapeutic experimentation on mentally ill persons or persons with impaired decision making capacity, including minors
- Exceptions to the requirement of informed prior consent for the use of experimental drugs

General Comment 20 (replacing General Comment 7) stresses that the purpose of this article is “to protect both the dignity and the physical and mental integrity of the individual” and notes that this includes mental suffering as well as physical pain.

The absolute nature of the prohibition of torture is emphasised in several ways: The text of the article itself does not allow any exception to the prohibition of torture and this provision may not be derogated from under any circumstances; that “it is the

duty of the State Party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity”; “that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority”; that statements obtained by torture should not be admissible in judicial proceedings; and that the granting of amnesties for acts of torture is generally incompatible with the State’s duty to “investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future”. The right to an effective remedy is also emphasised, a point which is repeated in **General Comment 32** (right to equality before courts and tribunals and to a fair trial).

This General Comment also defends the absence of a definition of torture in the Covenant or General Comment, as the distinctions between permitted and prohibited acts depend on the “nature, purpose and severity of the treatment”.

States are reminded that this article also prohibits medical or scientific experimentation without the free consent of the person concerned and notes that special protection is needed for those not capable of giving valid consent and those in any form of detention or imprisonment.

The General Comment also discusses the inclusion of corporal punishment under this article; the implementation of the death penalty; the obligation to “not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement”; safeguards necessary for the prevention of torture in places of detention (also discussed in **General Comment 21** (article 10 - humane treatment of persons deprived of their liberty)); and the obligation to inform detainees of their right to a remedy for violations of this article.

Paragraph 11 of **General Comment 28** (article 3 - the equality of rights between men and women) highlights the Committee’s opinion that domestic violence, rape, forced abortions, compulsory sterilisation and female genital mutilation can be considered acts of torture and so included under this article.

ARTICLE 8 (PROHIBITION OF SLAVERY)

1. *No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.*
 2. *No one shall be held in servitude.*
 3. (a) *No one shall be required to perform forced or compulsory labour;*
(b) *Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;*
(c) *For the purpose of this paragraph the term “forced or compulsory labour” shall not include:*
 - (i) *Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;*
 - (ii) *Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;*
 - (iii) *Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;*
 - (iv) *Any work or service which forms part of normal civil obligations.*
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This article is associated with article 24 (rights of the child) when dealing with child labour and with article 3 (equal rights of men and women) when dealing with trafficking. Other articles are mentioned more rarely.

Issues addressed under this article include:

- Legislation prohibiting slavery or forced labour
- Trafficking (article 3)
- Legislation
- Prosecutions, penalties, and compensation for victims
- Criminalisation of victims
- Identification of victims

- Protection and assistance, including rehabilitation, for victims
- Targeting of those using the services of trafficked persons as well as the traffickers
- Involvement of authorities in trafficking
- Working conditions of domestic labourers
- Measures to ensure women engaged in prostitution are not subjected to contemporary forms of slavery, including debt bondage
- Measures to end the abduction of women and children
- Return and reintegration of abducted children (article 24)
- Sexual exploitation and abuse of children (article 24)
- Child labour
- Minimum age for employment
- Measures to prevent the recruitment of children into the armed forces
- Demobilisation of children recruited by warring parties
- Labour performed by detainees (article 10)
- Types of labour permitted and conditions of work
- Hiring out of prisoners to private enterprises for labour. Measures to ensure this work is voluntary and that prisoners receive compensation

There is no General Comment dealing specifically with this article. However, paragraph 12 of [General Comment 28](#) (article 3 - the equality of rights between men and women) discusses the obligation to protect women and children, including aliens, from trafficking and contemporary forms of slavery, including domestic service. It may also be worth considering the Concluding Observations of the Committee on the Rights of the Child, particularly on the two Optional Protocols to the CRC on the issue of child labour.

ARTICLE 9 (PROHIBITION OF ARBITRARY DETENTION)

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
 2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
 3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
 4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
 5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*
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This article is commonly linked with articles 10 (conditions of detention), 6 (right to life) and 7 (prohibition of torture) since arbitrary detention is often associated with incommunicado or secret detention and facilitates the perpetration of abuses prohibited by those articles. It is associated with article 14 (right to equality before courts and tribunals and to a fair trial) as those guarantees are necessary for the effective implementation of the remedies mentioned here. It may also be linked to articles 12 (freedom of movement), 13 (right to remain in a State) and 26 (equality before the law) when issues around the detention of foreigners, particularly asylum seekers and refugees are discussed.

Issues addressed under this article include:

- Legislation prohibiting arbitrary detention and safeguards against arbitrary detention, including by security forces
- Guarantees for suspects under counter-terrorism legislation
- Access to judicial review of the lawfulness of detention

- Case law on granting compensation for unlawful detention
- Independent investigation of detention centres and complaints (article 10)
- Informing detainees of their rights (article 10)
- Access to a lawyer (article 10)
- Access to doctors and family (article 10)
- Incommunicado detention
- Disappearances
- National register of persons detained, including details of where they are held, accessible to relatives and lawyers (article 10)
- Secret places of detention or detention centres not under the jurisdiction of civil prosecution services
- Pre-trial detention (article 14)
 - Limits on the duration of pre-trial detention and procedures for extending the period
 - Transfer of suspects from one police station to another to extend the period before they must be brought before a judge
 - Alternatives to pre-trial detention/police custody
- Limits on the duration of detention without charges, including under counter-terrorism legislation
- Possibility of continued detention after a sentence has been served
- Detention of asylum seekers and irregular migrants
 - Prompt informing of reasons for detention
 - Prompt informing of rights
 - Access to legal aid

General Comment 8 points out that “paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.” as is the right to judicial review of the detention and to an effective remedy for breaches of the right to liberty. Preventative detention on grounds of public security must also be in accordance with these provisions and in accordance with article 2, paragraph 3 an effective remedy must be available for individuals deprived of their liberty in violation of the Covenant. **General Comment 15** (the position of aliens under the Covenant) reiterates that the safeguards of this article apply when non-nationals are detained as part of an expulsion procedure.

General Comment 28 (article 3 - the equality of rights between men and women), paragraph 14, notes the need to include information on “any laws or practices which may deprive women of their liberty on an arbitrary or unequal basis, such as by confinement within the house”.

General Comment 8 also discusses the delays permissible before a detainee is brought before a judge and of the total length of pre-trial detention, stressing that this should be the exception rather than the rule and for as short a time as possible.

