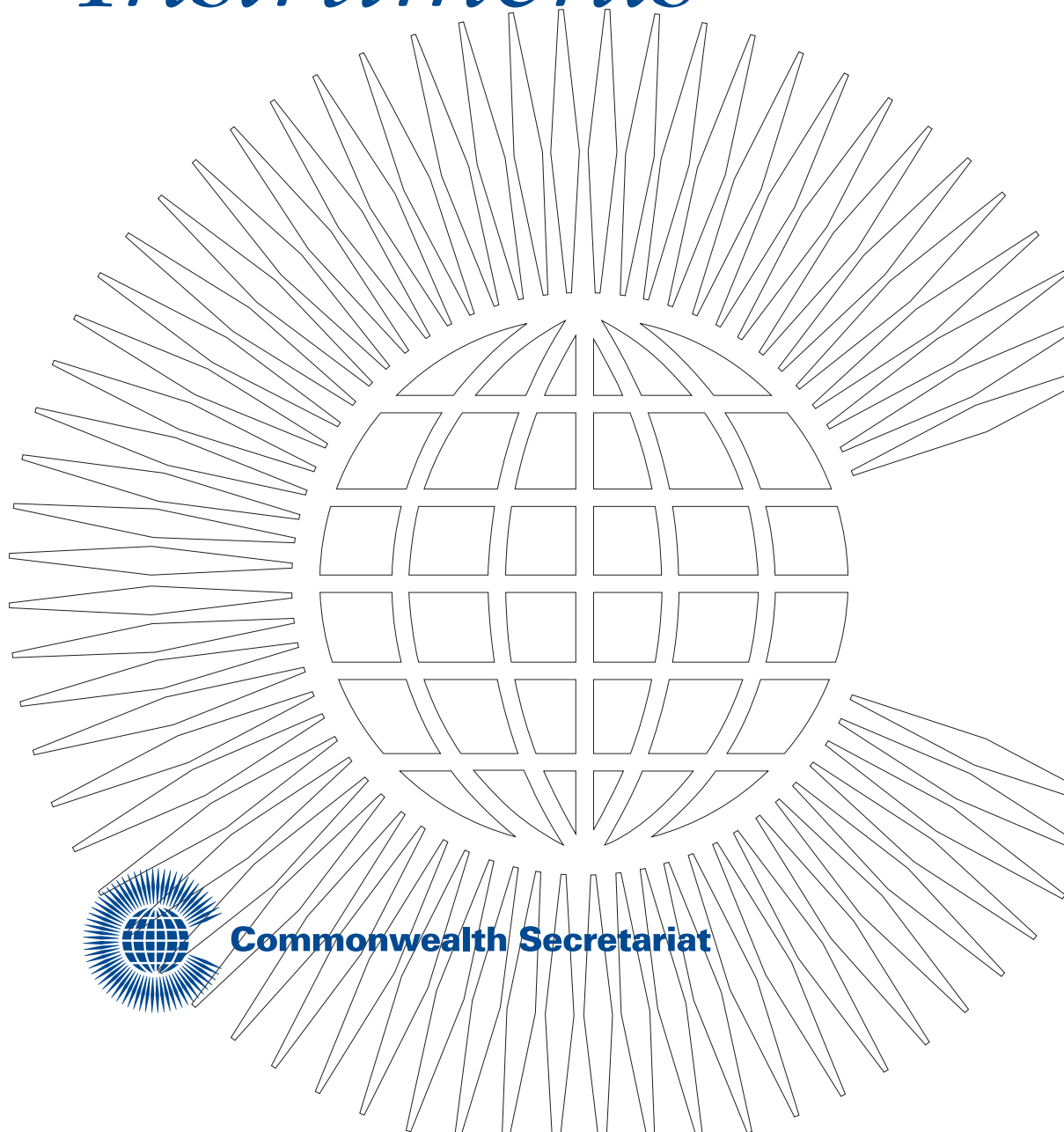


*Handbook on  
Ratification of*

**HUMAN  
RIGHTS**

*Instruments*



**Commonwealth Secretariat**



# Handbook on Ratification of Human Rights Instruments



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# Foreword

by the Rt Hon Don McKinnon, Commonwealth Secretary-General

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“Freedom from fear’ could be said to sum up the whole philosophy of human rights”, wrote Dag Hammarskjöld, the former UN Secretary-General.

The right to life, to freedom of expression and opinion, to practise one’s religion, the right to a fair trial, the right to be free from torture, the right to a basic education – these are just some fundamental human freedoms and entitlements which have been debated over centuries but which for over half a century now have been set in stone by the international community in the *Universal Declaration of Human Rights*. Forty years ago this year, the two 1966 Covenants went further: they defined more explicitly in international law fundamental Civil and Political Rights, and Economic, Social and Cultural Rights.

We in the Commonwealth bring together 53 nations and some 1.8 billion people. We unite governments and peoples. We may be bound by language, by history, by shared ways of doing things. But above all we are bound by shared values and beliefs about the principles of peace, democracy, equality, good governance and the rule of law.

Integral to these principles are human rights. No member of this Commonwealth can claim absolute adherence to the letter and the spirit of the two Covenants. Yet all must strive to do so; and all must be accountable in their efforts.

As I write - in August 2006 – twenty Commonwealth countries are still either to sign or to ratify both of these Covenants. That is twenty too many. Some say that human rights do not seem a priority when seen alongside the imperatives of fighting poverty. Others say that they lack the knowledge and capacity to ask where the Covenants do and do not fit with their own national policies, legislation and culture, what they might have to do to become a party, and indeed to report regularly and publicly on how they have enacted them. We fully understand: this Handbook, coupled with the dedicated support being given by Commonwealth technical advisers, is designed to address those very concerns. I invite you to take up this support. And we do not act alone, and are in close cooperation with the Office of the UN High Commissioner for Human Rights to address these concerns and ease these burdens.

Such concerns, however, can never blind us to the truth that the Commonwealth cannot show global moral leadership until the day when all of our members have ratified these two Covenants. Ratification represents the clearest indication of our commitment to a 21st century in which human rights are never wronged. It is also the only possible consequence of the way that we enshrined and adopted our own commitment to fundamental and indivisible human rights in our *Harare Declaration* of 1991. There are, of course, other important international human rights instruments, for example those covering children, the prevention and prohibition of State torture, discrimination against women and racial discrimination. All require our attention and commitment. Yet the two 1966 Covenants provide the soundest foundation, which has stood the test of time since their promulgation forty years ago this year.

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When I first became Commonwealth Secretary General in April 2000, I made it clear that human rights would be one of the cornerstones on which I would build my own commitment to the Commonwealth. This Handbook has been designed as part of honouring that commitment.

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**Don McKinnon**  
**Commonwealth Secretariat**  
**Marlborough House, London**

**August 2006**

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# Foreword by the Human Rights Unit

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The member countries of the Commonwealth have mandated the Commonwealth Secretariat to assist them in the better promotion and protection of human rights at the national level. The Human Rights Unit of the Secretariat has prepared this Handbook as a resource tool, for the use of officials and others in member countries, on ratification of the International Covenant of Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These Covenants are widely accepted by the international community as forming the pillars of a global order founded on respect for human rights.

It is hoped that the publication of this Handbook in 2006 will encourage and assist members to take advantage of the 30th anniversary of the Covenants coming into force (1976-2006) by embarking on the process of ratifying the Covenants (as well as the other significant instruments referred to in this Handbook).

The Handbook is intended to be user-friendly and easy to navigate. It seeks to simplify and explain the process and consequences of ratification for those member countries which have yet to ratify one or both of the two Covenants, or any of the other significant human rights instruments discussed in this Handbook. There may of course be any number of reasons why certain countries have not yet ratified – from lack of capacity, to concern about certain aspects of the process itself (such as the reporting obligations which may arise with ratification), as well as concerns about the perceived incompatibility of the Covenants with aspects of certain national policies or values. With its focus on the process to be followed, the Handbook does not aim to deal with substantive issues and concerns States might have. It therefore only briefly deals with the content of the Covenants themselves.

As the Secretary General has noted in his Foreword, the Human Rights Unit stands ready to assist officials in Commonwealth member countries with every possible advice, assistance and support in reviewing their signing or ratification status; in the process of ratification and eventual implementation of the Covenants and the other significant human rights conventions; and in fulfilling reporting and other requirements which may arise from ratification. We strongly encourage member countries to contact the Unit to discuss the manner in which we might extend such support, consistent with our mandate.

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## Acknowledgements

The Human Rights Unit wishes to acknowledge the work of Professors Max du Plessis and Stephen Peté of the Faculty of Law, University of Kwazulu-Natal, Durban, South Africa, who were responsible for the drafting of this Handbook.<sup>1</sup>

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We would also like to acknowledge the work of the United Nations Secretariat Treaties Section (New York) whose Treaties Handbook has been most useful in drawing up the present Handbook. As will be apparent, this Handbook has drawn directly from the UN resource at some points. This is only appropriate, given that the UN Secretariat is the repository of all human rights conventions.

<sup>1</sup> For the UN Treaties Handbook, see <http://unconvention.un.org/English/ConventionHandbook/hbframeset.htm>; some reliance has also been placed on the OHCHR's Fact Sheet 30 on the human rights treaty bodies, implementation and reporting: <http://www.ohchr.org/english/bodies/docs/OHCHR-FactSheet30.pdf>

For an example of 'best practice' guidelines for government officers from a Commonwealth country (and although it deals with the whole process of negotiating multilateral treaties, rather than simply ratifying these) see this resource: 'Signed, Sealed and Delivered: Treaties and Convention-Making – An Official's Handbook' (Department of Foreign Affairs and Trade, Australia) [http://www.dfat.gov.au/treaties/treaties\\_handbook.pdf](http://www.dfat.gov.au/treaties/treaties_handbook.pdf)

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# 1 Introduction

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- **The aims and contents of this handbook**
- **Historical background to the Covenants: the significance of ratification**

## ***What are the aims of this Handbook?***

The Handbook attempts to explain in a practical way the procedural steps involved in signing, ratifying, or acceding to the ICCPR and ICESCR. The Handbook also seeks to provide information about the consequences of a State becoming a party to these instruments, and to answer questions which frequently arise in relation to the process and its effects. It is not intended to provide a resource in relation to substantive human rights issues that might arise in the process of reviewing ratification status.

While the central focus of this Handbook is the two Covenants, it also mentions some of the other important human rights instruments, for which the process of ratification is largely identical.<sup>2</sup> It is important to note that the terms 'convention', 'instrument', 'covenant', or 'treaty' are often used interchangeably: 'convention' and, where appropriate, 'instrument' will be used throughout this Handbook. The Handbook includes brief discussion of the following:

- (i) The evolution of international legal frameworks for the protection of human rights.
- (ii) The basic rights protected by the different human rights instruments, and the manner in which the provisions contained in these instruments operate.
- (iii) The core concepts which are involved when a state becomes party to a convention by signature and ratification, or by accession.
- (iv) The core concepts which are involved when a State enters a reservation or makes a declaration upon becoming party to a convention.
- (v) The step-by-step process to be followed by a State in becoming party to a convention, from signature to ratification and accession.
- (vi) The consequences of ratification: implementation, reporting obligations, and the effect of ratification on the domestic law of the ratifying State.
- (vii) Frequently asked questions which arise in relation to the general issues discussed in this Handbook.

A number of useful annexures, including the text of the Covenants themselves, are included at the end of this Handbook.

<sup>2</sup> Together with the *Universal Declaration of Human Rights* of 1948, the two Covenants (the ICCPR and the ICESCR, both of which came into force in 1976) form what has become known as the 'International Bill of Rights'. Apart from its central focus, this Handbook also deals with three other significant international human rights conventions to which some Commonwealth members are not yet party i.e. the *International Convention on the Elimination of All Forms of Racial Discrimination* of 1966 (CERD); the *Convention Against Torture* (CAT) 1984 and the *Convention on the Elimination of all Forms of Discrimination Against Women* of 1979 (CEDAW). The Human Rights Unit of the Commonwealth Secretariat is also able to assist with the process of ratifying these conventions (or their Optional Protocols).

The *Convention on the Rights of the Child* has been ratified by all Commonwealth countries, and thus is not covered in detail, although its Optional Protocols (on children in armed conflict and on the sale of children, child prostitution and pornography) remain open for ratification.

Apart from the instruments listed above, the international conventions that make up the basic international protective framework for human rights include the *Genocide Convention* 1948, the *Convention on the Status of Refugees* 1951 (and its Additional Protocol), and the *Convention on the Protection of the Rights of Migrant Workers and their Families* 1990. The main regional instruments are the *American Convention on Human Rights*, the *European Convention on Human Rights*, and the *African Charter on Human and Peoples' Rights*. The four *Geneva Conventions* (governing behaviour in armed conflict situations) are also basic to this picture.

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### ***The significance of ratification: some historical background***

It is useful to briefly set the Covenants (and other major instruments) against an historical background, in particular the obligations flowing from the United Nations Charter. After 1945, in the aftermath of the Second World War, details began to emerge of the systematic murder, torture, enslavement, displacement and abuse of civilians on a vast scale, as well as the commission of countless war crimes. In forming the United Nations, the international community felt compelled to take steps formally and globally to promote and protect human rights. It is no surprise that one of the four principles upon which the United Nations was founded is that of the protection of human rights. The UN Charter of 1945 proclaims that the United Nation's purposes include '...promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.'<sup>3</sup> Furthermore, the UN Charter obliges member States to promote 'universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.<sup>4</sup>

Shortly after the United Nations was created, the General Assembly adopted the Universal Declaration of Human Rights (UDHR) of 1948. The intention was not to create a legally binding document, but rather, as the preamble to the UDHR suggests, 'a common standard of achievement for all peoples and nations'. The UDHR was adopted by 48 votes to none, with eight abstentions. Although the UDHR was not legally enforceable, many of its provisions already represented or now have come to represent customary international law, and it has proved influential in shaping subsequent human rights conventions. The UDHR's enumeration of the most basic human rights has served as a benchmark, which led to the drafting of the Covenants and a range of international human rights conventions, which are binding on the States that are party to these agreements. Some of the duties in these conventions are considered binding on all States, whether or not they have ratified any international covenants – that is, of course, because some principles bind all States as a matter of customary international law. An example is the prohibition of State torture, which has been condemned universally as contrary to the international legal duties of States.

The process of drafting a legally-binding instrument enshrining the UDHR started soon after the UDHR was adopted in 1948. Initially a single covenant encompassing all human rights was envisaged. However, after long discussions, the General Assembly requested the Commission on Human Rights to draft two separate covenants, which led eventually to the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

A feature of the evolving international system since 1948, then, has been the development of an increasingly comprehensive web of legal protections at the international level, based on the duties that States owe to afford protection and fulfillment of human rights to their populations. The global human rights 'regime' has shifted somewhat from a consensus-based 'standard-setting phase', which occupied the period between 1950 and 2000, to an 'implementation phase', which will occupy the coming years. A sufficient number of basic human rights conventions are in place giving expression to these standards, and there is general agreement on the nature of the fundamental human rights contained in these conventions. However, it is important to secure comprehensive global ratification of the basic human rights conventions so as to complete the framework. Through ratification of human rights conventions at an international level, States send a clear message of an irrevocable commitment on the part of the State concerned to promote and protect the human rights of its population. Ratification (and the various mechanisms for reporting that follow from it), therefore, is the means by which States move the global human rights 'regime' from the 'standard-setting phase' of the last century to the 'implementation phase' that is the imperative of this century.

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<sup>3</sup> Article 1 of the Charter of the United Nations.

<sup>4</sup> Article 55 and Article 56 of the Charter of the United Nations.

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*“...we believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives; we recognise racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil; we oppose all forms of racial oppression, and we are committed to the principles of human dignity and equality...”*

from *The Declaration of Commonwealth Principles, Harare, 1991*

Commonwealth countries have of course been part of the process of solidifying common legal standards for State conduct, including through the Commonwealth's strong and principled stand against *apartheid* and racism in the post-colonial era. The Commonwealth has also played an important part in the general trend towards the universal acceptance of fundamental human rights, and the crystallization of international consensus as to what these rights are and what they require that States should do or not do. As the Secretary General has suggested in his Foreword, ratification of the ICCPR and the ICESCR by the remaining Commonwealth members would further complete the Commonwealth's contribution to the formulation and implementation of global standards and common values.

Signature and ratification of basic human rights conventions is not only at the top of the agenda of the Commonwealth, but also an important priority of the international community as a whole. In 2005, in his comprehensive vision document entitled '*In Larger Freedom*', UN Secretary General Kofi Annan called for further strengthening of the human rights normative framework, including the ratification of universal human rights instruments. Securing universal ratification of these is also a priority of other bodies. For example, Pacific Island Forum countries agreed in 2005 to the 'Pacific Plan', which lists ratification of international human rights conventions as a central first stage step.

The Secretary General's initiative to assist countries to ratify the Covenants fits centrally into the strategic objectives and mandate of the Commonwealth Secretariat in relation to the promotion of democracy, good governance and human rights. Further, the Covenants provide more detailed expression to the values set out by Commonwealth Heads of Government in the 1971 *Singapore* and 1991 *Harare* Declarations, as well as in the *Millbrook Plan* 1995 (Commonwealth Programme of Action on the *Harare Declaration*).