General Comment 32 (right to equality before courts and tribunals and to a fair trial) also considers, in the context of the judicial guarantees of article 14, the permissible length of delay before a case is brought before a court, the requirement to promptly inform the detainee of the charges against him and his rights and the interaction of articles 9, 10 and 14 in these rights.

Paragraph 13(b) of **General Comment 29** (article 4 - derogations during a state of emergency) notes that “the prohibitions against taking of hostages, abductions or unacknowledged detention are not subject to derogation” due to their status as norms of general international law.

ARTICLE 10 (CONDITIONS OF DETENTION)

1. *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*
 2. (a) *Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*
(b) *Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*
 3. *The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*
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This article is frequently grouped with articles 6 (right to life), 7 (prohibition of torture) and/or 9 (prohibition of arbitrary detention) as the safeguards of article 10 are an important element in preventing those abuses. It is also linked with article 14 (right to equality before courts and tribunals and to a fair trial) as an impartial judiciary and judicial oversight are necessary to guarantee all these rights.

Issues addressed under this article include:

- Living conditions in detention, including pre-trial detention
 - Overcrowding
 - Disease
 - Insanitary conditions
 - Malnutrition
 - Violence by prisoners
- Detention conditions and guarantees for terrorist suspects
- Living conditions in immigration detention and for those awaiting deportation (articles 6, 9 and 12)
- Separation of accused persons from convicted persons

- Status of detainees awaiting the decision of an appeal
- Separation of juveniles from adult detainees (article 24)
- Conditions in juvenile detention centres (article 24)
- Education and rehabilitation facilities for juveniles (article 14)
- Separation of detained asylum seekers from other detainees
- Torture and ill-treatment of detainees (article 7)
- Prohibition
- Prohibition on the use of statements obtained by torture in judicial proceedings (article 14)
- Conditions for the admissibility of complaints of ill-treatment
- Evidence needed to prove torture
- Criteria for imposing punishments or restraints on prisoners
- Use of solitary confinement, particularly for extended periods
- Independent inspections of detention centres and complaints mechanisms (article 9)
- Independent investigation of all deaths in custody (article 6)
- Awareness of the complaints mechanism among detainees
- NGO and National Human Rights Institutions access to detention centres
- Length of pre-trial detention (articles 9 and 14)
- Centralised register of all detainees and their place of detention (article 9)
- Contact with families (article 9)
- Access to medical assistance (article 9)
- Access to legal assistance (article 14)

- Duration of interrogations and audio-visual recording of interrogations
- Alternatives to detention and training for judges on these alternatives
- Training of guards on human rights obligations
- Protection of patients from abuse in residential health institutions, particularly those dealing with mental health
- Treatment of elderly in long term care homes

General Comment 21 (replacing **General Comment 9**) notes that article 10, paragraph 1 applies to “any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere. States Parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.” **General Comment 15** (the position of aliens under the Covenant) emphasises that the safeguards of this article also apply when non-nationals are detained as part of an expulsion procedure.

General Comment 21 also notes that “treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State Party. This rule must be applied without distinction of any kind”. **General Comment 29** (article 4 - derogations during a state of emergency), paragraph 13(a), corroborates this by suggesting that this provision is effectively non-derogable since it expresses a peremptory norm of international law. **General Comment 21** also asserts that persons deprived of their liberty should “enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment”. The guarantee of their rights to detainees is repeated in other General Comments, notably **General Comment 22** (articles 18 - freedom of thought, conscience and religion) and 25 (article 25 - electoral rights). **General Comment 25** (article 25 - participation in public affairs and the right to vote) asserts that “if conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence” and that “persons deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote”.

General Comment 21 points out that State reports should include information on the application and review of the legislation and procedures for detention; training of personnel who have authority over persons deprived of their liberty; measures to ensure the education and rehabilitation of convicted persons; detailed information on the operation of the penitentiary system; the implementation of the relevant

United Nations Standards; and the juvenile detention system.

Assuring that detainees are not subject to torture or cruel, inhuman or degrading treatment or punishment is mentioned in both this General Comment and **General Comment 20** (article 7 - prohibition of torture or cruel, inhuman or degrading treatment or punishment).

Issues around the treatment of children are dealt with in **General Comment 17** (article 24 - rights of the child). That General Comment mentions that States should specify in their reports at what age a child is considered adult for the purposes of article 10, paragraphs 2 and 3 and notes that this age should not be set too low. **General Comment 32** (article 14 - right to equality before the courts and tribunals and to a fair trial) emphasises that the age of Criminal Responsibility should take into account their physical and mental immaturity. However, **General Comment 21** mentions the Human Rights Committee's opinion that "article 6, paragraph 5 [prohibition of the death penalty for under eighteens] suggests that all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice".

Paragraph 15 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses safeguards and provisions for female prisoners.

ARTICLE 11 (IMPRISONMENT FOR FAILURE TO FULFIL A CONTRACTUAL OBLIGATION)

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

This article is rarely addressed and questions usually focus on specific laws which may violate this provision.

Issues addressed under this article include:

- Legislation prohibiting imprisonment for inability to fulfil a contractual obligation
- Arbitrary arrests for failure to fulfil a contractual obligation (article 9)
- Imprisonment for debt
- Number of detainees covered by this provision (article 10)

There is no General Comment dealing with this article.

ARTICLE 12 (FREEDOM OF MOVEMENT)

- 1 *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
 - 2 *Everyone shall be free to leave any country, including his own.*
 - 3 *The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
 - 4 *No one shall be arbitrarily deprived of the right to enter his own country.*
-

This article is commonly associated with article 13 (right to remain in a territory), as both provisions are frequently mentioned in relation to the rights of immigrants and the detention and expulsion of asylum seekers. Articles 2 (non-discrimination) and 26 (equality before the law) are mentioned when restrictions on movement are applied to specific groups and so are discriminatory.