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## 2. Key Human Rights Instruments & the duties they impose

**This Handbook deals with the *process* of ratification, rather than the substance of the Covenants and other international human rights conventions. However, before looking at the actual process of ratification in subsequent sections, for the purposes of setting the context, this section briefly considers:**

- **Basic and Common Concepts: the nature of the State's international legal duty.**
- **ICCPR and ICESCR – the range and nature of the rights these conventions include, and the nature and level of the duty they impose.**
- **In brief, some of the other leading human rights conventions and what they involve.**

### ***Basic and Common Concepts***

- International human rights law calls upon States to meet a range of duties which require different conceptual forms of State action. States are required (under the Covenants and other human rights conventions) to 'promote', 'protect', 'ensure', 'fulfil' and 'respect' human rights, and to provide for a system of remedies where rights are breached.
  - Since human rights conventions are in effect multilateral treaties between States, the international legal duties they create are owed by the ratifying State to the other States party to the convention. Individuals do not necessarily obtain enforceable rights vis-à-vis the State as a result of ratification. Normally individuals are rather the beneficiaries of the duties created between States.
  - Usually, such conventions are not directly enforceable under national or domestic law without express incorporation into that law. That is, the act of ratification by a State does not, in most countries with a common law tradition, create new justiciable legal rights that may be relied upon by individuals in the courts.
  - A useful way to consider State obligations is to look at them as involving both 'positive' and 'negative' duties. A **negative** duty – as is at the heart of many rights in the ICCPR – requires that the State '*not act*'; that is, that a State party to a particular Covenant itself refrain acting in a way that amounts to violating the rights concerned. However, in certain circumstances the instruments also impose a **positive** duty on a State party '*to act*' to ensure that rights are fulfilled. For example, many of the duties under the ICESCR require the State to take positive measures to ensure the progressive realisation of the economic and social rights protected
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under the Covenant. Or, consider the right to life in the ICCPR: it requires the State both to itself not deprive a person of life without cause (negative duty) and to act positively to fulfil the right to life by, for example, putting in place crime prevention and apprehension systems to protect people from danger to their lives generally.

- In addition to the substantive content of the positive and negative duties created, which includes the obligation to go about implementing these standards within its jurisdiction after ratifying, such conventions of course create procedural obligations on States relating to the proper working of the convention mechanism itself. In general, these require a ratifying State to undertake systematic reviews of its own progress and performance in relation to the various substantive obligations, so as to report to bodies created under the conventions. In considering each convention below, a section is devoted to examining how these review and enforcement mechanisms operate.
- In considering the nature of the duties assumed by ratification, it is useful to recall that, of course, all individuals' rights are limited (by reference, for example, to others' rights and to the needs of a peaceful and orderly society). It is in the degree, manner and proportionality of limitation that the importance lies. All human rights conventions provide for limitation of rights in certain ways. Common to the Covenants considered below, for example, is that provision for the State to take measures limiting certain rights is built into these instruments. The actions or measures to limit a fundamental right should be necessary and proportional to the good aim that is being pursued. It is useful to examine Article 29 of the UDHR, which captures the basic position on limitations on rights:

*“Everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements or morality, public order and the general welfare in a democratic society.”*

Article 4 of the ICCPR provides that in time of officially proclaimed public emergency ‘which threatens the life of the nation’ States party may take measures derogating from their obligations ‘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.’ Also, there are certain rights (such as the right to life, and to be treated as a person before the law) which cannot be derogated from even in emergency situations. Article 4 of the ICESCR, meanwhile, provides that States may subject the listed rights to limitations only that are determined by law, and then only insofar as such limitations are “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”

- In outlining the most significant international human rights conventions, emphasis is given in what follows to the two Covenants. They have a generally similar structure and wording. Both recognise in their preambles the *interdependence* of all human rights: that the human rights ideal can only be achieved if conditions are created whereby everyone may enjoy their economic, social, cultural, civil and political rights.

Parts I of both Covenants are identical (on the right of all peoples to self-determination and to freely dispose of their natural wealth and resources). Parts II of both set out general provisions prohibiting discrimination and, in Article 2 of Part II of each Covenant, sets out the core overall obligation that each Covenant places upon States: to take legislative and other measures to protect and ensure rights, including a guarantee of the equal rights of men and women.

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Then Part III of each Covenant contains the substantive provisions, which elaborate on rights contained in the UDHR. Parts IV and following, which deal with the way in which each Covenant is monitored, reporting obligations of ratified countries, etc., are somewhat different as between each of the two Covenants and are considered below.

### ***The International Covenant on Civil and Political Rights (ICCPR)***

- The ICCPR was adopted by the General Assembly of the United Nations in 1966 and came into force in 1976. The ICCPR gives legal expression and further content to the UDHR's list of 'political' rights (rights that protect and enable participation in political processes such as freedom of expression, assembly, and association) and 'civil' rights of the classic sort (right to a fair trial, to know the charges and be brought before a court, etc).
  - The ICCPR contains the fullest catalogue of civil and political rights. These include:
    - The right to life (Article 6)
    - Freedom from torture, cruel, inhuman or degrading treatment or conduct (Article 7)
    - Freedom from slavery and servitude (Article 8)
    - Liberty and security of the person (Article 9)
    - That those deprived of liberty are to be treated with humanity (Article 10)
    - No imprisonment on basis of inability to fulfill a contractual obligation (Article 11)
    - Freedom of movement (Article 12)
    - Expulsion of aliens only in accordance with law (Article 13)
    - Equality before courts and tribunals and right to a fair trial (Article 14)
    - Non retroactivity of criminal law (Article 15)
    - Right to recognition as a person before the law (Article 16)
    - Right to privacy (Article 17)
    - Right to freedom of thought, conscience and religion (Article 18)
    - Right to freedom of expression (Article 19)
    - Prohibition of propaganda for war or advocacy of religious or racial hatred (Article 20)
    - Right of peaceful assembly (Article 21)
    - Right to freedom of association (Article 22)
    - Protection of the family (Article 23)
    - Right of the child to protection, registration, a name and a nationality (Article 24)
    - Right to participation in public affairs and to vote (Article 25)
    - Equality before the law and non-discrimination before the law (Article 26)
    - Right of individuals belonging to an ethnic, religious, linguistic minority to enjoy their own culture, practice their religion and use their own language (Article 27).
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## Article 2 of the ICCPR – the core obligations

*“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.”*

- Article 2 (quoted in the box above) contains the basic duty imposed on States by the Covenant. States parties to the ICCPR have an obligation to ‘respect’ those rights and ‘ensure’ that the rights contained within the Covenant are enjoyed by all people, without discrimination, within the State’s territory or subject to its jurisdiction.
- The terminology of Article 2 imposes an obligation upon States both to secure the rights directly through the actions of State officials or through States’ own legislative and other measures (including administrative practices and procedures), as well as to protect individuals against ‘indirect’ violation of rights by other actors (other than the State). It also obliges States (Article 2(3)) to provide for systems to ensure that effective remedies can be sought for the violation of rights, including violations by State officials.
- Central to the nature of the ICCPR is the duty on the State to take measures to prevent racial, religious and other forms of discrimination. The ICCPR however also provides for certain positive obligations on States Parties. For example, some groups suffer serious disadvantages in society as a consequence of entrenched discrimination against them. In order to achieve equality for such groups the ICCPR imposes positive obligations on States to promote equality, rather than a mere negative obligation to refrain from discrimination which is likely to do little to affect existing disadvantage. Accordingly, the Human Rights Committee (which monitors compliance with the ICCPR – see below) has recognised that ensuring non-discrimination may involve and require the adoption of positive measures including ‘positive discrimination’ (or ‘affirmative action’ as it is sometimes known). Thus the principle of equality enshrined within the ICCPR ‘requires States Parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.’<sup>5</sup> For example, it may be necessary under the Covenant for States to take affirmative action by ‘granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population’.<sup>6</sup>
- As noted above, States may derogate from the ICCPR during the time of an officially proclaimed public emergency, with the exception of violations of certain basic stipulated rights.<sup>7</sup>
- As with most conventions, reservations to the ICCPR may be made by States, provided they are not incompatible with the object and purpose of the Covenant (see section on reservations, below).
- An important issue in respect of approaching the ratification of the ICCPR is that of the death penalty. Some Commonwealth countries have retained the death penalty under national law. While the ICCPR protects the right to life (the duty of the State not to deprive an individual of his or her life), the death penalty is not automatically prohibited under the Covenant. Article 6(2) and 6(4) provide respectively as follows:

<sup>5</sup> See para 10. of General Comment 18 of the Human Rights Committee, and Harris and Joseph, *The International Covenant on Civil and Political Rights and United Kingdom Law*, (1995) at 578.

<sup>6</sup> See General Comment 18 of the Human Rights Committee, para. 10.

<sup>7</sup> Article 4 ICCPR.

*'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 judgment rendered by a competent court.'*

*'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.'*

Also, Article 6(5) of the ICCPR prohibits the penalty of death being imposed 'for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women'.

- Accordingly, it is permissible for a State to be a party to the ICCPR and to continue imposing the death sentence.

#### **Overview - the ICCPR and the Death Penalty**

It is permissible for a State to become a party to the ICCPR and yet to maintain the death sentence. The circumstances of permissible imposition of the death sentence by that State would, however, be limited, including only to 'the most serious crimes'.

Note that there is a substantial body of decisions which emanate from various national and regional courts, including the Privy Council, as well as UN treaty bodies, dealing with the death penalty and which together inform current international law on the practice of imposing the death penalty. Every year since 1997, what was the UN Commission on Human Rights has passed a resolution calling on States to establish a moratorium (or formal halt) on executions.

The Second Optional Protocol to the ICCPR, a separate optional instrument whereby States may opt to bind themselves to abolish the death penalty in their jurisdictions, is considered below.

#### **How are the provisions in the ICCPR enforced?**

Part IV of the ICCPR establishes the mechanism for enforcing the convention.

##### *The Human Rights Committee*

The ICCPR operates by obliging States Parties firstly to take steps to implement human rights protections and remedies, and secondly to respect procedures for the submission of periodic reports by States on their progress with implementation of the Covenant within their jurisdiction, as well as on their degree of compliance with their obligations under the Covenant.

The 'Human Rights Committee'<sup>8</sup> established by the Covenant has responsibility for monitoring progress by States Parties and measures taken towards compliance with the provisions of the ICCPR. This includes receiving reports from State Parties on 'the measures they have adopted which give effect to the rights recognised [in the ICCPR] and on the progress made in the enjoyment of those rights'.<sup>9</sup> Clearly, the core obligations contained in Article 2 form the basis on which such self evaluation and reporting take place. The Committee is made up of 18 independent experts 'of high moral character and recognised competence in the field of human rights'. Members are nationals of States Parties to the ICCPR and are elected by States Parties. Members of the Committee serve in their personal capacity (see Articles 28 to 39).

<sup>8</sup> Part IV ICCPR.

<sup>9</sup> Article 40 ICCPR.

### **State Reporting**

Article 40 of the ICCPR requires State Parties to submit an initial report to the Committee within one year of the Covenant coming into effect for the State concerned and thereafter “whenever the Committee so requests”. The Human Rights Committee has decided that the period for submission of subsequent reports is five years.<sup>10</sup> However, rules of procedure stipulate also that reports may be requested ‘at any other time the Committee deems appropriate.’<sup>11</sup> The Committee has provided guidance to States on the preparation of initial and subsequent periodic reports.<sup>12</sup> The Committee has reminded States that, in preparing their reports, they should bear in mind that the obligations under the Covenant include undertakings by them not only to respect, but also actively to ensure that all individuals within their territory enjoy the enshrined rights.<sup>13</sup>

NGOs and other non-State bodies do not enjoy formal standing under the reporting procedure. However, NGOs and others may submit information to Committee members informally and thus influence proceedings.<sup>14</sup> Indeed the Committee ‘encourages’ NGOs to submit written information or reports to the Committee for their consideration, and it has become a common practice for NGOs to provide the Committee with ‘shadow reports’ on a State’s compliance.<sup>15</sup> Often, the national human rights institution (if there is one) will assist in the compilation of such a report. In some Commonwealth countries, the national report is prepared in consultation with civil society and a joint report is submitted.

### **Article 41 Inter-State Communications**

If it chooses to do so, a State Party may at any time declare, under Article 41, that it recognizes the competence of the Committee to receive and consider ‘inter-State communications’. These are communications where one State Party claims that another State Party is not fulfilling its obligations under the Covenant.

Article 41 sets out a detailed procedure for such Communications, so that States are given the opportunity to clarify between themselves the matters raised by the other State. Thus if a State Party to the ICCPR considers that another State Party is not giving effect to the provisions of the Covenant, it may, by written communication, bring the matter to the attention of that State Party. If the matter is not adjusted to the satisfaction of both States, either has the right, upon notice, to refer the matter to the Committee.

Such Article 41 Communications may be received and considered only if submitted by a State Party which has *itself* made a declaration recognizing the competence of the Committee to examine any Communications which might be brought by other States in respect of its own performance on compliance. The Committee will not receive a Communication if it is made by or made about a State Party which has not made such a declaration. The Committee’s procedures are not public. It may assist in resolving the matter, in which case a report of the solution reached is drawn up. If no solution is reached, the Committee’s report is confined to a factual record of the matter between the States. In the event of not reaching any resolution, it is also possible that the Committee may appoint a Conciliation Commission under Article 42, with some reporting powers and duties.

### **The First Optional Protocol to the ICCPR (Individual Petitions)**

In addition to State reporting under Article 40 of the ICCPR itself, the First Optional Protocol<sup>16</sup> to the ICCPR allows for petition to the Human Rights Committee by individuals of ratified States. This petition system was erected in order to further the purposes for which the ICCPR itself was set up. It is a system that enables individuals of a State that has chosen to ratify the Optional Protocol and who claim to be victims of a violation of the Convention to file, in certain limited circumstances, individual ‘communications’ with the Committee for its consideration. There are various limitations on which communications are admissible, the most significant of which is that the individual (anonymous

<sup>10</sup> UN Doc., CCPR/C/19/Rev.1.

<sup>11</sup> See: ‘Rules of Procedure of the Human Rights Committee’ CCPR/C/3/Rev.6 and see for further information Michael O’Flaherty “Human Rights and the UN: Practice Before the Treaty Bodies”, 1996.

<sup>12</sup> UN Doc., CCPR/C/5/Rev. 2 and CCPR/C/20/Rev. 2.

<sup>13</sup> Ibid.

<sup>14</sup> See Michael O’Flaherty “Human Rights and the UN: Practice Before the Treaty Bodies”, 1996.

<sup>15</sup> <http://www.unhchr.ch/html/menu2/6/a/introhc.htm>.

<sup>16</sup> *Optional Protocol to the International Covenant on Civil and Political Rights* (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XX) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 9).

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communications are not allowed) has demonstrated that they have exhausted all available domestic remedies that might have been open to them, and the matter is not at that time before any other decision-making body.

The 'OP 1' to the ICCPR is a separate legal instrument to the ICCPR and a human rights convention in its own right. The ratification process is entirely independent of ratification to ICCPR itself. As an optional convention, States may elect whether or not to enable individual petitions to be brought against them by private persons. Once ratified or acceded to the OP, States may denounce their ratification at any time by following the process in Article 12.

### **The Second Optional Protocol to the ICCPR (Abolition of the Death Penalty)**

The ICCPR regime is further supplemented by the Second Optional Protocol,<sup>17</sup> aimed at the abolition of the death penalty. The Preamble notes that States that opt to ratify this separate instrument (sometimes referred to as 'OP 2') do so in the belief that 'abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights' and the belief that 'all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life'. It notes that Article 6 of the ICCPR 'strongly suggests that abolition is desirable.'

The core commitment of a State ratifying OP 2 is a moratorium on executions, along with an undertaking eventually to abolish the death penalty. Article 1 provides that no one within the jurisdiction of a State Party shall be executed, and each State Party that has ratified shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 2 provides that no reservations are admissible to the Protocol, although there is provision for a reservation to the effect that the death penalty may be applied 'in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime'

As with OP 1, this Protocol is entirely an optional instrument: ratification of the ICCPR itself does not mandate going on to ratify an OP.

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<sup>17</sup> *Second Optional Protocol to the International Covenant on Civil and Political Rights* (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/128 of 15 December 1989. Entry into force 11 July 1991 in accordance with Article 8(1)).

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## ***The International Covenant on Economic, Social and Cultural Rights (ICESCR)***

- The ICESCR entered into force in 1976. It imposes duties on the State to ensure and fulfil certain rights which relate to ensuring human dignity and development by enabling people to meet their minimum economic and socio-cultural needs. It is the only universal human rights instrument which deals extensively with the whole range of economic, social and cultural rights. The ICESCR represents recognition of the indivisibility of rights - that political and civil rights, such as those enshrined in the ICCPR, cannot effectively be exercised except under conditions of material, social, and cultural security.
- The ICESCR includes the following rights:
  - The right to work (Article 6).
  - The right to fair conditions of employment (Article 7).
  - The right to join and form trade unions (Article 8).
  - The right to social security (Article 9).
  - The right to protection of the family (Article 10).
  - The right to an adequate standard of living, including the right to food, clothing, and housing (Article 11).
  - The right to health (Article 12).
  - The right to education (Article 13).
  - The right to culture (Article 15).

### **Article 2 of the ICESCR – the core obligations**

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

- A State which becomes a party to the ICESCR must take legislative and other steps, to the maximum of its available resources, with a view to achieving progressively the full realisation of these rights. This principle of ‘progressive realization’ expressly acknowledges the constraints States Parties may face due to the limits of available resources. However, the ICESCR also imposes an immediate obligation on States to take deliberate, concrete and targeted steps towards the full realisation of the rights set out in the Covenant.

These rights are sometimes mistakenly considered ‘non-justiciable’ (that is, that they are lacking in content to such an extent that courts are unable to order States to fulfill them in specific terms). However, they have been interpreted to prescribe at least a ‘minimum core content’ binding on States. It is possible by reference to Article 2 to gauge the progress of any State in terms of its duty to ‘take steps’. There is also a duty on States, set out in Article 3, to ensure the equal right of men and women to the enjoyment of the rights set out in the Covenant.

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## How are the provisions in the ICESCR enforced?

### *State Reporting*

The body that oversees the implementation of the ICESCR is the Committee on Economic, Social and Cultural Rights. Unlike the other institutions created by UN-sponsored treaties (known generally as UN Human Rights Treaty Bodies), the Committee on Economic, Social and Cultural Rights was not established by its corresponding instrument. The Economic and Social Council (ECOSOC) of the United Nations created the Committee. The members of the Committee are elected by the ECOSOC and thus the Committee is a subsidiary organ of ECOSOC and derives its formal authority from that body.

The primary function of the Committee is to monitor progress on the implementation of the ICESCR by States Parties. Under Articles 16 and 17 of the ICESCR, States Parties undertake to submit periodic reports to the Committee (within 2 years after the Covenant enters into force in respect of a particular State Party and thereafter once every 5 years) outlining the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the rights contained in the ICESCR.

As with the ICCPR, the formal reporting procedures give standing only to State Parties. However, the Committee has adopted a particular procedure permitting participation of NGOs. Further, the Committee has reiterated its long-standing invitation to NGOs to submit in writing, at any time, information regarding any aspect of its work.<sup>18</sup>

### *No individual petition system*

The system of supervision devised for the ICESCR differs from that for the ICCPR in so far as it does not, at this time, provide for submission of individual petitions as provided for by the First Optional Protocol to the ICCPR. During the drafting of the Covenant it was believed that the progressive nature by which the rights were to be implemented, made it impossible for individual complaints to be entertained. As a result, the only obligation which the ICESCR places on States Parties (at present) is that they periodically report to the Economic and Social Council on the 'measures which they have adopted' and the 'progress made' in achieving observance of the rights set out in the Covenant.

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## ***The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)***

The *Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) was signed in 1965 and entered into force in 1969. It is the oldest and one of the most widely ratified human rights instruments of the United Nations. ICERD builds on the non-discrimination provisions set out in the UN Charter and the UDHR. The desire to eliminate all forms of racial discrimination from our societies is a core issue around which the modern Commonwealth has come to define itself, and for years the organisation raised its common voice against *apartheid* in South Africa, further solidifying Commonwealth values in the process. This makes ratification of ICERD particularly apposite for Commonwealth member countries.

### **ICERD: its place in the evolution of the modern Commonwealth**

In opening the Commonwealth Peoples' Forum in Malta in November 2005, Commonwealth Secretary General Don McKinnon specifically mentioned the significance of ICERD to the organization:

*"...the Harare Declaration 1991...also talks at length about racism. Remember that the Declaration occurred at a time in history when we were contributing in our own way to the conclusive end of apartheid in South Africa. The Declaration says, and I quote:*

*'...we recognise racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil.'*

*Rarely were truer words spoken with greater importance and impact. Yet there are still Commonwealth members today that have not ratified the Convention on the Elimination of Racial Discrimination – the international instrument that converts our strongly held Commonwealth principle into broader international law. It's almost unbelievable, and we can take no satisfaction from that, let alone claim moral leadership globally."*

Article 2(1) contains the basic obligation on States that are party to ICERD: to pursue by all appropriate means, and without delay, a policy of eliminating racial discrimination in all its forms and promoting understanding among all races. States undertake, *inter alia*, to engage in no act or practice of racial discrimination; not to sponsor, defend or support racial discrimination; to take effective measures to review governmental, national and local policies; to prohibit and bring to an end racial discrimination by any persons, group or organisation; and to encourage, where appropriate, integrationist multiracial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

'Affirmative action' policies and programs are permitted under ICERD. Article 1(4) permits States to take special measures, 'for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection'. Such measures may not, however, lead to the maintenance of separate rights for different racial groups, and may not be continued after the objectives for which they were taken have been achieved. In terms of Article 2(2) States are required, when the circumstances so warrant, to take special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. Once again, such measures may not entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

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**How are the provisions in the ICERD enforced?**

ICERD established the Committee on the Elimination of Racial Discrimination to monitor its implementation by States Parties. States Parties are required to submit periodic reports to the Committee on the measures adopted which give effect to the rights contained in the Convention.<sup>19</sup> Reports must be submitted within one year of the Convention coming into effect for the State concerned and thereafter when the Committee directs.<sup>20</sup>

ICERD provides (within the body of the Convention, rather than as a separate instrument), for an optional system under which States Parties may 'declare and recognise the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in ICERD.'<sup>21</sup>

As with all the treaty bodies, the Committee accepts submissions of information from independent sources and NGOs.<sup>22</sup>

**19** Article 9 of ICERD.

**20** Article 9 of ICERD.

**21** Article 14 of ICERD.

**22** Background document prepared by the secretariat 'Methods of Work Relating to the State Reporting Process', First inter-Committee meeting of the human rights treaty bodies, 26-8 June 2002, HRI/ICM/2002/2.

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## ***The International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)***

CEDAW was adopted by the UN General Assembly in 1979, entered into force in 1981 and is the most significant and comprehensive instrument dealing with women's rights and the elimination of gender-based discrimination.

CEDAW is concerned primarily with achieving equality between women and men. The Convention requires States Parties to prohibit sexual discrimination by embodying 'the principle of equality of men and women in their national constitutions or other appropriate legislation.'<sup>23</sup> Furthermore, States Parties are obliged to eliminate all discrimination against women, and to adopt laws or other measures 'including sanctions where appropriate, prohibiting all discrimination against women.'<sup>24</sup>

CEDAW is a significant convention in the Commonwealth, and its provisions help to create the international legal framework within which the Commonwealth Plan of Action on Gender Equality 2005 – 2015 operate. CEDAW acknowledges that women are a disadvantaged group and that their vulnerability to discrimination is compounded and increased when they belong to a racial or ethnic group which is in the minority.<sup>25</sup> The Convention therefore complements ICERD by prohibiting discrimination against women in particular when they belong to racial or ethnic minorities.

### **How are the provisions of CEDAW enforced?**

CEDAW establishes a Committee on the Elimination of Discrimination Against Women.<sup>26</sup> In common with the other major UN human rights conventions, the Convention provides for a mandatory system of State reporting within one year of ratification (and thereafter every four years) whereby States must submit reports detailing the legislative, administrative and other measures taken to give effect to the Convention rights, and progress on these measures, as well as factors hindering progress on these.<sup>27</sup>

### **The Optional Protocol to CEDAW**

By ratifying the Optional Protocol to CEDAW, a State allows for petition to the Committee by individuals of that State.<sup>28</sup> Furthermore, Article 8 of the Optional Protocol to CEDAW allows the Committee to make an inquiry and visit the territory of the State Party if the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set out in the Convention. However, such a visit may only take place 'where warranted and with the consent of the State Party'. Under Article 9 the Committee may invite the State Party concerned to indicate in the general report which that State is required to submit in terms of Article 18 of the Convention, the details of any measures it has taken in response to an inquiry conducted by the Committee in terms of Article 8.

However, it is important to note that in terms of **Article 10**, each State Party may, at the time of signature or ratification of the Optional Protocol, '**opt out**' or declare that it does not recognize the competency of the Committee to take the steps provided for under Articles 8 and 9, thereby opting out of the inquiry provisions of the Protocol .

The OP-CEDAW (like the Protocols to the CRC and the CAT discussed below) remains open for signature and ratification by Commonwealth countries. Twenty-one members have ratified or signed the OP-CEDAW (as at July 2006), with some exercising the option of the 'opt-out' clause provided for in the Protocol. Of these 21 members, 5 have signed, but not yet ratified this instrument.

<sup>23</sup> Article 2(a) of CEDAW.

<sup>24</sup> Article 2(b) of CEDAW.

<sup>25</sup> See for, example, the Concluding Comments of the Committee on the Elimination of Discrimination against Women: United Kingdom of Great Britain and Northern Ireland. 01/07/99. A/54/38, paras.278-318. (Concluding Observations/Comments).

<sup>26</sup> Article 17.

<sup>27</sup> Article 18.

<sup>28</sup> The *Optional Protocol to the Convention on the Elimination of Discrimination against Women* was adopted by General Assembly resolution A/54/4 on 6 October 1999, was opened for signature on 10 December 1999, and entered into force on 22 December 2000.

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## ***The Convention on the Rights of the Child (CRC) and its two Optional Protocols***

The CRC was adopted by the United Nations General Assembly in 1989 and the Convention came into force a year later. The CRC is the most widely ratified human rights convention, and all Commonwealth countries are parties to it.

Under the CRC, a broad range of children's rights are recognised including the right to life;<sup>29</sup> the right to education;<sup>30</sup> the right to protection from economic exploitation;<sup>31</sup> and the right to be free from torture or other cruel, inhuman or degrading treatment or punishment.<sup>32</sup> In general these are the basic human rights contained in the ICCPR and the ICESCR – the CRC bundles them in terms of the particular vulnerabilities of children.

### **How are the provisions of the CRC enforced?**

The CRC establishes a 'Committee on the Rights of the Child' which monitors the implementation of the CRC (and the Optional Protocols).<sup>33</sup> The CRC puts in place a reporting procedure typical of the other UN treaty body systems, whereby States Parties are required to submit reports in which they detail the measures they have taken to comply with their CRC obligations.<sup>34</sup>

### **The Optional Protocols to the CRC**

While all Commonwealth States have ratified the CRC, there are two free-standing optional protocols to the CRC that are still open to be ratified by Commonwealth members.

These optional instruments are significant international instruments in their own right, and deal with urgent human rights issues relating to children in armed conflict, and exploitation of children through sale, prostitution and pornography. The ratification of these two optional protocols is greatly encouraged in the Commonwealth, especially in view of the particular problems of children affected by armed conflict in a number of Commonwealth countries, as well as the increase in the trafficking of children globally for the purpose of prostitution and other forms of sexual exploitation.

- *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* 2000 obliges States Parties, among other duties, to ensure that persons who have not attained the age of 18 years are not recruited compulsorily into their armed forces.
- *The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* 2000 obliges State Parties to prohibit child prostitution, child pornography and the sale of children.

### **Eradicating the exploitation and forced servitude of children**

**Among the most urgent human rights issues, each of which attracts universal condemnation, is the abuse of children in situations of armed conflict; the forced servitude and sale of children; and the sexual exploitation of children.**

**Commonwealth countries, which have all ratified the CRC, are able to express their further commitment to protecting children by ratifying the CRC's two Optional Protocols. These Protocols opened for signature in 2000, enabling Commonwealth countries to express their renewed commitment to eradicate these abusive practices.**

**The rationale which underpins each of the Optional Protocols (the text of each of which is annexed to this Handbook) is contained in their respective Preambles.**

<sup>29</sup> Article 6.

<sup>30</sup> Article 28.

<sup>31</sup> Article 32.

<sup>32</sup> Article 37.

<sup>33</sup> Article 43.

<sup>34</sup> Article 44.

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## ***The International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)***

The CAT 1984 (which came into force in 1987) recognises that torture is prohibited by customary international law. The CAT thus codifies an existing position in international law. Essentially, it is a procedural convention requiring States Parties to facilitate the punishment of torture through their domestic or national law.

All States Parties are required by the Convention to exercise jurisdiction in respect of the prosecution and punishment of torture committed within their territory either by or against their nationals. As a result, the CAT creates a system of universal jurisdiction over the crime of torture. Each State Party, within whose territory a person alleged to have committed an offence is found, is obliged to submit the case to its own competent authorities for the purposes of prosecution unless it extradites the alleged offender to another State. This is so even if the alleged offender is not its national and even if the offence was committed abroad.

'Torture' for the purposes of the Convention means 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes', as, amongst other things, obtaining information or a confession (Article 1).

### **How are the provisions of the CAT enforced?**

The Convention establishes a 'Committee against Torture' and provides for a regular progress reporting mechanism similar in kind to those contained in the other human rights conventions, discussed above.<sup>35</sup>

CAT provides (in Article 20) for a rather more proactive role for its committee than other human rights conventions. Article 20 provides that if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information. Article 20 details the powers and process that are involved, including that the Committee may submit observations with regard to the information concerned.

CAT also provides an optional system for receiving complaints from other State Parties, similar to Article 41 of the ICCPR, where one State has alleged that another State is not fulfilling its obligations under the CAT. Both States must have elected to receive such communications for either of them to make any specific complaint.<sup>36</sup> The CAT itself also provides for an optional system for receiving complaints from individuals,<sup>37</sup> if the State concerned permits such complaints. States may later denounce their earlier acceptance to be subject to inter-State complaints and individual communications, although not in relation to a complaint already afoot.

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<sup>35</sup> Articles 17 to 20.

<sup>36</sup> Article 21.

<sup>37</sup> Article 22.

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### **The Optional Protocol to the Convention Against Torture 2002**

The Optional Protocol to CAT (OP-CAT) provides for an inquiry procedure, the primary objective of which is to add to the protection already provided under CAT, by establishing a system (to which States may accede voluntarily) of regular visits undertaken by independent international and national bodies, to prevent torture and other cruel, inhuman or degrading treatment or punishment from taking place.<sup>38</sup>

The Subcommittee on Prevention of Torture (established by the OP-CAT) has a restricted mandate consistent with the often sensitive nature of the subject matter of OP-CAT. Article 2(3), for example, provides that in making visits the Subcommittee 'shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.'

### ***International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)***

The ICRMW was adopted by the General Assembly in December 1990 and officially entered into force thirteen years later in 2003 as the seventh basic human rights instrument of the United Nations. The Convention is by far the most comprehensive international tool promoting the human rights of migrants.

The Convention aims at guaranteeing equality of treatment and the same working conditions for migrants and nationals, by ensuring that migrants and members of their families are not subjected to discriminatory or degrading treatment, exploitation in terms of pay and conditions or other human rights abuses. The Convention addresses the obligation for States to guarantee migrants and their families humane living and working conditions, rights to freedom of thought, expression, religion, access to information on their rights, equal access to educational and social services, right to participate in trade unions, right to legal equality, access to interpreting services and are not sentenced to disproportionate penalties such as expulsion. States are to undertake to ensure that migrants whose rights have been violated may seek judicial remedy.

The Convention also protects both documented and undocumented workers, regardless of their legal status, by setting minimal standard of protection by which governments should abide. Although the Convention recognises that legal migrants have the legitimacy to claim more rights than undocumented migrants and does not encourage the latter's presence, it seeks to ensure that they have access to basic human rights. The Convention also proposes that actions be taken to address the problem of irregular migration.

#### **How are provisions of the ICRMW enforced?**

The Convention establishes a 'Committee on Migrant Workers' (CMW), which comprises a body of 10 independent experts that monitors the implementation of the Convention. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. The Committee can also, under certain circumstance, consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated once 10 States parties have accepted this procedure in accordance with Article 77 of the Convention.

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<sup>38</sup> Adopted and opened for signature, ratification or accession by the General Assembly of the United Nations in A/Res/57/199 (18 December 2002) and will enter into force upon being ratified by 20 states (so far 18 States have ratified the OP-CAT, and 50 have signed it).





# 3. Becoming a Party: Signature, Ratification, Accession

● **This section examines the central issues to be considered when a state contemplates becoming party to an international human rights treaty.**

● **These central issues include the nature and effect of the following: *signature of a treaty; ratification of or accession to a treaty; reservations or declarations made in respect of a treaty.* The section includes discussion of the effects on a state at both the national and international level.**

## ***Signature***

● Signature of a convention by a State constitutes a preliminary and general endorsement of that convention. In the case of multilateral human rights conventions such as those discussed in this Handbook, signature is a non-binding step and amounts to an indication that the country intends to undertake a careful examination of the convention in good faith to determine its position towards it, before ratifying.