Issues addressed under this article include:

- Possibility of and criteria for imposing restrictions on the right to leave the country
- Exit visas
- Requirement of local registration for access to rights
- Internally Displace Persons (IDPs)
 - Efforts to create conditions for the voluntary, safe, and dignified return of IDPs
 - Integration of IDPs
 - Protection and assistance for those returning and to ensure sustainability of returns
 - Equal return of minorities (articles 2, 26 and 27)
 - Guarantees of security and freedom of movement for displaced persons
 - Access to personal documents enabling them to seek employment

- Access to education, health, and social services
- Discrimination against displaced minorities
- Forced displacement
- Restrictions on where refugees can stay and travel
- Integration of refugees

General Comment 27 notes that, in principle, citizens of a State are always lawfully within the territory of that State, but that whether or not a non-national is lawfully within the territory of the State is governed by domestic law. However, “an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of article 12”. **General Comment 15** (the position of aliens under the Covenant) also notes “consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State Party they are entitled to the rights set out in the Covenant”. This General Comment adds that “in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise”. Paragraph 13(d) of **General Comment 29** (article 4 - derogations during a state of emergency) notes that the legitimate right to derogate from article 12 may not be used to justify the “forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present” since this is recognised as a crime against humanity by the Rome Statute to the International Criminal Court. The State is therefore asked to indicate any circumstances in which aliens lawfully within the State are treated differently from nationals and the justification for this difference in treatment.

General Comment 27 discusses in detail the restrictions that may and may not be imposed under paragraph 3 (including noting that special conditions apply to persons in detention), particularly that these restrictions must be provided for by law and that such legislation should establish the conditions under which the rights may be limited. This general comment highlights the obligation to report on and justify as necessary and compatible with the rights guaranteed under the Covenant all legal, administrative and practical restrictions on freedom of movement. It stresses that “the Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one’s own country could be reasonable. A State Party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country”.

Paragraph 16 of **General Comment 28** (article 3 - the equality of rights between men and women) further discusses the particular restrictions sometimes imposed on and discriminating against women.

Finally the Human Rights Committee discusses the meaning of “his own country” in paragraph 4 of **General Comment 27**, emphasising that this is a broader term than “country of his nationality” and should be recognised as such.

ARTICLE 13 (RIGHT TO REMAIN IN A STATE)

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

This article is commonly associated with article 12 (freedom of movement), as the two provisions interact, particularly in relation to the detention and deportation of immigrants and asylum seekers. Articles 2 (non-discrimination) and 26 (equality before the law) are also mentioned when deportations have a discriminatory aspect. It is also connected with article 14 (right to equality before courts and tribunals and to a fair trial) as the safeguards of that article are necessary for the effective review of cases.

Issues addressed under this article include:

- Criteria under which a person may be expelled/deported
- Possible separation of families because of the expulsion or deportation of non-national parents when a child has nationality (articles 23 and 24)
- Asylum and refugee applicants:
 - Access to effective and independent review of rejected applications and expulsion or deportation orders
 - Suspension of expulsion/deportation orders during an appeal
 - Provision of information on rights and the possibilities for appealing a decision
 - Access to legal assistance (article 14)

- Mass expulsions/deportations
- Conditions of those awaiting expulsion/deportation or decision on asylum applications (article 10)
- Discrimination in asylum proceedings (article 2)
- Guarantees against expulsion or deportation to countries where rights guaranteed by the Covenant, particularly articles 6 and 7, may be violated

There is no General Comment specifically dealing with this article, but **General Comment 15** (the position of aliens under the Covenant), paragraphs 9 and 10, stress that this article is “applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise”. It also observes that, although this article only protects aliens lawfully in the territory of the State, in situations where the legality of an alien’s entry or stay is in dispute, “any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13” and that discrimination may not be made between different categories of aliens.

It further identifies the prevention of arbitrary expulsions as one aim of this article, observing, in particular, that the requirement that each alien has a decision in his own case acts as a prohibition of collective or mass deportations, reinforced by the right to submit reasons against expulsion and to have the decision reviewed.

It notes that if expulsion procedures entail detention, the safeguards of the Covenant relating to deprivation of liberty (articles 9 (prohibition of arbitrary detention) and 10 (conditions of detention)) are also applicable. States are reminded that “normally an alien who is expelled must be allowed to leave for any country that agrees to take him”.

Paragraph 17 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the equality of men and women in the enjoyment of these rights.

General Comment 32 (right to equality before courts and tribunals and to a fair trial) considers this article in the light of the procedural guarantees of article 14 and notes that “insofar as domestic law entrusts a judicial body with the task of deciding about expulsions or deportations, the guarantee of equality of all persons before the courts and tribunals as enshrined in article 14, paragraph 1, and the principles of impartiality, fairness and equality of arms implicit in this guarantee are applicable. All relevant guarantees of article 14, however, apply where expulsion takes the form of a penal sanction or where violations of expulsion orders are punished under criminal law.”

ARTICLE 14 (RIGHT TO EQUALITY BEFORE COURTS AND TRIBUNALS AND TO A FAIR TRIAL)

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*
2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*
3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*
 - (a) *To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*
 - (b) *To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*
 - (c) *To be tried without undue delay;*
 - (d) *To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*
 - (e) *To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (f) *To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*
 - (g) *Not to be compelled to testify against himself or to confess guilt.*
4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*
5. *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*

6. *When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*
 7. *No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*
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Article 14 is often linked with articles 9 (prohibition of arbitrary detention) and 10 (conditions of detention) as the judicial guarantees of this article are necessary for, and closely associated with, the guarantees and oversight in those provisions. It is associated with article 7 (prohibition of torture) by the shared concern with the use of evidence or confessions obtained through torture.

Issues addressed under this article include:

- Independence and impartiality of the judiciary
- Regulations governing the tenure, appointment, dismissal and disciplining of members of the judiciary
- Transparency and accountability of public institutions including the judiciary
- Prosecutions and convictions of judicial officials for corruption
- Processing time of cases
- Basing of convictions on confessions
- Lack of court translators and interpreters
- Guarantees of the 'equality of arms' of defence and prosecution in court, including access to relevant documentation and examination of witnesses
- Openness of court proceedings to the public, including local and international human rights monitors
- Enforcement of judicial decisions

- Trials in absentia (including informing the suspect and the right to a re-trial)
- Combined trials
- Juvenile justice (article 24)
- Special courts, including military courts
- Exceptional circumstances in which derogation from regular judicial procedures is permitted
- Jurisdiction of customary courts
 - Right to legal assistance in customary courts
 - Right to have cases transferred to a standard court
- Promptly informing detainees of their rights (article 10)
- Awareness of the right to appeal and the mechanisms for doing so
- Legal guarantees of the presumption of innocence
- Length of custody and/or detention before the detainee must be presented before a judge
- Length of preventative detention
- Guarantees of access to legal assistance and the implementation of this in practice
 - Discrimination in provision of legal aid
 - Legal assistance for non-citizens, including asylum seekers and immigrants
 - Length of detention without access to a lawyer
 - Restrictions on consultations with a lawyer
- Presence of a lawyer and audio-visual recording of interrogations
- Accessibility of justice system to all, including minorities
- Effect of counter-terrorism legislation and guarantees for terrorist suspects

General Comment 32 (replacing **General Comment 13**) defines the Human Rights Committee's understanding of the terms used and discusses in detail what the safeguards and provisions of article 14 mean and require in practice. It is strongly recommended to consult the relevant paragraphs when discussing violations of article 14.