● In addition to a signature, multilateral human rights instruments usually require a subsequent ratification by the State concerned. For example, Article 48 of the ICCPR provides, *inter alia*, as follows:

*'1. The present Covenant is open for signature by any State Member of the United Nations ...*

*2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary General of the United Nations.'*

● Put differently, signature indicates the State's intention to take the steps which are necessary to enable it to give its final consent to be bound by the convention at a later date. Once a State has gone through this process, it will ratify the convention concerned as a final expression of its consent to be bound. The period between signature and ratification is thus an opportunity for the State 'to reconsider its decision to be bound by the convention and, if necessary, to effect changes to its own law to enable it to fulfill its obligations under the convention.'<sup>39</sup>

● While a State that has signed a multilateral instrument such as those discussed in this Handbook is not bound by the obligations set out in the convention, there are legal consequences to its signature. Although signature does not commit a country to proceed to ratification, it does create an obligation to refrain from acts that would seriously undermine

<sup>39</sup> John Dugard (2005) *International Law - A South African Perspective* Juta & Co Ltd: Lansdowne at page 408.

or defeat the objectives of the Convention.<sup>40</sup> This is because Article 18 of the *Vienna Convention on the Law of Treaties* 1969 provides that:

*'A State is obliged to refrain from acts which would defeat the object and purpose of a convention when:*

*(a) it has signed the convention ... subject to ratification ... until it shall have made its intention clear not to become a party to the convention ...'.*

**Signature of a multilateral convention such as those discussed in this Handbook, results in an obligation during the period between signature and ratification, to refrain, in good faith, from acts which might defeat the object and purpose of the convention.**

### ***Defining Ratification and Accession***

- In order to become a party to a multilateral instrument, a State must demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained in the convention. In other words, it must express its consent to be bound by the convention. A State may express its consent to be bound in several ways, in accordance with the final clauses of the relevant convention. The most common ways are ratification and accession.
- In the section dealing with signature, reference was made to 'ratification', but not to the allied concept of 'accession'. A useful description of the term 'accession' is that '[a] state may later become a party to a convention in whose negotiation it did not participate, and which it did not sign, by means of accession, provided that the original parties accept that such states may accede to the convention.'<sup>41</sup>
- Multilateral conventions often provide that they will be open for signature only until a specified date, after which signature will no longer be possible. Once a convention is closed for signature, a State may generally become a party to it by means of accession. In other words, instead of first signing and then ratifying a convention in order to become bound by it, a State may be able to become bound by simply acceding to a convention.
- It is worth noting that most multilateral instruments on human rights, such as those discussed in this Handbook, are open for signature indefinitely.<sup>42</sup> States are therefore able to become parties to such conventions by means of signature followed by ratification. Furthermore, because such instruments seek to achieve a large measure of universality, they generally include an accession clause, which means that States may become parties to such conventions by means of accession.<sup>43</sup> Therefore, a State which wishes to become bound by such a convention may choose to follow the 'signature and ratification' route, or the 'accession' route.
- Accession has the same legal effect as ratification. However, unlike ratification, which must be preceded by signature to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession.<sup>44</sup>
- Accession is probably the best route to follow with conventions which are as widely accepted as those discussed in this Handbook, although some States may wish to proceed by adopting the route of signature and ratification, which allows for issues to be reconsidered between the two stages involved in this somewhat more complicated process. Note that the Secretary General of the United Nations, as depositary, has tended to treat instruments of ratification that have not been preceded by signature as instruments of accession, and the States concerned have been advised accordingly.

<sup>40</sup> In terms of Article 18 of the *Vienna Convention on the Law of Treaties* 1969.

<sup>41</sup> John Dugard (2005) *International Law - A South African Perspective* Juta & Co Ltd: Lansdowne at page 409.

<sup>42</sup> For example, the *Convention on the Elimination of All Forms of Discrimination Against Women, 1979*; *International Covenant on Civil and Political Rights, 1966*; *International Covenant on Economic, Social and Cultural Rights, 1966*; and *International Convention on the Elimination of All Forms of Racial Discrimination, 1966*.

<sup>43</sup> See, for example, Article 48(3) of the ICCPR.

<sup>44</sup> See Article 15 of the *Vienna Convention of 1969*.

## **The Process of Ratification/Accession**

- Ratification or accession refers to the acts undertaken on the international plane, whereby a State establishes its consent to be bound by a convention. As stated previously, a State in favour of a convention signs the convention shortly after it has been adopted and follows up the signature with ratification when all procedures required by domestic law have been fulfilled. A State may later become a party to a convention in whose negotiation it did not participate, and which it did not sign, by means of accession.
- When a State ratifies or accedes to a convention, it takes a formal decision to be a party to the convention in accordance with its domestic constitutional procedures. The State then deposits the instrument of ratification / accession with the UN Secretariat. The convention becomes legally binding upon the country within a certain period, for example 30 days after the instrument of ratification or accession has been received. The State is then bound in international law to the other States Parties to the convention, and is obliged to take legislative, law reform and other measures to respect, protect, promote and fulfill the rights contained in the convention, and to secure these for its populace.
- As pointed out earlier in the discussion on the key UN human rights conventions, the conventions include detailed compliance mechanisms. Depending on the human rights convention concerned, the State may be obliged to report periodically on what steps it has taken to give effect to the convention domestically. For example, if a State becomes party to the ICCPR then it will be obliged as a State Party to submit reports to the Human Rights Committee explaining the measures it has adopted to give effect to this convention.

### **Ratification at the National and International Levels Compared**

- Ratification at the international level, which indicates to the international community a State's commitment to undertake the obligations under a convention, should not be confused with ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions, before it expresses consent to be bound internationally.
- The domestic efforts taken by a State at the national level to become a party to a particular convention (for instance, through passing an Act of Parliament to give effect to the convention) are inadequate to establish a State's intention to be legally bound at the international level. The required actions at the international level must also be undertaken.<sup>45</sup>

#### **A preliminary note on Implementation**

*For most Commonwealth countries that are or wish to become party to these conventions and conventions, the obligations imposed will not become part of the country's domestic law without specific legislative or executive action. A convention will in most jurisdictions remain unenforceable in domestic law until such an act of incorporation takes place – it will not create rights and duties that may be relied on in court.*

*Thus, although a particular Commonwealth country may be bound at the international level by the conventions and conventions that it has ratified, the provisions of these conventions and conventions will remain unenforceable within the country's domestic courts, until they have been incorporated into domestic law by an Act of Parliament or executive act.*

*However, such conventions remain enforceable through the international machinery established by the conventions and conventions themselves. This is because the State has undertaken obligations vis-à-vis other States party to the agreement.*

<sup>45</sup> See United Nations Convention Book of the Office of Legal Affairs, Convention Section, available at <http://unconvention.un.org/English/ConventionHandbook/hbframeset.htm>



## 4. Becoming a Party: Reservations and Declarations

**This section explains the nature and effect of (1) reservations and (2) declarations that States may enter into when ratifying, in order to modify or exclude the obligations they are assuming, or to indicate their interpretation of a provision**

### **Reservations**

- A State's ratification of or accession to a convention may be made subject to a reservation. The *Vienna Convention on the Law of Treaties* of 1969 defines a 'reservation' as:

*'a unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a convention, whereby it purports to exclude or to modify the legal effect of certain provisions of the convention in their application to that state.'*<sup>46</sup>

- Thus in respect of multilateral conventions, subject to the important exceptions discussed below, a State may become a party to a multilateral convention while maintaining a reservation which excludes or modifies the legal effect of certain provisions of the convention in their application to that State.
- It is clear from the above definition that the purported effect of the 'unilateral statement' is more important than the manner in which it is 'phrased or named'. In other words, even though a unilateral statement by a state at the time it signs, ratifies or accedes to a convention may be termed a 'declaration', or 'understanding', or 'interpretative declaration', or 'interpretative statement', or something else, it will still amount to a 'reservation' in terms of the definition, if its purported effect is to exclude or to modify the legal effect of certain provisions of the convention in their application to that State.<sup>47</sup>
- Reservations are particularly important in the context of broad multilateral human rights instruments such as those discussed in this Handbook. As one noted commentator points out:

*'To some extent [reservations are] a means of encouraging harmony amongst states of widely differing social, economic and political systems, by concentrating upon agreed, basic issues and accepting disagreement on certain other matters.'*<sup>48</sup>

- States sometimes ratify a convention, but enter a reservation to certain provisions on the grounds that those provisions are inconsistent with a national law, or with a certain tradition,

<sup>46</sup> Article 2 of the *Vienna Convention on the Law of Treaties* 1969. See also Article 2(1)(d) of the *Vienna Convention on the Law of Treaties between States and International Organisations* of 1986, which provides a very similar definition of the term "reservation".

<sup>47</sup> See United Nations Convention Book of the Office of Legal Affairs, Convention Section, available at <http://unconvention.un.org/English/ConventionHandbook/hbframeset.htm>

<sup>48</sup> Malcolm Shaw, *International Law*, 5th Edition, 2003, 822.

or religious belief, or cultural practice. However, such broad reservations are often vulnerable to challenge from other States Party on the grounds that they undermine the nature and purpose of the convention itself.

- It is important to note that not all statements made by a State relating to the provisions of a convention at the time of signature or ratification, necessarily amount to reservations. For example, a State may make certain public statements for internal political reasons, and not in order to render its consent conditional upon a specific interpretation of the convention, or upon certain provisions of the convention not being binding on it.<sup>49</sup>

### Limitations on reservations

- In terms of Article 19 of the *Vienna Convention on the Law of Treaties* 1969, a State may make a reservation when signing, ratifying or acceding to a convention *unless*:
  1. The reservation is prohibited by the convention; or
  2. The convention provides that only specified reservations, which do not include the reservation in question, may be made; or
  3. In cases not falling under the above two categories, the reservation is incompatible with the object and purpose of the convention.
- Therefore, a State wishing to make a reservation when signing, ratifying or acceding to a convention should, in the first place, ensure that the particular convention neither explicitly prohibits the making of reservations, nor allows only for specified reservations, which do not include the reservation the State wishes to make. In the second place, that State should ensure that the reservation it wishes to make is not incompatible with the object and purpose of the convention.
- In other words, a State cannot say that it wishes to be bound by a convention, but then make a reservation which undermines the essence of what the convention is trying to achieve. Clearly, whether or not a particular reservation is 'incompatible with the object and purpose' of a particular convention, is open to interpretation. Generally speaking, however, it is fair to say that reservations which challenge a convention's central principles or the principles of international law, are not permitted, and will be challenged by other State Parties to the convention.

### The effect of a reservation

- At the outset it should be noted that, if a State which is party to a convention does not object to a reservation made by another State in relation to that convention, within a period of twelve months from the date on which the reservation was made, the first State will be deemed to have tacitly accepted the reservation.<sup>50</sup>
- Furthermore it should be noted that, by consenting to a convention, a State will be deemed to be accepting the reservations made more than twelve months previously by other States in relation to that convention, unless the consenting State objects to the reservations before it consents to the convention.<sup>51</sup>
- If there are no objections to a reservation, and the reservation is permissible, it will serve to modify the convention between the reserving state and the non-objecting States, to the extent set out in the reservation.<sup>52</sup>
- If a State objects to a permissible reservation, it may stipulate that it does not wish the convention *as a whole* to come into force between it and the State making the reservation. If the

<sup>49</sup> For a detailed discussion of this difficult area of international law see Malcolm Shaw, *International Law*, 5th Edition, 2003, 822-825.

<sup>50</sup> Article 20(5) of the *Vienna Convention on the Law of Treaties* of 1969.

<sup>51</sup> Article 20(5) of the *Vienna Convention on the Law of Treaties* of 1969.

<sup>52</sup> Shaw gives the example of a reservation by Libya to the *Vienna Convention on Diplomatic Relations* of 1961. This reservation allowed Libya to search the diplomatic bag of another state, with the consent of that state, and to insist that the said diplomatic bag be returned to its state of origin. The United Kingdom did not object to this reservation, and thus would have been entitled to treat diplomatic bags from Libya in a similar fashion. In other words, the *Vienna Convention on Diplomatic Relations*, as it related to Libya and the United Kingdom, was amended to the extent of the Libyan reservation, since the United Kingdom did not object to that reservation. See Malcolm Shaw, *International Law*, 5th Edition, 2003, 827.

objecting State does not make it clear that its intention is to prevent the convention *as a whole* coming into operation between itself and the State making the reservation, then the convention may still come into operation between the two States concerned, apart from those provisions to which the reservation relates, to the extent of the reservation.<sup>53</sup>

- Problems arise in relation to *impermissible* reservations. The first problem is to establish that the reservation is, in fact, impermissible. As pointed out in the previous section, this is difficult where the convention itself gives no guidance as to the permissibility of reservations, and the objecting state/states is/are alleging that the reservation is contrary to the object and purpose of the convention concerned.<sup>54</sup>
- Fortunately, some conventions do give guidance as to the permissibility of reservations. For example, Article 20(2) of the *International Convention on the Elimination of All Forms of Racial Discrimination* of 1966 provides as follows:

*'A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.'*

- Article 28(2) of the *International Convention on the Elimination of All Forms of Discrimination Against Women* of 1979 states simply that: 'A reservation incompatible with the object and purpose of the present Convention shall not be permitted.' Article 51(2) of the *Convention on the Rights of the Child* of 1989 adopts precisely the same wording.<sup>55</sup>

The above should serve to alert States to the difficulties which may arise in relation to reservations. This Handbook cannot hope to provide definitive answers to the difficult and unresolved questions alluded to in the preceding discussion. States wishing to make reservations in relation to the kinds of conventions discussed in this Handbook would be well advised to take legal advice on the matter.<sup>56</sup>

Commonwealth countries should bear in mind, however, that many of the difficulties outlined above will arise only in the event that States wish to make a reservation when becoming party to a particular convention. Commonwealth countries wishing to become parties to the international human rights conventions dealt with in this Handbook, in particular the ICCPR and the ICESCR, may well feel no need to make a reservation to any of the provisions in the conventions.

### Withdrawal of reservations

- Unless the convention provides otherwise, a State is entitled to withdraw its reservation or objection to a reservation completely or partially at any stage. Consent need not be obtained from the States concerned in order for the withdrawal to be valid.<sup>57</sup> However, the withdrawal must be in writing and signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities. The Secretary General of the United Nations will circulate a notification of the withdrawal to all States concerned.
- Article 22(3) of the *Vienna Convention on the Law of Treaties* 1969 provides that the withdrawal of a reservation becomes operative in relation to another State when that State is notified of the withdrawal. In the same way, the withdrawal of an objection to a reservation becomes operative when the reserving State is notified of the withdrawal.

<sup>53</sup> Article 21(3) read with Article 20(4)(b) of the *Vienna Convention on the Law of Treaties* of 1969.

<sup>54</sup> As Shaw points out '[a]t the moment, unless the particular convention otherwise provides, whether a reservation is impermissible is a determination to be made by states parties to the convention themselves. In other words, it is a subjective application of objective criteria'. See Malcolm Shaw, *International Law*, 5th Edition, 2003, 828.

<sup>55</sup> Assuming it has been established that a particular reservation is, in fact, impermissible, a second set of problems arise. Shaw outlines the different possibilities as follows:

'Either the convention provision to which the reservation has been attached applies in full to the state that made the impermissible reservation or the consent of the state to the convention as a whole is vitiated so that the state is no longer a party to the convention. A further question is whether the other parties to the convention may accept and thus legitimate an impermissible reservation or whether a determination of impermissibility is conclusive. All that can be said is that state practice on the whole is somewhat inconclusive.' See Malcolm Shaw, *International Law*, 5th Edition, 2003, 828-829.

Significantly in relation to the kinds of treaties discussed in this Handbook, Shaw points out the following important trend:

'There is a trend with regard to human rights treaties to regard impermissible reservations as severing that reservation so that the provision in question applies in full to the reserving state.' (Ibid).

<sup>56</sup> For an in depth discussion of these issues, and in particular the issues raised in General Comment 24/52 of 2 November 1994 by the UN Human Rights Committee, as well as in the Preliminary Conclusions on Reservations to Normative Multilateral Treaties Including Human Rights

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## **Declarations**

There are two types of declarations: Interpretive Declarations and Optional Declarations.

### **Interpretative declarations**

- A State may make a declaration about its understanding of a matter contained in a convention, or the manner in which it interprets a particular provision in a convention. Unlike reservations, interpretative declarations of this kind do not purport to exclude or modify the legal effects of a convention. The purpose of an interpretative declaration is to clarify the meaning of certain provisions or of the entire convention. Note, however, that if the effect of the declaration is to exclude or to modify the legal effect of certain provisions of the convention in their application to the state, then that declaration will amount to a reservation and will be treated as such.

### **Optional declarations**

- Interpretative declarations must be distinguished from 'optional declarations'. Many human rights conventions provide for States to make optional declarations that are legally binding upon them. In most cases, these declarations relate to the competence of human rights commissions or committees. For example, Article 41 of the ICCPR provides that

*'[a] State Party to the present Covenant may at any time declare under this Article that it recognizes the competence of the [Human Rights] Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.'*

### **Objections to declarations**

Usually, States object to a declaration by another State on the grounds that the declaration is in fact a reservation, since it modifies or excludes the legal effects of a particular provision of the convention. Put differently, objections generally focus on whether the statement is merely an interpretative declaration, or amounts to a reservation which seeks to modify the legal effects of the convention. If the objecting State concludes that the declaration is a reservation and/or incompatible with the object and purpose of the convention, the objecting State may prevent the convention from entering into force between itself and the reserving State.