Paragraphs 1-6 discuss article 14 in general terms and emphasise that these guarantees must be respected regardless of legal tradition or domestic law. States are reminded that they should report on all the guarantees and scopes of action of the provisions. Although this article is not listed in article 4 as non-derogable any derogation must not exceed the strict requirements of the situation and must not act to circumvent any of the non-derogable rights listed in article 4 (reiterated in paragraph 15 of **General Comment 29** (article 4 - derogations during a state of emergency)).

The first sentence of article 14, paragraph 1 is considered in detail by paragraphs 7-14 of **General Comment 32**. The right to equality before tribunals or courts applies to “any judicial body entrusted with a judicial task under domestic law”. The principle of equality of arms must be respected; in other words no party to the case should suffer discrimination. The right of access to justice through the courts or tribunals “is not limited to citizens of States parties, but must also be available to all individuals [...] who may find themselves in the territory or subject to the jurisdiction of the State Party”. States are encouraged to facilitate this access by providing “free legal aid in other cases, for individuals who do not have sufficient means to pay for it”. Similarly access must not be inhibited by the “the imposition of fees on the parties to proceedings that would de facto prevent their access to justice”. Equality before the courts also requires that “similar cases are dealt with in similar proceedings”.

Paragraphs 15-21 deal with the second sentence of paragraph 1, starting with the definition of ‘criminal charges’ (15) and ‘suit at law’ (16) while paragraph 17 explains circumstances in which access to a court is not required.

Paragraph 18 clarifies the meaning of ‘tribunal’ as “a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature” and notes that “any criminal conviction by a body not constituting a tribunal is incompatible with this provision. Similarly, whenever rights and obligations in a suit at law are determined, this must be done at least at one stage of the proceedings by a tribunal within the meaning of this sentence.

The requirement of competence, independence and impartiality of a tribunal in the is an absolute right that is not subject to any exception and has bearing on the functioning of the judiciary.

Paragraphs 22 to 24 of the General Comment consider the application of article 14 in relation to special courts, including military and religious courts as well as customary courts. Article 14, paragraph 2 is discussed in paragraph 30, while **General Comment 21** (article 10 - humane treatment of persons deprived of their liberty) notes the close connection between the separation of accused and convicted persons with the presumption of innocence.

Paragraph 3 and its sub-paragraphs are covered by paragraphs 31-41 of the General Comment, defining the terms and expanding on the implications of these obligations

Paragraphs 58-65 discuss the relationship with other provisions of the ICCPR, notably: articles 2, paragraph 1 , article 3, and article 26; article 2, paragraph 3; article 6; article 7; article 9; article 13 ; articles 12 and 19; and article 25 .

Paragraph 18 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses matters specifically relating to women's access to justice.

ARTICLE 15 (NON-RETROACTIVITY OF LAWS)

- 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.*
 - 2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.*
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The Human Rights Committee rarely asks about this article except in the context of specific laws which appear to be retroactive.

There is no General Comment dealing specifically with this article. However, paragraph 15 of **General Comment 29** (article 4 - derogations during a state of emergency) notes that procedural and judicial guarantees including those of this article may not be derogated from or adjusted in such a way as to amount to a derogation of non-derogable rights.

ARTICLE 16 (RECOGNITION AS A PERSON BEFORE THE LAW)

Everyone shall have the right to recognition everywhere as a person before the law.

This article is rarely addressed, but is sometimes connected with articles 24 (rights of the child) and 27 (rights of minorities) as birth registration and access to identity documents are occasionally mentioned under those articles and are necessary for the practical implementation of this article.

Issues addressed under this article include:

- Birth registration (article 24)
- Inclusion of indigenous in the civil registry (articles 24 and 27)
- Access to personal identity documents (articles 2 and 26)

There is no General Comment dealing with this article, but the observations in paragraphs 7 and 8 of **General Comment 17** (article 24 - rights of the child) on the right of every child to be registered and have a name and the right to acquire a nationality may be relevant. Paragraph 19 of **General Comment 28** (article 3 - the equality of rights between men and women) notes that this provision implies the capacity of women to own property, to enter into a contract or to exercise other civil rights. It also notes the need to provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.

ARTICLE 17 (RIGHT TO PRIVACY)

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.*
 2. *Everyone has the right to the protection of the law against such interference or attacks.*
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Article 17 is commonly linked with articles 18 (freedom of thought, conscience and religion), 19 (freedom of expression), and 21 (freedom of assembly), because the safeguards this article provides are necessary for the free exercise, in practice, of those rights.

Issues addressed under this article include:

- Legislation on monitoring communications and the permitted duration of such measures
- Illegal monitoring of communications, shadowing and surveillance
- Remedies for misuse and abuse of monitoring of communications
- Judicial control and independent overview of monitoring communications
- Counter-terrorism powers affecting this article
- Possibility of searching without a warrant
- Right not to have data collected
- DNA testing to control and restrict family reunification (article 23)
- Consideration of the right to privacy and family life when the criminal conviction of an alien is accompanied by an expulsion order

General Comment 16 emphasises that the State has a duty to protect individuals from undue interference both by the State and its officials and by other natural and legal persons. To this end the State report should contain information on both the law (including on access to remedies and case law on these matters) and the practice. The General Comment goes on to consider some of the restrictions and safeguards necessary for the implementation of this right in practice, while acknowledging that ‘family’ and ‘home’ have different meanings in different contexts.

The General Comment explains the inclusion of the term ‘arbitrary interference’ as “intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”.

Finally the General Comment discusses the regulation of “gathering and holding of personal information on computers, data banks and other devices” and stresses the right of the individual to know what information about him or her is held and who has access to it.

General Comment 22 (article 18 - freedom of thought, conscience or religion) observes that together this article and paragraph 2 of article 18 provide that “no one

can be compelled to reveal his thoughts or adherence to a religion or belief”.

General Comment 28 (article 3 - the equality of rights between men and women) paragraph 20 notes specific areas, particularly reproductive rights, in which women frequently suffer violations of the right to privacy.

ARTICLE 18 (FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION)

- 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
- 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
- 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

This article is frequently associated with articles 17 (right to privacy) and 19 (freedom of expression) because those provisions are related to the ability to manifest one's religion or belief. It is linked with articles 2 (non-discrimination), 20 (prohibition of propaganda for war and advocacy of national, racial or religious hatred) and 26 (equality before the law) as these provide guarantees against discrimination or violence on the grounds of religion.

It should also be remembered that religious minorities are specifically protected under article 27.

Issues addressed under this article include:

- Registration of religions (including any restrictions on the groups that can register)
- Status of religious groups

- Consequences of non-recognition of religions or places of worship
- Guarantees of the right to change religion
- Restrictions on or criminalising of conversions
- Measures discriminating against some religions or religious manifestations
- Religious ministers authorised to perform civil wedding ceremonies
- Implicit or explicit requirements to accept the State religion in order to hold a public office (including in the judiciary)
- Promotion of religious tolerance
- Measures to combat acts of religious intolerance
- Protection of places of worship
- Discrimination against children not attending religious classes
- Subsidising of a state religion
- Conscientious objection to military service
- Imprisonment for failure to discharge compulsory military service (article 9)
- Availability of a non-punitive alternative service
- Taxation of conscientious objectors
- Preferential treatment of specific religions in granting exemptions from military service

General Comment 22 emphasises the broad scope of the freedoms of thought, conscience and religion or belief, encompassing freedom of thought on all matters and “theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief” and of possible manifestations of religion or belief. The Human Rights Committee emphasises that article 18 “does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. [...] In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief”.

The freedom to manifest religion or belief, in contrast, may be limited, but only on the grounds specified in paragraph 3 and article 20 (prohibition of propaganda for war and advocacy of national, racial or religious hatred). The Human Rights Committee emphasises that restrictions on other grounds may not be imposed “even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security”.

The General Comment points out that the recognition of a State religion or the existence of a majority religious group “shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers” and notes various specific forms that such discrimination may take. The rights of religious minorities are also covered by article 27 (rights of minorities).

General Comment 19 (article 23 - the family) notes that while legislation on marriage should allow both religious and civil ceremonies “for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the Covenant”

Paragraph 21 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the equality of men and women and notes that freedom of thought, conscience and religion cannot be used to justify the infringement of other rights guaranteed under the Covenant.

Finally, in **General Comment 22**, the Human Rights Committee declares that a right to conscientious objection to military service can be derived from article 18 “inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief”. It also requires that “when this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service”. States should therefore report on the conditions under which persons may be exempted from military service and on the nature and length of alternative national service. **General Comment 32** (right to equality before courts and tribunals and to a fair trial) also deals with conscientious objection, specifically noting that the principle of ‘ne bis in idem’ (paragraph 7 of article 14) prohibits the repeated punishment of conscientious objectors for a refusal to perform military service.

ARTICLE 19 (FREEDOM OF EXPRESSION)

1. *Everyone shall have the right to hold opinions without interference.*
 2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
 3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) For respect of the rights or reputations of others;*
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.*
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This article is often associated with article 18 (freedom of thought, conscience and religion) as it is linked to the expression or manifestation of those beliefs. It is also frequently linked with articles 21 (freedom of assembly) and 22 (freedom of association) as these too reflect the manifestation of beliefs and opinions and the guarantees of this article are necessary for the full exercise of those rights.

Issues addressed under this article include:

- Implementation of legislation on freedom of expression
- Guarantees, including judicial mechanisms, of freedom of expression
- Incidents of threats to and attacks on journalists
- Censorship of journalists, including self-censorship
- Blocking of information critical to the government
- Restrictions on freedom of expression
- Restrictions because of the fear of terrorism
- Definitions of crimes such as incitement to terrorism and case law for these offences

- The application (and consistency of application) of laws on incitement to racial hatred (article 20)
- Legislation on libel and defamation, including exceptions for public figures
- Existence of non-state controlled media
- Equal access to the media for opposition officials and those critical of the government
- Measures to protect places of worship belonging to minorities and to provide safe access to those places (articles 18 and 20)
- Arrest or harassment of demonstrators (articles 21 and 22)

A new **General Comment (34)** on Freedom of Expression is currently being prepared by the Committee. This General Comment will provide a detailed consideration of the various forms of expression protected by this article as well as the scope of the permitted restrictions.

General Comment 10 emphasises that the Covenant permits no exception or restriction to the right to hold opinions without interference, that freedom of expression may only be limited for one of the reasons listed in paragraph 3, and that the State must justify the necessity of any restrictions.

General Comment 11 (article 20 - prohibition of propaganda for war and advocacy of national, racial or religious hatred) highlights that the restrictions imposed on freedom of expression by that article are an example of the reasonable restrictions that may be imposed on this right. States are reminded to report on the exercise of freedom of expression as well as the legislation.

General Comment 23 (article 27 - rights of minorities) is careful to distinguish between the right of linguistic minorities to use their language, guaranteed in article 27, and the general right of freedom of expression, which is available to all, not only to minorities.

Paragraph 22 of **General Comment 28** (article 3 - equality of rights between men and women) discusses the equality of men and women in the exercise of this right and particularly observes that States should restrict the publication and dissemination of pornography material as this “portrays women and girls as objects of violence or degrading or inhuman treatment [which] is likely to promote these kinds of treatment of women and girls”.

ARTICLE 20 (PROPAGANDA FOR WAR AND ADVOCACY OF NATIONAL, RACIAL OR RELIGIOUS HATRED)

1. *Any propaganda for war shall be prohibited by law.*
 2. *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*
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This article is associated with article 19 (freedom of expression) since it imposes some restriction on freedom of expression. It is also sometimes linked with articles 2 (non-discrimination) and 26 (equality before the law). It may also be linked with article 18 (freedom of thought, conscience and religion) when dealing with attacks on religious grounds.

Issues addressed under this article include:

- Legislation criminalising incitement to national, racial, or religious hatred
- Racist motivation as an aggravating factor in offences
- Leniency of sentences for hate crimes and low number of prosecutions
- Combating hate speech in the media
- Measures to counter the spread of racism and xenophobia via the internet and in sports.
- Responses to religious or racially motivated attacks on places of worship (article 18)
- Protection of places of worship belonging to minorities and safe access to these (articles 18 and 19)

General Comment 11 notes that “for article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation”. It emphasises that this is a legitimate restriction of the right to freedom of expression (article 19). **General Comment 22** (article 18 - freedom of thought, conscience or religion) also notes that the freedom to manifest religion or belief guaranteed by article 18 is subject to the restrictions of article 20. This General Comment also stresses the importance of article 20, paragraph 2 in protecting religious minorities against violence and persecution.