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## 5. Becoming a Party: the steps to be followed

**This section sets out the practical steps to be followed in relation to the signature of an international human rights convention; the ratification of or accession to such a convention; and the making of a reservation or declaration in respect of such convention.**

### ***Where to Deposit the Convention***

The Secretary General of the United Nations is the depositary for over 500 multilateral conventions. The depositary functions relating to multilateral conventions deposited with the Secretary General are discharged by the Convention Section of the Office of Legal Affairs of the United Nations. The Section is also responsible for the registration and publication of conventions submitted to the Secretariat pursuant to Article 102 of the *Charter of the United Nations*. Article 102 provides that every convention and every international agreement entered into by a Member of the United Nations, after entry into force of the Charter, shall be registered with and published by the Secretariat.

The UN Secretariat has published a UN Handbook on Treaties<sup>58</sup> as a guide to the Secretary General's practice as a depositary of multilateral treaties, and to convention law and practice in relation to the registration function. The Handbook sets out a useful step-by-step procedure to be followed by a State wishing to become a party to a convention. In what follows the most salient points to this procedure are summarised. For further information and/or advice, States may contact the Convention Section, either directly or through the Human Rights Unit of the Commonwealth Secretariat. The contact information is set out below:

Convention Section, Office of Legal Affairs, United Nations, New York, NY 10017, USA

Telephone: +1 212 963 5047

Facsimile: +1 212 963 3693

E-mail (general): [convention@un.org](mailto:convention@un.org)

E-mail(registration): [ConventionRegistration@un.org](mailto:ConventionRegistration@un.org)

Web site: <http://unconvention.un.org>

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<sup>58</sup> See United Nations Convention Book of the Office of Legal Affairs, Convention Section, available at <http://unconvention.un.org/English/ConventionHandbook/hbframeset.htm>

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## **Steps Relating to Signature**

The various steps relating to the signature of an international human rights convention are set out below:

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### **The requirement of an instrument of 'full powers'**

The Head of State, Head of Government or Minister for Foreign Affairs may sign a convention or undertake any other convention action on behalf of the State without an instrument of full powers. A person other than the Head of State, Head of Government or Minister for Foreign Affairs may sign a convention only if that person possesses a valid instrument of full powers. This instrument empowers the specified representative to undertake specified convention actions. This is a legal requirement reflected in Article 7 of the *Vienna Convention on the Law of Treaties* 1969. It is designed to protect the interests of all States parties to a convention as well as the integrity of the depositary. Typically, full powers are issued for the signature of a specified convention.

Some countries have deposited general full powers with the Secretary General. General full powers do not specify the convention to be signed, but rather authorise a specified representative to sign all conventions of a certain kind.

### **What form must an instrument of full powers take?**

As depositary, the Secretary General insists on proper full powers for the person (other than a Head of State, Head of Government or Minister for Foreign Affairs) seeking to sign a convention. Documents not containing a legible signature from one of the above-mentioned authorities are not acceptable (e.g. a telexed message). Signature of a convention without proper full powers is not acceptable.

According to the UN Treaties Handbook, there is no specific form for an instrument of full powers, but it must include the following information:

*The instrument of full powers must be **signed** by one of the three above-mentioned authorities and must unambiguously empower a specified person to sign the convention. Full powers may also be issued by a person exercising the power of one of the above-mentioned three authorities of State **ad interim**. This should be stated clearly on the instrument.*

*Full powers are usually limited to one specific convention and must indicate the **title of the convention**. If the title of the convention is not yet agreed, the full powers must indicate the subject matter and the name of the conference or the international organization where the negotiations are taking place.*

*Full powers must state the **full name and title of the representative** authorised to sign. They are individual and cannot be transferred to the 'permanent representative'. Due to the individual character of the full powers, it is prudent to name at least two representatives, in case one is hindered by some unforeseen circumstance from performing the designated act.*

*The **date and place of signature** must be indicated.*

*Affixing an **official seal** is optional. Even though an official seal of the State concerned is affixed to the document, the convention must nevertheless be signed by one of the three authorities of State.*

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The Handbook contains the following example of an instrument of full powers:

*“I have the honour to inform you that I (name), President of the Republic of (name of State), have given full powers to the Honourable Ms (name), Secretary of State for the Interior and Religious Affairs, to sign on behalf of (name of State) the United Nations Convention against Transnational Organized Crime and the following two Protocols to be opened for signature in Palermo, Italy, from 12th to 15th December 2000:*

*Protocol against the smuggling of migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime.*

*Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime.*

*This note constitutes the full powers empowering the Honourable (name) to sign the above-stated Convention and Protocols.*

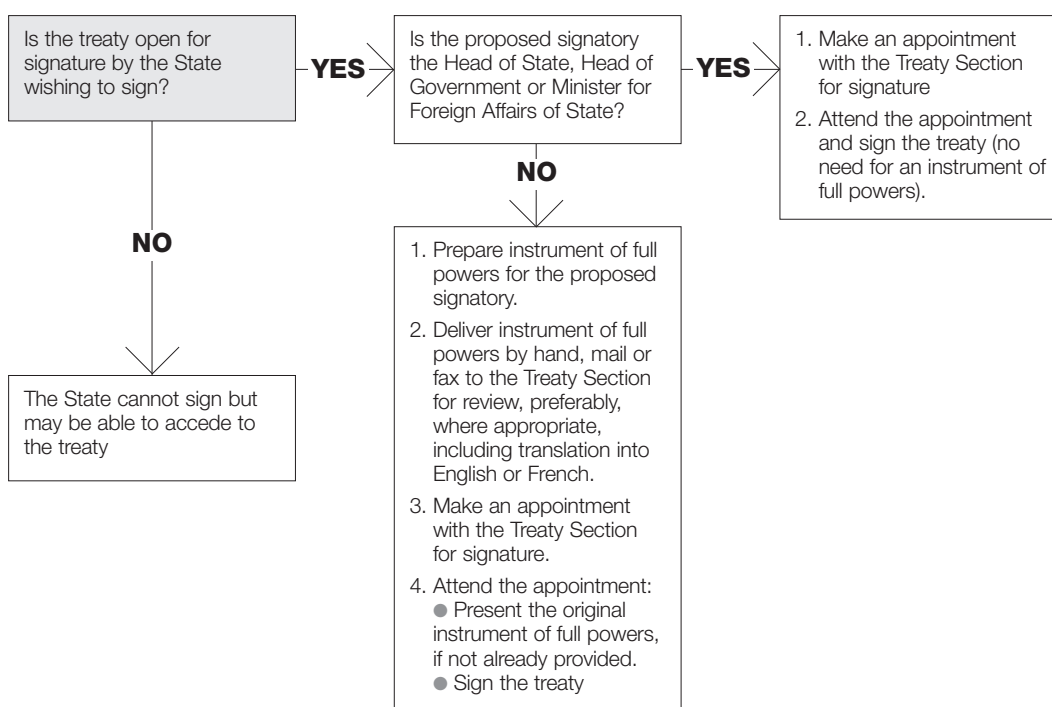
*The Hon. (name), President of the Republic of (name of State)*

*[Signature] “*

### Appointment with the depositary for affixing signature

Because the Secretary General of the United Nations is the custodian of the original versions of the human rights conventions discussed in this Handbook, any Commonwealth State wishing to sign a convention should make an appointment for signature with the Convention Section of the Office of Legal Affairs of the United Nations and submit to the Convention Section for verification a copy of the instrument of full powers well in advance of signature (facsimiles are acceptable for this purpose). The State should present the original instrument of full powers at the time of signature. Full powers may be submitted by hand or mail to the Convention Section.

The UN Treaties Handbook provides the following useful flowchart relating to the steps involved in the signature of a multilateral convention of the kind discussed in this Handbook:



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## **Steps Relating to Ratification/Accession**

The various steps relating to the ratification of or accession to an international human rights convention are set out below:

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### **Form of the instrument of ratification or accession**

When a State wishes to ratify or accede to a convention, it must execute an instrument of ratification or accession, signed by one of three specified authorities, namely the Head of State, Head of Government or Minister for Foreign Affairs. According to the UN Treaties Handbook, there is no mandated form for the instrument, but it must include the following:

*Title, date and place of conclusion of the convention concerned;*

*Full name and title of the person signing the instrument, i.e., the Head of State, Head of Government or Minister for Foreign Affairs or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities;*

*An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the convention and to undertake faithfully to observe and implement its provisions;*

*Date and place where the instrument was issued; and*

*Signature of the Head of State, Head of Government or Minister for Foreign Affairs (the official seal is not adequate) or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities.*

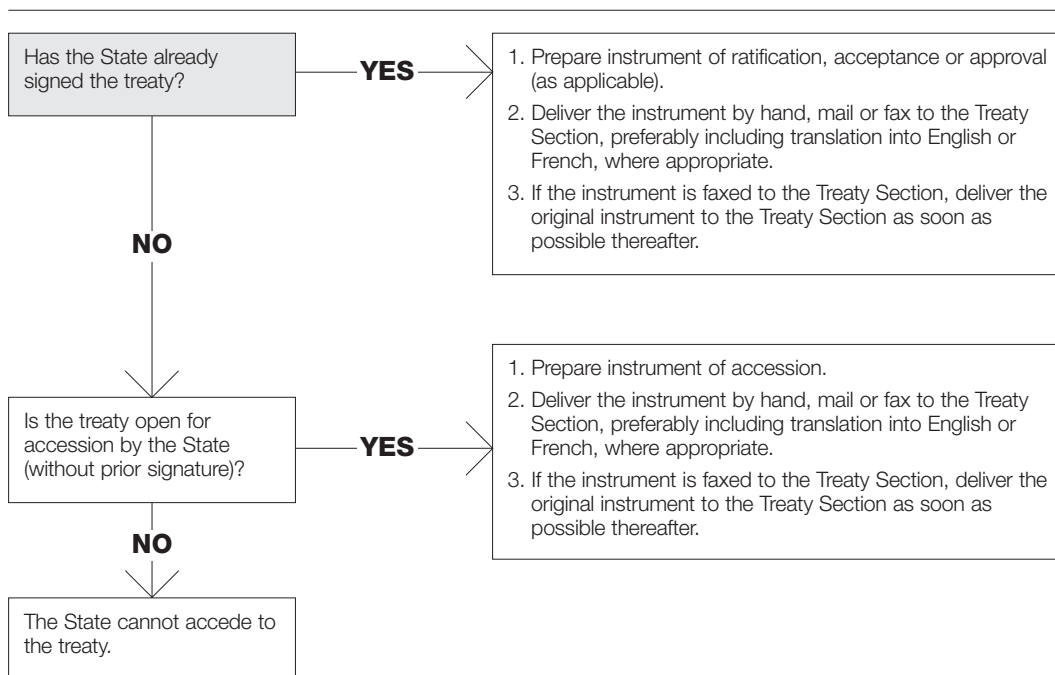
### **Delivery of the instrument of ratification or accession to the Secretary-General**

The instrument of ratification or accession becomes effective only when it is deposited with the Secretary-General of the United Nations at United Nations Headquarters in New York. The date of deposit is normally recorded as that on which the instrument is received at Headquarters.

States are advised to deliver such instruments to the UN Treaties Section directly to ensure the action is promptly processed. The individual who delivers the instrument of ratification does not require full powers. In addition to delivery by hand, instruments may also be mailed or faxed to the UN Treaties Section. If a State initially faxes an instrument, it must also provide the original as soon as possible thereafter to the Treaties Section.

The UN Treaties Handbook provides the following useful flowchart relating to the steps involved in the ratification of, or accession to, a multilateral convention of the kind discussed in this Handbook:

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### ***Steps Relating to Reservations and Declarations***

Various steps relating to the making of a reservation or declaration in respect of a multilateral convention are set out below:

#### **When and how to make a reservation**

Article 19 of the *Vienna Convention on the Law of Treaties* 1969 provides for reservations to be made at the time of signature or when depositing an instrument of ratification, acceptance, approval or accession. If a reservation is made upon simple signature (i.e. signature subject to ratification or accession), it is merely declaratory and must be formally confirmed in writing when the State later expresses its consent to be bound by ratification or accession.

Normally, when a reservation is formulated, it must be included in the instrument of ratification or accession or be annexed to it and, if annexed, must be signed separately by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities.

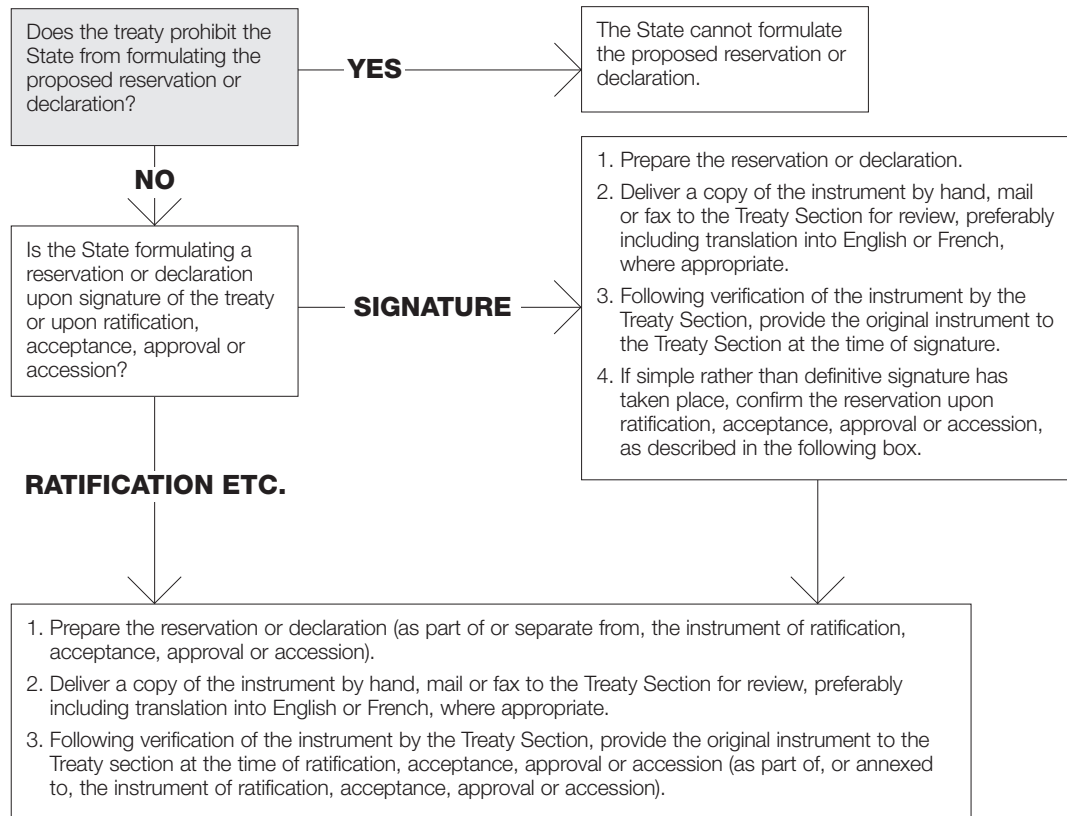
#### **When and how to make a declaration**

Declarations are usually deposited at the time of signature or at the time of deposit of the instrument of ratification or accession. Sometimes, a declaration may be lodged later.

The UN Treaties Handbook makes it clear that since an *interpretative* declaration does not have a legal effect similar to that of a reservation, it need not be signed by a formal authority as long as it clearly emanates from the State concerned. Nevertheless, such a declaration should preferably be signed by the Head of State, Head of Government or Minister for Foreign Affairs or a person having full powers for that purpose issued by one of the above authorities. This practice avoids complications in the event of doubt as to whether or not the declaration in fact constitutes a reservation.

In the case of *optional* declarations it is clear that they impose legal obligations on the declarant. Therefore, such declarations must be signed by the Head of State, Head of Government or Minister for Foreign Affairs or by a person having full powers for that purpose issued by one of the above authorities.

The UN Treaties Handbook provides the following useful flowchart relating to the steps involved in making either a reservation or declaration in respect of a multilateral convention:



### Translations

The UN Treaties Handbook recommends that, where feasible, States provide courtesy translations in English and/or French of instruments in other languages submitted for deposit with the Secretary General. This facilitates the prompt processing of the relevant actions.