General Comment 11 explains the term ‘propaganda for war’ as “all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations”.

ARTICLE 21 (FREEDOM OF ASSEMBLY)

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

This article is commonly linked with article 19 (freedom of expression) as this right may be seen as a manifestation of freedom of expression and with article 22 (freedom of association) as the right to assembly is necessary for the effective exercise of the right to association, particularly where this concerns trade unions and the right to strike.

Issues addressed under this article include:

- Restrictions on the freedom of assembly
- Criteria for declaring a meeting illegal or a threat to public security
- Measures to guarantee the right to assembly to all those in the territory or jurisdiction of the State (including migrant workers)
- Conditions for the authorisation of a public assembly
- Remedies if authorisation is refused
- Statistics on the number of refusals and reasons for the refusal
- Prevention of the use of excessive force by law enforcement personnel when dispersing assemblies
- Statistics on penalties and arrests for holding unauthorised meetings

There is no General Comment dealing with this article. However, **General Comment 25** (article 25 - participation in public affairs and the right to vote) notes the particular

importance of the freedoms of expression, association and assembly in ensuring the electoral rights guaranteed by that article and touches on ways the State might facilitate the exercise of these rights.

ARTICLE 22 (FREEDOM OF ASSOCIATION)

1. *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
 2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*
 3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*
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This article is often associated with articles 19 (freedom of expression) and 21 (freedom of assembly) as those rights are necessary if the right to form and join associations is to have its full force.

Issues addressed under this article include:

- Legislation on freedom of association
- Impact of counter-terrorism legislation on the freedom of association
- Requirements or restrictions on the recognition of associations, including political parties
- Refusal to register certain types of organisations, such as human rights associations or political parties (article 25)
- Possibility of appealing the refusal to register an organisation and decisions in such cases

- Penalties imposed on members of prohibited organisations
- Statistics on applications, refusals, and reasons for the refusal of applications
- Trade Unions
 - Guarantees of the right to strike
 - Attacks and threats to members of trade unions
 - Restrictions on forming and joining trade unions for certain categories of workers
 - Percentage of the workforce belonging to a trade union
 - Institutional frameworks for recognising unions and collective bargaining
- Exclusion of human rights organisations from discussions and decisions on welfare and human rights policy
- Measures to ensure the right to association to all those within the State
 - Restrictions on immigrant workers, undocumented workers or other groups
- Financial or other controls on NGOs

There is no General Comment dealing with this article. However, [General Comment 25](#) (article 25 - participation in public affairs and the right to vote) notes the particular importance of the freedoms of expression, association and assembly in ensuring the electoral rights guaranteed by that article and touches on ways the State might facilitate the exercise of these rights.

ARTICLE 23 (RIGHT TO A FAMILY)

1. *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
 2. *The right of men and women of marriageable age to marry and to found a family shall be recognized.*
 3. *No marriage shall be entered into without the free and full consent of the intending spouses.*
 4. *States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.*
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This article is often linked with article 24 (rights of the child) as family life inevitably has an impact on the child. It is also linked with article 3 (equal rights of men and women) particularly paragraphs 3 and 4 as these also refer to the equality of spouses in a marriage.

Issues addressed under this article include:

- Legislation discriminating between spouses
- Right to choose the place of residence (article 12)
- Guardianship of the woman by the husband (article 3)
- Equal right of parents to claim child benefits
- Transmission of nationality to children (article 24)
- Minimum age for marriage, including differences for men and women, or for foreigners
- Forced marriages
- Polygamy
- Religious ministers authorised to perform civil weddings, and religious ceremonies recognised as weddings (article 18)

- Restrictions on family reunification, including for families of immigrants
- Domestic violence (articles 3 and 7)
- Status and activities of courts specialising in family law

General Comment 19 notes that the concept of the family differs from State to State and even within States different forms of ‘family’ exist. The Human Rights Committee therefore asks the State to report on “how the concept and scope of the family is construed or defined in their own society and legal system” and for information on the recognition and protection in law and practice of all forms of family, including unmarried couples and their children or single parents and their children.

The Human Rights Committee also notes the importance of equality of spouses at all stages of the marriage and is particularly concerned about provisions for the protection of children at the dissolution of a marriage or the separation of spouses.

The General Comment notes that although the Covenant does not establish a minimum age for marriage this must be “such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law” while **General Comment 28** (article 3 - the equality of rights between men and women) notes the desirability of having the same minimum age for men and women. Both the Committee on the Rights of the Child (**General Comment 4**) and the Committee on the Elimination of Discrimination Against Women (General Recommendation 2) have, however, suggested that ideally the minimum age for marriage should be 18 for both men and women. The Human Rights Committee also emphasises that legal provisions must be compatible with the full exercise of the other rights guaranteed by the Covenant, giving as an example provisions for both religious and civil marriages (required by article 18), although they add “for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the Covenant”.

Finally, the General Comment notes that “the right to found a family implies, in principle, the possibility to procreate and live together” which affects family planning policies and the duty of the State to ensure the reunification of families.

Paragraphs 23-27 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the equality of men and women in the exercise of this right, particularly noting the influence of practices and social attitudes on the exercise of these rights.

ARTICLE 24 (RIGHTS OF THE CHILD)

1. *Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*
 2. *Every child shall be registered immediately after birth and shall have a name.*
 3. *Every child has the right to acquire a nationality.*
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Article 24 is associated at times with a wide range of articles, but most commonly with articles 2 (non-discrimination), 3 (equal rights of men and women) and 26 (equality before the law) as it reiterates the principle of non-discrimination. It is also linked with article 23 (right to a family) as the rights of the child are intimately associated with family life.

It should be remembered that children are guaranteed all the rights covered by other provisions of the Covenant; article 24 and other provisions dealing specifically with children provide additional protection, without limiting the exercise of other rights. Issues addressed under this article include:

- Street children
- Measures to prevent the removal of children to third jurisdictions by parents or guardians in order to be subjected to practices which breach their rights under the Covenant
- Violence and abuse
 - Sexual abuse and exploitation
 - Rehabilitation facilities for abused children
 - Corporal punishment (article 7)
- Minimum age for sexual consent
- Marriage of minors
- Acquisition of nationality

- Transmission from parents (article 23)
- Birth registration for all (article 16)
- Measures to prevent statelessness
- Discrimination against children born out of wedlock
- Gender based inequalities in the education system (article 3)
- Measures to ensure compliance with child support decisions and to protect children when support is not provided
- Provision of child benefits to low income families
- Infant mortality rate (article 6)
- Extrajudicial executions of street children (article 6)
- Child Labour (article 8)
- Military recruitment
- Trafficking (article 8)
- Return and reintegration of abducted children (article 8)
- Children in immigration detention (articles 9 and 13)
- Treatment and return of unaccompanied minors entering the State (article 13)
- Provisions for school attendance for refugee children or those awaiting refugee status
- Juvenile Justice System (article 14)
- Length of pre-trial detention (articles 9 and 10)
- Legal aid
- Age of criminal responsibility
- Separation from adults in detention (article 10)

- Investigations into ill-treatment and deaths in detention (articles 6, 7, and 10)
- Disciplinary measures in detention (articles 7 and 10)
- Life sentences without the possibility of parole
- Children of minorities (article 27)
- Opportunities to receive education in or of their language and about their culture
- Over-representation of minorities in schools intended for children with mental disabilities

General Comment 17 emphasises that article 24 requires States to adopt special measures to protect children in addition to ensuring to them the exercise of all rights guaranteed under the Covenant. These additional measures for juveniles are not limited to the specific protections included in the Covenant (e.g. the prohibition on the juvenile death penalty), but must be assessed by the State “in the light of the protection needs of children in its territory and within its jurisdiction”. The Human Rights Committee notes that these measures should include economic and social measures as these affect the exercise of civil and political rights.

The General Comment also clarifies that, as the Covenant does not define the age of majority, this is to be determined by the State in the light of social and cultural conditions. The State report should indicate the age of majority in civil matters, under labour law and in the justice system as well as the minimum ages for labour and criminal responsibility, which should take account of their physical and mental immaturity (**General Comment 32** (right to equality before courts and tribunals and to a fair trial)). The Human Rights Committee emphasises that the age of majority should not be set too low and that a lower age of majority does not release a State from its obligations where the Covenant requires special provisions for those under eighteen. Paragraph 13 of **General Comment 21** (article 10 - humane treatment of persons deprived of their liberty), gives the Human Rights Committee’s opinion that “article 6, paragraph 5 [prohibition on the death penalty for under eighteens], suggests that all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice”. It may also be worth referring to any comments by the Committee on the Rights of the Child on the age of majority for various purposes established by the State.

The General Comment also discusses the State’s role in intervening in family life to protect children, and the purpose and nature of the rights to birth registration and the acquisition of a name and nationality.

General Comment 20 (article 7 - prohibition of torture or cruel, inhuman or degrading treatment or punishment) notes that the Human Rights Committee considers the prohibition of torture to extend to corporal punishment “including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure” and therefore emphasises the protection provided to “in particular, children, pupils and patients in teaching and medical institutions” under that provision.

General Comment 28 (article 3 - the equality of rights between men and women), paragraph 28, reminds States of the obligation to protect and provide equally for boys and girls.

ARTICLE 25 (ELECTORAL RIGHTS)

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
 - (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
 - (c) To have access, on general terms of equality, to public service in his country.*
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This article is frequently linked with articles 2 (non-discrimination), 3 (equal rights of men and women), 26 (equality before the law) and 27 (rights of minorities) since the majority of the issues raised concern inequalities in the exercise of these rights.

Issues addressed under this article include:

- Participation of women in public life (article 3)
- Representation of minorities in public life (article 27)
- Representation of persons with disabilities in public life
- Right of convicted persons to vote and be elected (article 10)
- Measures to ensure free and fair elections

- Control of funding (public or private) for political parties
- Equal access to the media (article 19)
- Independent investigations into irregularities in elections
- Violence against members of political parties
- Registration of political parties/prohibition of certain parties (article 22)
- Use of minority languages in government and administration (article 27)
- Need for fluency in the majority language to access or be employed in public services (article 27)
- Acquisition of right to vote by foreigners
- Special voting arrangements for hospitalized, homebound or imprisoned citizens or citizens temporarily living abroad

General Comment 25 notes that, in contrast to all the other rights guaranteed under the Covenant, article 25 is explicitly limited to ‘citizens’. State reports should therefore “outline the legal provisions which define citizenship in the context of the rights protected by article 25”. The Human Rights Committee repeatedly stresses that any restrictions or differences in the ability of citizens to exercise these rights must be justified on objective and reasonable criteria (and provides examples of what it considers reasonable criteria). In particular the General Comment notes that “discrimination between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25”. **General Comment 22** (article 18 - freedom of thought, conscience and religion) also observes that policies and practice must not discriminate against holders of a particular religion or belief in the exercise of these rights.

The majority of **General Comment 25** is taken up by an elaboration of the meaning of the rights indicated in article 25 and the obligations these impose on the State as well as the safeguards necessary for their implementation and the associated reporting requirements. It also lays out the inevitable relationship between the exercise of these rights and the freedoms of expression, association and assembly.

Paragraph 29 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the equality of men and women in the enjoyment of these rights.

General Comment 32 (right to equality before courts and tribunals and to a fair trial), paragraph 64 discusses the impact of the dismissal of judges on equal access to public services.

ARTICLE 26 (EQUALITY BEFORE THE LAW)

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This article is linked with a wide range of other articles, but most commonly with articles 2 (non-discrimination) and 3 (equal rights of men and women) and these three articles are often mentioned together when dealing with discrimination. The three articles differ slightly in their scope and implications: article 2 only covers the rights guaranteed in the Covenant, but requires positive measures to guarantee these rights as well as respect for them without discrimination; article 3 is limited to discrimination on grounds of gender; and article 26 requires protection against any discrimination (not limited to the rights in the Covenant), but does not include the positive aspects of the other two articles. **General Comment 18** lays out the connections and differences between these articles and the references to non-discrimination in other provisions as well as providing the Human Rights Committee's working definition of discrimination. Since discrimination may affect the exercise of all rights these articles are frequently invoked and may be linked with any other article.