### ***Ratification and Entry into Force***

*It is important to note that the act by which a State expresses its consent to be bound by a convention is distinct from the convention's entry into force for that State. Consent to be bound is the act whereby a State demonstrates its willingness to undertake the legal rights and obligations under a convention through definitive signature or the deposit of an instrument of ratification or accession. Entry into force of a convention is that moment at which the convention becomes legally binding for the State that is party to the convention.*

*Each convention contains provisions dealing with both aspects. For example, the ICCPR provides as follows (Article 49):*

*"1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.*

*2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession."*

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# 6. Consequences of Ratification

**The primary consequence of ratification is for the State to (1) implement or give effect within its jurisdiction to the various rights in the Covenants. The primary obligation to implement is contained in Article 2 of both ICCPR and ICESCR. The process of ratification might have a range of different (2) legal effects.**

**It is widely acknowledged that no one country has a perfect record on human rights, and there is always room for improvement. Another consequence of ratification is to periodically (3) report on what these implementation steps are and the plans for ongoing further implementation. Reporting was considered when introducing the ICCPR and ICESCR. What follows in this section are more generally applicable points.**

## ***Implementation***

- Implementation of a human rights instrument is the process of ensuring that the rights contained in the Covenants are protected and promoted within the legal system and national policies of the ratifying State. Countries have different systems in pursuing implementation after ratification. Some may require that the Covenants are incorporated into the national legislative framework as a schedule to a normal Act of Parliament. 'Implementation' entails the process generally of giving effect at home to a State's internationally-assumed responsibilities, and is not only focused on legislation but also on what Article 2 of each Covenant calls "other measures".
- While this Handbook deals mainly with the process of ratification, what follows now is discussion of the possible legal effect of ratification. References have been made to decisions of courts in some Commonwealth countries. Actual implementation of human rights obligations is a matter for each State (albeit within the terms of the Covenants and subject to the review of reports by the treaty bodies).

## **The typical need for implementing legislation**

- In most Commonwealth countries, while a convention which a State has ratified or acceded to binds the State at the international level, the convention does not become part of domestic law (creating rights and duties in national law) until *implementation* by the enactment of national legislation incorporating the convention. Such countries follow what is known as a 'dualist' system when it comes to the effect of international law within their domestic legal systems. In a dualist system, the national and international systems co-exist, but function separately. Each system is seen to have its own distinct purposes.

By contrast to those states which adopt a dualist system, monist states follow a system whereby the general rules of public international law are accepted as an integral part of

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domestic law, and create rights and duties for people in those states without having to be incorporated by specific legislation into the domestic law.

- In relation to human rights conventions, an expression of the dualist position is to be found in the doctrine of *transformation*.<sup>59</sup> In terms of this doctrine any rule or principle of international law can only have an effect within the domestic legal system if it is expressly and specifically ‘transformed’ into municipal law by the use of the appropriate constitutional machinery, such as an Act of Parliament.

In the United Kingdom, for example, the Crown possesses the constitutional authority to enter into conventions and this prerogative power cannot be impugned by the courts.<sup>60</sup> As a result, conventions cannot operate within the United Kingdom unless enabling statutes have been passed in respect of such conventions. The British Crown retains the right to sign and ratify international agreements, but is unable to legislate directly. An Act of Parliament is essential to enable a convention to become part of English law.

- In those Commonwealth countries that follow a dualist approach, a convention is not part of domestic law until it has been incorporated into the law by legislation.<sup>61</sup>

Because of this approach, as has been noted before, there is a clear difference between the effects of a convention in the *domestic* law of such countries, and its effects in the realm of *international* law: a convention becomes effective in international law when it is ratified by the executive, but in states that follow a dualist approach, it usually has no effect in municipal law until an Act of Parliament is passed to give effect to it.

- If a convention requires changes in the State’s domestic law, it is necessary to pass an Act of Parliament in order to bring the domestic law into conformity with the convention. If such an Act is not passed, the convention is still binding on the State from the perspective of international law, and the State will be responsible under international law if it fails to comply with the convention.<sup>62</sup>

<sup>59</sup> In relation to the status of treaties within the domestic law of Commonwealth countries, Malcolm Shaw refers to the case of *Attorney-General for Ontario v. Attorney-General for Ontario* [1937] AC 326; 8 AD, p. 41, in which Lord Atkin:

“noted that within the then British empire it was well enshrined that the making of a treaty was an executive act, while the performance of its obligations, if they involved alteration of the existing domestic law, required legislative action.” Malcolm N. Shaw (2003) *International Law – Fifth Edition* Cambridge University Press, Cambridge, pages 151-152.

Shaw goes on to note, however, that this general position may need to be qualified in the case of countries with written constitutions:

“Although the basic approach adopted by the majority of common law states is clear, complications have arisen where the country in question has a written constitution, whether or not specific reference is made therein to the treatment of international agreements... In such cases where there is a written constitution, serious questions of constitutional law may be involved, and one would have to consider the situation as it arises and within its own political context.” (page 154.)

<sup>60</sup> See *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374, 418.

<sup>61</sup> As Lord Oliver noted in the decision of *Maclaine Watson v. Department of Trade and Industry* [1989] 3 All ER 523, at 544-5:

“[A]s a matter of the constitutional law of the United Kingdom, the royal prerogative, whilst it embraces the making of treaties, does not extend to altering the law or conferring rights on individuals or depriving individuals of rights which they enjoy in domestic law without the intervention of Parliament. Treaties, as it is

### Three points to consider

**1.** There is no requirement that a country’s legal system be reviewed for compliance with international standards before it is possible to ratify.

**2.** It is accepted that obligations arising from ratification come into force within a ‘reasonable time’. [That is, the Human Rights Committee has made clear that the obligation after ratification is to implement the obligations (ensure compliance of national laws) within a ‘reasonable time’. This takes account of some of the constraints national governments might face in implementing their obligations. However, some rights by their nature are applicable immediately.]

**3.** Some countries’ constitutions contain certain rights and freedoms, and it may be that ratification is not thought to add greatly to the aggregate of existing human rights protections. But every country can always improve its human rights performance. Clearly, then, one of the consequences of implementation might be that there may be provisions of existing national laws or practices that would require revision in the light of the ratification and implementation of the Covenants. Technical expertise, including legislative draftspersons, may assist a country with this process.



## The Indirect Effect of an Unincorporated Human Rights Convention

- As pointed out above, in those Commonwealth countries that follow a dualist approach a convention is not part of domestic law until it has been incorporated into the law by legislation. That does not mean that the unincorporated convention has no effect domestically. A convention that a state has ratified or acceded to – but not yet incorporated – may have an *indirect* effect within a State Party's domestic law.
- One way in which it may affect the domestic law is through the presumption of compatibility. In many Commonwealth countries there is a presumption that, where an ambiguity exists in domestic law, the State's domestic law will be interpreted in a way which does not place the State at odds with its international obligations. As Lord Bridge explained in *Brind*:<sup>63</sup>

*'[I]t is already well settled that, in construing any provision in domestic legislation which is ambiguous in the sense that it is capable of a meaning which either conforms to or conflicts with the Convention, the courts will presume that Parliament intended to legislate in conformity with the Convention, not in conflict with it.'*

The Botswana Court of Appeal in *Attorney General v Dow* put this in similar terms. Botswana was then a signatory to the *African Charter on Human and People's Rights* but had not implemented it into national law. The Court explained the position as follows:<sup>64</sup>

*'Even if it is accepted that those conventions and conventions do not confer enforceable rights on individuals within the State until Parliament has legislated its provisions into the law of the land...relevant international treaties and conventions may be referred to as an aid to construction of [national legislative] enactments, including the Constitution...we should so far as is possible so interpret domestic legislation so as not to conflict with Botswana's obligations under the charter or other international obligations...'*

- Another way in which unincorporated human rights conventions have come to have an indirect effect in domestic law is through the acceptance by courts throughout the Commonwealth that the values reflected in unincorporated human rights conventions ought to inform the exercise of official discretion. For example, in *Baker v Minister of Citizenship and Immigration*<sup>65</sup>, the Canadian Supreme Court referred to the fact that 'the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review'. Similar developments (that a ratified but unincorporated convention could legitimately be seen to influence an exercise of official discretion) have occurred in other parts of the Commonwealth.<sup>66</sup>

## Reporting requirements and the Role of Treaty Bodies

Accountability is an important component of the international system for the national promotion and protection of human rights. Reporting is necessary in order for the state of national adherence and implementation of human rights obligations to be assessed and advice given on the proper interpretation and effect of particular rights provisions.

The major human rights instruments share a common approach to monitoring, with the convention instruments themselves setting up the bodies that consider national reports and offer comments (the 'treaty bodies'). Each State party has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the convention. The convention body helps them to do this by monitoring implementation and recommending further action. This convention-based system is independent of the processes of what used to be the UN Commission on Human Rights.

sometimes expressed, are not self-executing. *Quite simply, a treaty is not part of English law unless and until it has been incorporated into the law by legislation*".

<sup>62</sup> See United Nations Convention Book of the Office of Legal Affairs, Convention Section, available at <http://unconvention.un.org/English/ConventionHandbook/hbframeset.htm>

<sup>63</sup> *R v Secretary of State for the Home Department ex p. Brind* [1991] AC 696, at p. 747.

<sup>64</sup> *Attorney General of Botswana v Dow* 1994 (6) BCLR 1, 29-30

<sup>65</sup> 174 DLR (4th) 1999.

<sup>66</sup> See *Ashby v Minister of Immigration* [1981] 1 NZLR 222, *Tavita v Minister of Immigration* [1994] 2 NZLR 257 (New Zealand Supreme Court of Appeal); *Minister for Immigration and Ethnic Affairs v Teoh*. (1995) 183 CLR 273 but see *Re Minister for Immigration and Multicultural Affairs; ex parte Lam* [2003] HCA 6; (2003) 195 ALR 502 (High Court of Australia); *R v Secretary of State for the Home Department Ex parte Ahmed* [1998] INLR 570; *R v Uxbridge Magistrates' Court, Ex Parte Adimi* 3 WLR [2000] 451 (UK House of Lords).

The following treaty bodies are in place under the provisions of the various human rights conventions covered in this Handbook:

- Human Rights Committee (*International Covenant on Civil and Political Rights*).
- Committee on Economic, Social and Cultural Rights (*International Covenant on Economic, Social and Cultural Rights*).
- Committee on the Elimination of Race Discrimination (*The International Convention on the Elimination of Racial Discrimination*).
- Committee on the Elimination of Discrimination Against Women, CEDAW (*International Convention on the Elimination of Discrimination Against Women*).
- Committee on the Rights of the Child (*International Convention on the Rights of the Child*).
- Committee Against Torture (*International Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment*).
- Committee on Migrant Workers (*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*).<sup>67</sup>

Each of these treaty bodies is made up of independent experts 'of high moral character and recognised competence in the field of human rights' (typically required under the instruments in question). With the specialised human rights instruments, competence in the subject-matter of the particular Convention is required (eg child health; women's health; psychological effects of torture). Members are nationals of States that are party to the particular Convention and are elected by States Parties, although once elected members of the committees serve in their personal capacity.

For the purposes of this Handbook, the most important monitoring mechanisms include:

### State Reporting

- Upon ratification, States submit initial reports and thereafter periodic reports on their progress towards implementation of the new obligations. Such reports usually consider any obstacles encountered, any other difficulties, and any steps planned or taken to improve performance.
- The report is considered first by a sub-committee or working group of the relevant Committee. Issues of concern are identified and referred back to the State.
- The report is then presented in a public session of the relevant Committee and State representatives are invited to make clarifying comments on the basis of the identified issues.
- After the sessions the Committee issues 'Concluding Comments' which highlight points of commendation and concern, and suggestions or clarifications of the rights provisions in context.

Reporting requires a State to consider its on-going implementation and engage in dialogue with the reporting mechanism. It is important for Commonwealth States to appreciate that the approach taken by the committees is constructive and non-confrontational, and intended to point out where and how States might better realise their national programmes of promotion and protection of human rights.

<sup>67</sup> For more information about the treaties and the treaty bodies, OHCHR publishes the following fact sheets relating to the work of the treaty bodies:

Complaint Procedures (No. 7);

The Rights of the Child (No. 10);

The Committee on the Elimination of Racial Discrimination (No. 12);

Civil and Political Rights: the Human Rights Committee (No. 15);

The Committee on Economic, Social and Cultural Rights (No. 16);

The Committee against Torture (No. 17);

Discrimination against Women: the Convention and the Committee (No. 22); and The Rights of Migrant Workers (No. 24).

These fact sheets are available free of charge from the OHCHR publications office, or online at

<http://www.ohchr.org/english/about/publications/sheets.htm>

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The human rights treaty bodies occasionally publish their interpretation of the content of human rights provisions, in the form of 'General Comments' on thematic issues.

**The UN's OHCHR explains how the reporting process is positive in approach:**

*' States parties are encouraged to see the process of preparing their reports for the treaty bodies, not only as the fulfillment of an international obligation, but also as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation. The report preparation process offers an occasion for each State party to:*

- (a) Conduct a comprehensive review of the measures it has taken to harmonise national law and policy with the provisions of the relevant international human rights treaties to which it is a party;*
- (b) Monitor progress made in promoting the enjoyment of the rights set forth in the treaties in the context of the promotion of human rights in general;*
- (c) Identify problems and shortcomings in its approach to the implementation of the treaties;*
- (d) Assess future needs and goals for more effective implementation of the treaties; and*
- (e) Plan and develop appropriate policies to achieve these goals.<sup>6</sup>*

*Seen in this way, the reporting system is an important tool for a State in assessing what has been achieved, and what more needs to be done, to promote and protect human rights in the country...'*

**Individual complaint mechanisms (optional)**

- Conventions create duties owed to other States, rather than to individuals. Individuals are rather beneficiaries of the convention, although of course international human rights law focuses heavily on the individual.
- The right of individuals to make a complaint of lack of fulfillment or violation of a human right has been established primarily in the case of civil and political rights. It is important to note that agreeing to respond to this procedure is voluntary and States are not obliged to accept individual complaints against them. The procedure is available under the ICCPR (First Optional Protocol), the CERD (States parties may accept the procedure under Article 14), the CAT (States parties may accept the procedure under Article 22) and under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999.
- Committees established under optional mechanisms in human rights conventions generally only hear complaints where the individual has satisfied the treaty body that the complainant has exhausted all domestic forums in search of a remedy.

The entire UN treaty body system of reporting is under review, particularly with a view to streamline the reporting procedure. It is increasingly being felt, often by smaller countries, that they lack the capacity to fulfill their obligations under these instruments specially in terms of reporting obligations. Challenges under the present reporting system have led to delays in the submission or consideration of reports, lack of reporting altogether, and duplication of reporting requirements.

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This is an area in which, as with the ratification process itself, assistance from the Commonwealth Secretariat and the UN OHCHR can be provided to ensure that reports are comprehensive, comply with the reporting guidelines, and are submitted on time.

The UN Secretary General in his 2002 report, *Strengthening the United Nations: an agenda for further change*, has identified steps for the rationalization and modernization of the treaty body system. He called on the human rights treaty bodies to consider the following measures:

- (a) to craft a more coordinated approach to their activities;
- (b) to standardise their varied reporting requirements, and
- (c) to allow each State to produce a single report summarising its adherence to the full range of international human rights conventions to which it is a party.

These ideas have received wide support. In March 2005, in his report *In Larger Freedom*, the Secretary General requested (amongst other things) that 'harmonised guidelines on reporting to all treaty bodies should be finalised and implemented so that these bodies can function as a unified system'.

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# 7. Conclusion

**This Handbook has been prepared by the Human Rights Unit of the Commonwealth Secretariat as a guide to assist officials and others in Commonwealth countries in the important process of signing or ratifying the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. It has been commissioned in 2006 to mark the fortieth anniversary of the birth of these instruments (in 1966), and the thirtieth anniversary of the year in which they came into force in international law (in 1976).**

**An international consensus** – the two Covenants capture the international consensus that has been reached on the fundamental and universal nature of those human rights that we hold by virtue of our common humanity and as a reflection of our inherent dignity and equality. As an organisation committed to certain values and principles, the Commonwealth has played an important part in giving content and coherence to the international framework of fundamental human rights.

**National human rights action plans** – Ratification of the Covenants is an important part of any country's overall national human rights action plan that might also include the implementation of the Covenants into the policies, laws and practices of each country. There are, of course, other important human rights conventions, mentioned in this Handbook, ratification of which may also be part of a national action plan. Each country's path to ratification may be different. Sometimes, this path will involve extensive nation-wide consultation with civil society, the legal profession, national human rights institutions, etc. In this way the process of reviewing ratification status may provide a useful forum for a constructive exchange of views. However, an extensive preliminary examination of the legal system is (like any optional consultation process) not a pre-requisite for ratification.

**Compatibility with national policies** – While this Handbook does not deal with substantive matters of human rights convention law, it attempts to briefly demonstrate how the Covenants (and other conventions), read with the international law of treaties, and provide processes whereby a country's reservations or interpretative declarations may be accommodated. In this way (and of course within the limits of international law), the sovereign prerogative of a country to pursue certain national policies need not be affected. The Secretariat's Human Rights Unit is able to provide substantive and procedural support and advice to member country governments in assisting them to realise the goal of ratification.

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## 8. Frequently Asked Questions

### **What is a “treaty”?**

“Treaty” is a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international juridical persons. Treaties are usually concluded between States. The application of the term “treaty” signifies that the parties to it intend to create rights and obligations enforceable under international law

The *Vienna Convention on the Law of Treaties* 1969 defines a treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.<sup>68</sup> Accordingly, conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties. A treaty must be governed by international law and is normally in written form.

### **What is a “convention”?**

“Convention” is the term frequently used to describe a multilateral treaty at the international level, often negotiated under the auspices of an international organisation such as the United Nations, and involving a large number of States. Most of the international human rights treaties discussed in this Handbook are normally referred to as “conventions”. The term “covenant” usually connotes a convention of great solemnity.