Issues addressed under this article include:

- Legislation on discrimination
- Legislation allowing discrimination or exceptions to the prohibition of discrimination
- Effective implementation of non-discrimination legislation and measures to combat discriminatory attitudes
- Discriminatory attitudes and stereotypes
- Discrimination, including against women, under customary law
- Traditional, historical, cultural and religious practices impeding the implementation of the Covenant

- Effective remedies for discrimination
- Specific groups mentioned as suffering discrimination:
 - Women (article 3)
 - Homosexuals
 - Persons with disabilities
 - Citizens of foreign origin
 - Refugees and asylum seekers (articles 12 and 13)
 - Foreigners, immigrants and non citizens (article 13)
 - Internally displaced persons (article 12)
 - Those living in the street, particularly street children (article 24)
 - Children born out of wedlock (article 24)
 - Persons from minority religions (articles 18 and 27)
 - Minorities (article 27)
 - Indigenous peoples (article 27)
- A wide range of specific rights and areas in which discrimination may occur are mentioned, including:
 - Employment, including equal pay for equal work
 - Standard of living, including access to housing
 - Immigration laws and naturalisation (article 13)
 - Access to justice (article 14)
 - Ability to acquire personal identification necessary for the exercise of rights (article 16)
 - Acquiring and transmitting nationality (articles 16, 23 and 24)

- Punitive nature of alternatives to military service (article 18)
- Equality in contracting, during, and at separation of marriages (article 23)
- Education, including attendance, achievement and relevance of the syllabus (articles 3, 24 and 27)
- Representation in government (article 25)
- Access to services (article 25)
- Requirement of fluency in the majority or official language to access services and be elected (articles 25 and 27)
- Discriminatory behaviour by law enforcement personnel, including violence, ill-treatment or extrajudicial executions targeting certain groups (articles 6, 7 and 10)
- Sexual harassment
- Domestic violence (articles 3, 6 and 7)

There is no General Comment dealing exclusively with article 26, but **General Comment 18** covers all the non-discrimination provisions. It mentions that non-discrimination is effectively non-derogable under article 4 as well as reminding States of the need to report on the situation and problems in practice as well as legislation on discrimination. This General Comment notes that some of the grounds for discrimination listed in articles 2 and 26 are omitted from domestic laws and observes that States should clarify the significance of these omissions. This General Comment emphasises the three elements contained in article 26: equality before the law; equal protection of the law; and the prohibition of discrimination under the law. It defines discrimination as “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”. However the Human Rights Committee emphasises that “enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance”, observing that affirmative measures may be necessary to eliminate discrimination and notes several provisions of the Covenant which specifically require or allow different treatment. It also notes that not every difference in treatment constitutes discrimination “if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”.

The General Comment notes that article 26 does not duplicate article 2 since article 26 is not limited to those rights provided for in the Covenant, but requires that all legislation and administration be non-discriminatory.

General Comment 23 (article 27 - rights of minorities) carefully distinguishes between the specific rights for minorities in that article and the right to equality before the law for all under this. The Human Rights Committee notes that the absence of discrimination on the grounds of ethnicity, language or religion does not mean that there are no ethnic, linguistic or religious minorities, or that the provisions of article 27 are irrelevant in this regard.

Paragraph 31 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses this article with particular reference to unequal penalties for the same offence and so-called 'honour crimes'.

ARTICLE 27 (RIGHTS OF MINORITIES)

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 27 may be linked with a wide range of articles, but most commonly with articles 2 (non-discrimination) and 26 (equality before the law), as minorities often face discrimination, and 25 (electoral rights) for the issues around representation and access to services.

Issues addressed under this article include:

- General statistical information on the population, showing the existence of minorities
- Provisions ensuring the rights of minorities
- Discrimination, including by law enforcement personnel and in employment
- Land rights of indigenous peoples, including compensation for displacement (article 1)
- Representation of minorities in governing and administrative bodies (article 25)

- Minority languages (article 25)
 - Translation of official documents
 - Use in local administration
 - The necessity of fluency in the majority language for election to office
 - Availability of teaching (including textbooks) in minority languages (article 24)
 - Teaching of minority languages as a second language
- Inclusion of minority cultures and history in the education syllabus (article 24)
- Acquisition of nationality for all those born within the State's territory (articles 16 and 24)

General Comment 23 explains that article 27 is distinct from article 1 in that it deals with the rights of individuals belonging to a minority (although they “depend in turn on the ability of the minority group to maintain its culture, language or religion”) while article 1 is a right of ‘peoples’. This is particularly important in relation to the First Optional Protocol on Individual Communications as article 1 is excluded from that procedure, but article 27 can be the grounds of a complaint. The General Comment also emphasises that this article is distinct from the non-discrimination provisions of the Covenant as it guarantees specific rights to members of minorities in addition to the rights provided by the Covenant, which also extend to members of minorities. In this regard the Human Rights Committee emphasises that the absence of discrimination against minorities does not remove the obligation to guarantee them these rights. It asserts that the existence of minorities in a State Party does not depend on State recognition and carries no requirement of permanence, so that “they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State Party constituting such minorities are entitled not to be denied the exercise of those rights”. The State is also obliged to provide protection for minorities “not only against the acts of the State Party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State Party”. Paragraph 9 of **General Comment 22** (article 18 - freedom of thought conscience and religion) also deals with the position and rights of religious minorities. **General Comment 29** (article 4 - derogations during a state of emergency), paragraph 13(c), notes that certain elements of the protection of minorities must be maintained in all circumstances.

General Comment 23 draws particular attention to the right of linguistic minorities to use their own language among themselves in private or in public and distinguishes

this from the general right to freedom of expression (article 19) and that of access to interpretation in court proceedings (article 14, paragraph 3) as this only applies if the individual cannot understand or express himself in the language of the court.

The Human Rights Committee also notes that the cultural rights protected by this article may “manifest itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them”.

Finally, the Human Rights Committee emphasises that “none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant”, in particular measures in favour of minority communities should be consistent with the non-discrimination provisions (although, as discussed under those provisions, this means distinctions based on objective and reasonable criteria not identical treatment). Paragraph 32 of **General Comment 28** (article 3 - the equality of rights between men and women) discusses the continuing obligation to ensure equal rights of men and women including in traditional ways of life.

NGOs have a critical role to play as outside observers and commentators in the monitoring of the implementation of the ICCPR in States Parties. They can often act as a bridge between the national and international levels and provide the UN Human Rights Committee with much valuable information about the situation on the ground during the reporting process. NGOs also make a concrete contribution with regard to the implementation of the Concluding Observations, both by lobbying the State and with their own follow-up activities.

These guidelines make readily available to all NGOs the expertise which the Centre for Civil and Political Rights has accrued in the area of the reporting process. The combination of detailed practical and substantive information should make these Guidelines extremely useful in facilitating and honing the work of NGOs in relation to the UN Human Rights Committee.

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