### **What is the difference between a “treaty”, a “convention” and a “covenant”?**

In the context of multilateral human rights instruments at the international level, these terms are often used interchangeably and generally speaking may be taken to mean the same thing (for the remainder of this section, “convention” is used for convenience).

### **When does a convention enter into force?**

Entry into force of a convention is the moment in time when a convention becomes legally binding on the parties to the convention. The provisions of the convention will determine the moment of its entry into force. This may be a date specified in the convention or a date on which a specified number of ratifications or accessions have been deposited with the depositary. The date when a convention deposited with the UN Secretary General enters into force is determined in accordance with the convention provisions.

### **What is meant by “signature” in the context of international human rights conventions?**

With most international human rights conventions, when a State signs, the signature is considered subject to ratification. However, signature indicates an intention to review one’s position on ratification, or to undertake any necessary local legal processes before ratification. Signature alone does not impose obligations on the State under the convention. The State is not bound by the provisions of such a convention until it has ratified that convention (once a State has ratified a convention at the international level, it must give effect to the convention domestically).

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<sup>68</sup> See Article 2(1)(a) of the *Vienna Convention on the Law of Treaties* 1969.

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Note, however, that a State which has signed (but not yet ratified) a convention is obliged, in good faith, to refrain from acts that would defeat the object and purpose of the convention. The provisions of Articles 14 and 18 of the *Vienna Convention on the Law of Treaties* 1969 are important in this regard.

***Why is the signature of certain human rights conventions made subject to ratification?***

Most multilateral conventions expressly provide for States to express their consent to be bound by signature subject to ratification. Providing for signature subject to ratification allows those States whose constitutional law requires it, time to seek approval for the convention at the domestic level. In some systems, the executive may ratify, and legislation to implement this is not necessary. In other systems, the country may need time to enact any legislation necessary to implement the convention domestically, prior to undertaking the legal obligations under the convention at the international level.

It may not be necessary for a country to undertake signature and ratification as two separate processes. That is, a country may decide simply to accede to a convention without the interim status of being a signatory only.

***What is the difference between “ratification”, “acceptance” and “approval”?***

“Ratification”, “acceptance” and “approval” all refer to the manner in which a State establishes its consent to be bound by a convention. To avoid confusion, this Handbook only makes use of the term “ratification”.

***What is “ratification”?***

Ratification is an act which follows the signature of a convention, by means of which a State finally establishes its consent to be bound by that convention at the international level. Generally speaking, two steps are involved. First, an instrument of ratification must be executed by the Head of State, Head of Government, or Minister of Foreign Affairs, which expresses the intent of the State to be bound by the convention. Second, in the case of a multilateral convention, the instrument of ratification must be deposited at that office of the United Nations which acts as depositary for such conventions.

***Is there a time limit for ratification?***

Generally, there is no time limit within which a State is required to ratify a convention which it has signed. Upon ratification, however, the State becomes legally bound under the convention.

***What is “accession”?***

Accession is the act whereby a State that has not signed a convention expresses its consent to become a party to that convention by depositing an “instrument of accession”. Accession has the same legal effect as ratification.

***What is the legal effect of ratification or accession under international law?***

Ratification or accession at the international level indicates to the international community a State's commitment to undertake the obligations under a convention.

This should not be confused with the act of ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions, before it consents to be bound externally (internationally). So, some countries' constitutional law requires parliament to ‘ratify’ a convention before the executive can enter into international obligations. Ratification at the national level is inadequate to establish the State's consent to be bound at the international level: it is still necessary to lodge an instrument of ratification or accession internationally.

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See Articles 2(1)(b), 11, 14 and 16 of the *Vienna Convention on the Law of Treaties* 1969 for further information on this point.

***What is a State Party?***

A party to a convention is a State or other entity with convention-making capacity that has expressed its consent to be bound by that convention by an act of ratification or accession or some other means, and where that convention has entered into force for that particular State. This means that the State is bound by the convention under international law. See Article 2(1)(g) of the *Vienna Convention on the Law of Treaties* 1969.

***How does a State become a State Party to a convention?***

A State establishes its consent to be bound by a convention through ratification or accession. According to the UN Treaties Handbook, ratification and accession require two steps:

The execution of an instrument of ratification or accession by the Head of State, Head of Government or Minister for Foreign Affairs, expressing the intent of the State to be bound by the relevant convention;

For multilateral treaties such as human rights conventions, the deposit of the instrument with the depositary.

***What is a “reservation”?***

A reservation is a statement made by a State (addressed to the other States party to the convention) by which the State purports to exclude or alter the legal effect of certain provisions of a convention in their application to that State. A reservation may enable a State to participate in a multilateral convention that it would otherwise be unable or unwilling to participate in. States may make reservations to a convention when they sign, ratify, accept, approve or accede to it.

Reservations may not be contrary to the object and purpose of the convention.

When a State makes a reservation upon signing, it must confirm the reservation upon ratification. According to the UN Treaties Handbook, because a reservation purports to modify the legal obligations of a State, it must be signed by the Head of State, Head of Government or Minister for Foreign Affairs.

***What is an “interpretative declaration”?***

An interpretative declaration is a declaration by a State as to its understanding of some matter covered by a convention or its interpretation of a particular provision. Unlike a reservation, a declaration merely clarifies a State's position and does not purport to exclude or modify the legal effect of any provision of the convention concerned.

An instrument containing the interpretive declaration must be deposited with the Secretary General of the United Nations (usually together with the instrument of ratification or accession). The Secretary General will pay specific attention to such declaration to ensure that it does not amount to an impermissible reservation.

***What is an optional declaration?***

An optional declaration is a declaration that is specifically provided for in a convention, but which the convention does not require. Unlike an interpretative declaration, an optional declaration is binding on the State which makes it.

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**What is an instrument of full powers?**

Full powers take the form of a solemn instrument issued by the Head of State, Head of Government or Minister for Foreign Affairs, empowering a named representative to undertake given convention actions.

According to the UN Treaties Handbook, the Secretary General's practice in relation to full powers may differ in certain respects from that of other depositaries. The Secretary General does not accept full powers transmitted by telex or powers that are not signed. The Head of State, Head of Government and Minister for Foreign Affairs are considered as representing their State for the purpose of all acts relating to the signature of, and the consent to be bound by, a convention. Accordingly, they need not present full powers for those purposes.

See also Articles 2(1)(c) and 7 of the *Vienna Convention on the Law of Treaties* 1969.

**What is an instrument of general full powers?**

An instrument of general full powers authorises a named representative to execute certain convention actions, such as signatures, relating to conventions of a certain kind (for example, all conventions adopted under the auspices of a particular organization).

**What is the effect of the ICCPR on national policies of immigration and asylum?**

It is sometimes thought incorrectly that ratification of the ICCPR (or indeed the ICESCR) affects a country's ability to control the persons it does or does not wish to receive through its borders. This is not the case, although the Covenants spell out certain international standards that must be met in relation to the conditions of detention of any illegal immigrants in the State concerned. Any obligations under the *Convention on the Status of Refugees* would remain unchanged by ratification of the ICCPR.

**Does the ICCPR prohibit the death penalty?**

No. While the ICCPR protects the right to life, the death penalty is not absolutely prohibited under the Covenant. The ICCPR permits the imposition of the Death Penalty 'for the most serious crimes'. Article 6(2) and 6(4) provide respectively as follows;

"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 judgment rendered by a competent court."

"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."

Accordingly, it is permissible for a State to be a party to the ICCPR and for its laws to provide for the imposition of the death sentence, subject to certain limitations set out in Article 6 of the convention. States wishing to abolish the death penalty may elect to become party to the *Second Optional Protocol* to the ICCPR, which is aimed at the abolition of the death penalty.

**What is a "protocol"?**

A "protocol" is an agreement that usually amends, supplements or clarifies a multilateral convention, and has the same effect as a convention. According to the UN Treaties Handbook, the "advantage of a protocol is that, while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail."<sup>69</sup>

<sup>69</sup> See definition of "protocol" in the UN Treaty Handbook

Optional protocols are additional to the main conventions with which they are associated. For example, the right of individual complaint under the ICCPR has been established for states that voluntarily choose to allow such complaints. The procedure is available for States Parties to the ICCPR under the First Optional Protocol. States that become a party to the First Optional Protocol allow individuals to file a communication with the Human Rights Committee about alleged violations of their rights under the ICCPR, provided that these persons have tried and exhausted all possible remedies in their own legal system. Similarly, under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1999, States Parties to CEDAW may choose to allow individual complaints to be made against them. It is important to note that this procedure is voluntary and States are not obliged to become party to the Optional Protocols.

***What is meant by “implementation”?***

Implementation of a human rights convention refers to the process of giving effect nationally to a State’s internationally-assumed responsibilities. This is often manifested in law reform.

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# 9. List of Annexures

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|--------------|--|
| Annexure 1   | Status Chart of Ratification of ICCPR, ICESCR, ICERD, CEDAW, CAT, CRC and ICRMW by Commonwealth member countries as at August 2006 |
| Annexure 1a  | Abbreviations  |
| Annexure 2   | Model Instrument of Ratification   |
| Annexure 3   | Model Instrument of Accession  |
| Annexure 4   | Model Instrument of Reservation or Declaration   |
| Annexure 5   | Text of ICCPR  |
| Annexure 5a  | Text of OP1 – ICCPR  |
| Annexure 5b  | Text of OP2 – ICCPR  |
| Annexure 6   | Text of ICESCR   |
| Annexure 7   | Text of ICERD  |
| Annexure 8   | Text of CEDAW  |
| Annexure 8a  | Text of OP – CEDAW   |
| Annexure 9   | Text of CAT  |
| Annexure 9a  | Text of OP – CAT   |
| Annexure 10a | Text of OP – CRC (Children in conflict)  |
| Annexure 10b | Text of OP – CRC (Sale and sexual exploitation)  |
| Annexure 11  | Text of ICRMW  |
| Annexure 12  | Diagram of the United Nations Treaty System  |
| Annexure 13  | <i>Vienna Convention on the Law of Treaties</i> 1969   |
| Annexure 14  | Text of UDHR   |
| Annexure 15  | Commonwealth <i>Harare Declaration</i> 1991  |

## Annexure 1

**Status Chart of  
Ratification of  
ICCPR, ICESCR,  
ICERD, CEDAW,  
CAT, CRC and  
ICRMW by  
Commonwealth  
member  
countries as at  
August 2006**

| STATE                       | ICCPR                   | ICCPR-OP1              | ICCPR-OP2              | ICESCR                 | ICERD                   |
|-----------------------------|-------------------------|------------------------|------------------------|------------------------|-------------------------|
| Antigua & Barbuda           |                         |                        |                        |                        | 25 Oct 88 <sup>d</sup>  |
| Australia                   | 13 Aug 80               | 25 Sep 91 <sup>a</sup> | 2 Oct 90 <sup>a</sup>  | 10 Dec 75              | 30 Sep 75               |
| Bahamas                     |                         |                        |                        |                        | 5 Aug 75 <sup>a</sup>   |
| Bangladesh                  | 6 Sep 00 <sup>a</sup>   |                        |                        | 5 Oct 98 <sup>a</sup>  | 11 Jun 79 <sup>a</sup>  |
| Barbados                    | 5 Jan 73 <sup>a</sup>   | 5 Jan 73 <sup>a</sup>  |                        | 5 Jan 73 <sup>a</sup>  | 8 Nov 72 <sup>a</sup>   |
| Belize                      | 10 Jun 96 <sup>a</sup>  |                        |                        | 6 Sep 00 <sup>s</sup>  | 14 Nov 01               |
| Botswana                    | 8 Sep 00                |                        |                        |                        | 20 Feb 74 <sup>a</sup>  |
| Brunei Darussalam           |                         |                        |                        |                        |                         |
| Cameroon                    | 27 Jun 84 <sup>a</sup>  | 27 Jun 84 <sup>a</sup> |                        | 27 Jun 84 <sup>a</sup> | 24 Jun 71               |
| Canada                      | 18 May 76 <sup>a</sup>  | 19 May 76 <sup>a</sup> | 25 Nov 05 <sup>a</sup> | 19 May 76 <sup>a</sup> | 14 Oct 70               |
| Cyprus                      | 2 Apr 69                | 15 Apr 92              | 10 Sep 99 <sup>a</sup> | 2 Apr 69               | 21 Apr 67               |
| Dominica                    | 17 June 93 <sup>a</sup> |                        |                        | 17 Jun 93 <sup>a</sup> |                         |
| Fiji Islands                |                         |                        |                        |                        | 11 Jan 73 <sup>d</sup>  |
| Gambia                      | 22 Mar 79 <sup>a</sup>  | 9 Jun 88 <sup>a</sup>  |                        | 29 Dec 78 <sup>a</sup> | 29 Dec 78 <sup>a</sup>  |
| Ghana                       | 7 Sep 00                | 7 Sep 00               |                        | 7 Sep 00               | 8 Sep 66                |
| Grenada                     | 6 Sep 91 <sup>a</sup>   |                        |                        | 6 Sep 91 <sup>a</sup>  | 17 Dec 81 <sup>s</sup>  |
| Guyana                      | 15 Feb 77               | 10 May 93 <sup>a</sup> |                        | 15 Feb 77              | 15 Feb 77               |
| India                       | 10 Apr 79 <sup>a</sup>  |                        |                        | 10 Apr 79 <sup>a</sup> | 3 Dec 68                |
| Jamaica                     | 3 Oct 75                | 3 Oct 75               |                        | 3 Oct 75               | 04 Jun 71               |
| Kenya                       | 1 May 72 <sup>a</sup>   |                        |                        | 1 May 72 <sup>a</sup>  | 13 Sept 01 <sup>a</sup> |
| Kiribati                    |                         |                        |                        |                        |                         |
| Lesotho                     | 9 Sep 92 <sup>a</sup>   | 6 Sep 00 <sup>a</sup>  |                        | 9 Sep 92 <sup>a</sup>  | 04 Nov 71 <sup>a</sup>  |
| Malawi                      | 22 Dec 93 <sup>a</sup>  | 11 Jun 96 <sup>a</sup> |                        | 22 Dec 93 <sup>a</sup> | 11 Jun 96 <sup>a</sup>  |
| Malaysia                    |                         |                        |                        |                        |                         |
| Maldives                    |                         |                        |                        |                        | 24 Apr 84 <sup>a</sup>  |
| Malta                       | 13 Sep 90 <sup>a</sup>  | 13 Sep 90 <sup>a</sup> | 29 Dec 94 <sup>a</sup> | 13 Sep 90              | 27 May 71               |
| Mauritius                   | 12 Dec 73 <sup>a</sup>  | 12 Dec 73 <sup>a</sup> |                        | 12 Dec 73 <sup>a</sup> | 30 May 72 <sup>a</sup>  |
| Mozambique                  | 21 Jul 93 <sup>a</sup>  |                        | 21 Jul 93 <sup>a</sup> |                        | 18 Apr 83 <sup>a</sup>  |
| Namibia                     | 28 Nov 94 <sup>a</sup>  | 28 Nov 94 <sup>a</sup> | 28 Nov 94 <sup>a</sup> | 28 Nov 94 <sup>a</sup> | 11 Nov 82 <sup>a</sup>  |
| Nauru                       | 12 Nov 01 <sup>s</sup>  | 12 Nov 01 <sup>s</sup> |                        |                        | 12 Nov 01 <sup>s</sup>  |
| New Zealand                 | 28 Dec 78               | 26 May 89 <sup>a</sup> | 22 Feb 90              | 28 Dec 78              | 22 Nov 72               |
| Nigeria                     | 29 Jul 93 <sup>a</sup>  |                        |                        | 29 Jul 93 <sup>a</sup> | 16 Oct 67 <sup>a</sup>  |
| Pakistan                    |                         |                        |                        | 3 Nov 04 <sup>s</sup>  | 21 Sep 66               |
| Papua New Guinea            |                         |                        |                        |                        | 27 Jan 82 <sup>a</sup>  |
| St Kitts & Nevis            |                         |                        |                        |                        |                         |
| St Lucia                    |                         |                        |                        |                        | 14 Feb 90 <sup>d</sup>  |
| St Vincent & the Grenadines | 9 Nov 81 <sup>a</sup>   | 9 Nov 81 <sup>a</sup>  |                        | 9 Nov 81 <sup>a</sup>  | 9 Nov 81a               |
| Samoa                       |                         |                        |                        |                        |                         |
| Seychelles                  | 5 May 92 <sup>a</sup>   | 5 May 92 <sup>a</sup>  | 15 Dec 94 <sup>a</sup> | 5 May 92 <sup>a</sup>  | 7 Mar 78 <sup>a</sup>   |
| Sierra Leone                | 23 Aug 96 <sup>a</sup>  | 23 Aug 96 <sup>a</sup> |                        | 23 Aug 96 <sup>a</sup> | 2 Aug 67                |
| Singapore                   |                         |                        |                        |                        |                         |
| Solomon Islands             |                         |                        |                        | 17 Mar 82 <sup>d</sup> | 17 Mar 82 <sup>d</sup>  |
| South Africa                | 10 Dec 98               | 28 Aug 02 <sup>a</sup> | 28 Aug 02 <sup>a</sup> | 3 Oct 94 <sup>s</sup>  | 10 Dec 98               |
| Sri Lanka                   | 11 Jun 80 <sup>a</sup>  | 3 Oct 97 <sup>a</sup>  |                        | 11 Jun 80 <sup>a</sup> | 18 Feb 82 <sup>a</sup>  |
| Swaziland                   | 26 Mar 04 <sup>a</sup>  |                        |                        | 26 Mar 04 <sup>a</sup> | 7 Apr 69 <sup>a</sup>   |
| Tonga                       |                         |                        |                        |                        | 16 Feb 72 <sup>a</sup>  |
| Trinidad & Tobago           | 21 Dec 78 <sup>a</sup>  | 14 Nov 80 <sup>a</sup> |                        | 8 Dec 78 <sup>a</sup>  | 4 Oct 73                |
| Tuvalu                      |                         |                        |                        |                        |                         |
| Uganda                      | 21 Jun 95 <sup>a</sup>  | 14 Nov 95 <sup>a</sup> |                        | 21 Jan 87 <sup>a</sup> | 21 Nov 80 <sup>a</sup>  |
| United Kingdom              | 20 May 76               |                        | 10 Dec 99              | 20 May 76              | 7 Mar 69                |
| United Republic of Tanzania | 11 Jun 76 <sup>a</sup>  |                        |                        | 11 Jun 76 <sup>a</sup> | 27 Oct 72 <sup>a</sup>  |
| Vanuatu                     |                         |                        |                        |                        |                         |
| Zambia                      | 10 Apr 84 <sup>a</sup>  | 10 Apr 84 <sup>a</sup> |                        | 10 Apr 84 <sup>a</sup> | 4 Feb 72                |

<sup>a</sup> acceded to

<sup>d</sup> succeeded to

<sup>s</sup> signed only (not ratified)

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**Status Chart of  
Ratification of  
ICCPR, ICESCR,  
ICERD, CEDAW,  
CAT, CRC and  
ICRMW by  
Commonwealth  
member  
countries as at  
August 2006**

| STATE                       | CAT                     | OP-CAT                  | CEDAW                  | OP-CEDAW               |
|-----------------------------|-------------------------|-------------------------|------------------------|------------------------|
| Antigua & Barbuda           | 19 Jul 93 <sup>a</sup>  |                         | 1 Aug 89 <sup>a</sup>  |                        |
| Australia                   | 8 Aug 89                |                         | 28 Jul 83              |                        |
| Bahamas                     |                         |                         | 6 Oct 93 <sup>a</sup>  |                        |
| Bangladesh                  | 5 Oct 98 <sup>a</sup>   |                         | 6 Nov 84 <sup>a</sup>  | 9 Dec 00               |
| Barbados                    |                         |                         | 16 Oct 80              |                        |
| Belize                      | 17 Mar 86 <sup>a</sup>  |                         | 16 May 90              | 9 Dec 02 <sup>a</sup>  |
| Botswana                    | 8 Sep 00                |                         | 13 Aug 96 <sup>a</sup> |                        |
| Brunei Darussalam           |                         |                         | 24 May 06 <sup>a</sup> |                        |
| Cameroon                    | 19 Dec 86 <sup>a</sup>  |                         | 23 Aug 94              | 7 Jan 05 <sup>a</sup>  |
| Canada                      | 24 Jun 87               |                         | 10 Dec 81              | 18 Oct 02 <sup>a</sup> |
| Cyprus                      | 18 Jul 91               | 26 Jul 04 <sup>s</sup>  | 23 Jul 85 <sup>a</sup> | 26 Apr 02              |
| Dominica                    |                         |                         | 15 Sep 80              |                        |
| Fiji Islands                |                         |                         | 28 Aug 95 <sup>a</sup> |                        |
| Gambia                      | 23 Oct 85 <sup>s</sup>  |                         | 16 Apr 93              |                        |
| Ghana                       | 7 Sep 00                |                         | 2 Jan 86               | 24 Feb 00 <sup>s</sup> |
| Grenada                     |                         |                         | 30 Aug 90              |                        |
| Guyana                      | 19 May 88               |                         | 17 Jul 80              |                        |
| India                       | 14 Oct 97 <sup>s</sup>  |                         | 9 Jul 93b              |                        |
| Jamaica                     |                         |                         | 19 Oct 84              |                        |
| Kenya                       | 21 Feb 97 <sup>a</sup>  |                         | 9 Mar 84 <sup>a</sup>  |                        |
| Kiribati                    |                         |                         | 17 Mar 04 <sup>a</sup> |                        |
| Lesotho                     | 12 Nov 01 <sup>a</sup>  |                         | 22 Aug 95              | 24 Sep 04              |
| Malawi                      | 11 Jun 96 <sup>a</sup>  |                         | 12 Mar 87 <sup>a</sup> | 7 Sep 00 <sup>s</sup>  |
| Malaysia                    |                         |                         | 5 July 95 <sup>a</sup> |                        |
| Maldives                    | 20 Apr 04 <sup>a</sup>  | 15 Feb 06               | 1 Jul 93 <sup>a</sup>  | 13 Mar 06 <sup>a</sup> |
| Malta                       | 13 Sept 90 <sup>a</sup> | 24 Sep 03               | 8 Mar 91 <sup>a</sup>  |                        |
| Mauritius                   | 9 Dec 92 <sup>a</sup>   | 21 June 05 <sup>a</sup> | 9 Jul 84 <sup>a</sup>  | 11 Nov 01 <sup>s</sup> |
| Mozambique                  | 14 Sep 99 <sup>a</sup>  |                         | 21 Apr 97 <sup>a</sup> |                        |
| Namibia                     | 28 Nov 94 <sup>a</sup>  |                         | 23 Nov 92              | 26 May 00              |
| Nauru                       | 12 Nov 01 <sup>s</sup>  |                         |                        |                        |
| New Zealand                 | 10 Dec 89               | 23 Sep 03 <sup>s</sup>  | 10 Jan 85              | 7 Sep 00               |
| Nigeria                     | 28 Jun 01               |                         | 13 Jun 85              | 22 Nov 04              |
| Pakistan                    |                         |                         | 12 Mar 96 <sup>a</sup> |                        |
| Papua New Guinea            |                         |                         | 12 Jan 95 <sup>a</sup> |                        |
| St Kitts & Nevis            |                         |                         | 25 Apr 85 <sup>a</sup> | 20 Jan 06 <sup>a</sup> |
| St Lucia                    |                         |                         | 8 Oct 82 <sup>a</sup>  |                        |
| St Vincent & the Grenadines | 1 Aug 01 <sup>a</sup>   |                         | 4 Aug 81 <sup>a</sup>  |                        |
| Samoa                       |                         |                         | 25 Sep 92 <sup>a</sup> |                        |
| Seychelles                  | 5 May 92 <sup>a</sup>   |                         | 5 May 92 <sup>a</sup>  | 22 Jul 02 <sup>s</sup> |
| Sierra Leone                | 25 Apr 01               | 26 Sep 03 <sup>s</sup>  | 11 Nov 88              | 8 Sept 00 <sup>s</sup> |
| Singapore                   |                         |                         | 5 Oct 95 <sup>a</sup>  |                        |
| Solomon Islands             |                         |                         | 6 May 02               | 6 May 02               |
| South Africa                | 10 Dec 98               |                         | 15 Dec 95              | 18 Oct 05 <sup>a</sup> |
| Sri Lanka                   | 3 Jan 94 <sup>a</sup>   |                         | 5 Oct 81               | 15 Oct 02 <sup>a</sup> |
| Swaziland                   | 26 Mar 04 <sup>a</sup>  |                         | 26 Mar 04 <sup>a</sup> |                        |
| Tonga                       |                         |                         |                        |                        |
| Trinidad & Tobago           |                         |                         | 12 Jan 90              |                        |
| Tuvalu                      |                         |                         | 6 Oct 99 <sup>a</sup>  |                        |
| Uganda                      | 3 Nov 86 <sup>a</sup>   |                         | 22 Jul 85              |                        |
| United Kingdom              | 8 Dec 88                | 10 Dec 03               | 7 Apr 86               | 17 Dec 04 <sup>a</sup> |
| United Republic of Tanzania |                         |                         | 20 Aug 85              | 12 Jan 06 <sup>a</sup> |
| Vanuatu                     |                         |                         | 8 Sep 95 <sup>a</sup>  |                        |
| Zambia                      | 7 Oct 98 <sup>a</sup>   |                         | 21 Jun 85              |                        |

**a** acceded to

**d** succeeded to

**s** signed only (not ratified)

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## Annexure 1

**Status Chart of  
Ratification of  
ICCPR, ICESCR,  
ICERD, CEDAW,  
CAT, CRC and  
ICRMW by  
Commonwealth  
member  
countries as at  
August 2006**

| STATE                       | CRC                    | OP-CRC-AC              | OP-CRC-SC               | ICRMW                  |
|-----------------------------|------------------------|------------------------|-------------------------|------------------------|
| Antigua & Barbuda           | 5 Oct 93               |                        | 30 Apr 02               |                        |
| Australia                   | 17 Dec 90              | 21 Oct 02 <sup>s</sup> | 18 Dec 01 <sup>s</sup>  |                        |
| Bahamas                     | 20 Feb 91              |                        |                         |                        |
| Bangladesh                  | 3 Aug 90               | 6 Sep 00               | 6 Sep 00                | 7 Oct 98 <sup>s</sup>  |
| Barbados                    | 9 Oct 90               |                        |                         |                        |
| Belize                      | 2 May 90               | 1 Dec 03               | 1 Dec 03                | 14 Nov 01 <sup>a</sup> |
| Botswana                    | 14 Mar 95 <sup>a</sup> | 4 Oct 04               | 24 Sep 03 <sup>a</sup>  |                        |
| Brunei Darussalam           | 27 Dec 95 <sup>a</sup> |                        |                         |                        |
| Cameroon                    | 11 Jan 93              | 5 Oct 01 <sup>s</sup>  | 5 Oct 01 <sup>s</sup>   |                        |
| Canada                      | 13 Dec 91              | 7 Jul 00               | 14 Sep 05               |                        |
| Cyprus                      | 7 Feb 91               |                        | 6 Apr 06                |                        |
| Dominica                    | 13 Mar 91              | 16 Sep 05              | 20 Sep 02 <sup>a</sup>  |                        |
| Fiji Islands                | 13 Aug 93              | 20 Sep 02              | 16 Sept 05 <sup>s</sup> |                        |
| Gambia                      | 8 Aug 90               | 21 Dec 00 <sup>s</sup> | 21 Dec 00 <sup>s</sup>  |                        |
| Ghana                       | 5 Feb 90               | 24 Sep 03 <sup>s</sup> | 24 Sep 03 <sup>s</sup>  | 7 Sep 00               |
| Grenada                     | 5 Nov 90               |                        |                         |                        |
| Guyana                      | 14 Jan 91              |                        |                         | 15 Sep 05 <sup>s</sup> |
| India                       | 11 Dec 92 <sup>a</sup> | 30 Nov 05              | 16 Aug 05               |                        |
| Jamaica                     | 14 May 91              | 9 May 02               | 8 Sep 00 <sup>s</sup>   |                        |
| Kenya                       | 30 Jul 90              | 28 Jan 02              | 8 Sep 00 <sup>s</sup>   |                        |
| Kiribati                    | 11 Dec 95 <sup>a</sup> |                        |                         |                        |
| Lesotho                     | 10 Mar 92              | 24 Sep 03              | 24 Sep 03               | 16 Sep 05              |
| Malawi                      | 2 Jan 91 <sup>a</sup>  | 7 Sep 00 <sup>s</sup>  | 7 Sep 00 <sup>s</sup>   |                        |
| Malaysia                    | 17 Feb 95 <sup>a</sup> |                        |                         |                        |
| Maldives                    | 11 Feb 91              | 29 Dec 04              | 10 May 02               |                        |
| Malta                       | 30 Sep 90              | 9 May 02               | 7 Sep 00 <sup>s</sup>   |                        |
| Mauritius                   | 26 Jul 90 <sup>a</sup> | 11 Nov 01 <sup>s</sup> | 11 Nov 01 <sup>s</sup>  |                        |
| Mozambique                  | 26 Apr 94              | 19 Oct 04 <sup>a</sup> | 6 Mar 03 <sup>a</sup>   |                        |
| Namibia                     | 30 Sep 90              | 16 Apr 02              | 16 Apr 02               |                        |
| Nauru                       | 27 Jul 94 <sup>a</sup> | 8 Sep 00 <sup>s</sup>  | 8 Sep 00 <sup>s</sup>   |                        |
| New Zealand                 | 6 Apr 93               | 12 Nov 01              | 7 Sep 00 <sup>s</sup>   |                        |
| Nigeria                     | 19 Apr 91              | 8 Sep 00 <sup>s</sup>  | 8 Sep 00 <sup>s</sup>   |                        |
| Pakistan                    | 12 Nov 90              | 26 Sep 01 <sup>s</sup> |                         |                        |
| Papua New Guinea            | 2 Mar 93               |                        |                         |                        |
| St Kitts & Nevis            | 24 Jul 90              |                        |                         |                        |
| St Lucia                    | 16 Jun 93              |                        |                         |                        |
| St Vincent & the Grenadines | 26 Oct 93              |                        | 15 Sep 05 <sup>a</sup>  |                        |
| Samoa                       | 29 Nov 94              |                        |                         |                        |
| Seychelles                  | 7 Sep 90 <sup>a</sup>  | 23 Jan 01 <sup>s</sup> | 23 Jan 01 <sup>s</sup>  | 15 Dec 94 <sup>a</sup> |
| Sierra Leone                | 18 Jun 90              | 15 May 02              | 17 Sep 01               | 15 Sep 00 <sup>s</sup> |
| Singapore                   | 5 Oct 95 <sup>a</sup>  | 7 Sep 00 <sup>s</sup>  |                         |                        |
| Solomon Islands             | 10 Apr 95 <sup>a</sup> |                        |                         |                        |
| South Africa                | 16 Jun 95              | 8 Feb 02 <sup>s</sup>  | 30 Jun 03 <sup>a</sup>  |                        |
| Sri Lanka                   | 12 Jul 91              | 8 Sep 00               | 8 May 02 <sup>s</sup>   | 11 Mar 96 <sup>a</sup> |
| Swaziland                   | 7 Sep 95               |                        |                         |                        |
| Tonga                       | 6 Nov 95 <sup>a</sup>  |                        |                         |                        |
| Trinidad & Tobago           | 5 Dec 91               |                        |                         |                        |
| Tuvalu                      | 22 Sep 95 <sup>a</sup> |                        |                         |                        |
| Uganda                      | 17 Aug 90              | 6 May 02 <sup>a</sup>  | 30 Nov 01 <sup>a</sup>  | 14 Nov 95              |
| United Kingdom              | 16 Dec 91              | 24 Jun 03              | 7 Sep 00 <sup>s</sup>   |                        |
| United Republic of Tanzania | 10 Jun 91              | 11 Nov 04 <sup>a</sup> | 24 Apr 03 <sup>a</sup>  |                        |
| Vanuatu                     | 7 Jul 93               | 16 Sep 05 <sup>s</sup> | 16 Sep 05 <sup>s</sup>  |                        |
| Zambia                      | 6 Dec 91               |                        |                         |                        |

**a** acceded to

**d** succeeded to

**s** signed only (not ratified)

**Note** – this chart does not indicate reservations or declarations which States may have made (or made and subsequently withdrawn). Information on reservations and declarations can be obtained from the United Nations OHCHR or on this website:

<http://www.ohchr.org/english/law/>



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|                  |   |
|------------------|---|
| <b>UDHR</b>      | Universal Declaration of Human Rights   |
| <b>ICCPR</b>     | International Covenant on Civil and Political Rights  |
| <b>ICCPR-OP1</b> | Optional Protocol to the ICCPR (on individual complaints)   |
| <b>ICCPR-OP2</b> | Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty                           |
| <b>ICESCR</b>    | International Covenant on Economic, Social and Cultural Rights  |
| <b>ICERD</b>     | International Convention on the Elimination of All Forms of Racial Discrimination                             |
| <b>CAT</b>       | Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment             |
| <b>OPCAT</b>     | Optional Protocol to the Convention Against Torture   |
| <b>CEDAW</b>     | Convention on the Elimination of Discrimination Against Women   |
| <b>OP-CEDAW</b>  | Optional Protocol to the Convention on the Elimination of Discrimination against Women                        |
| <b>CRC</b>       | Convention on the Rights of the Child.  |
| <b>OP-CRC-AC</b> | Optional Protocol to the CRC on the involvement of children in armed conflict                                 |
| <b>OP-CRC-SC</b> | Optional Protocol to the CRC on the sale of children, child prostitution and child pornography                |
| <b>ICRMW</b>     | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |

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**UN HANDBOOK ANNEX 4**

**MODEL INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL**

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

**[RATIFICATION / ACCEPTANCE / APPROVAL]**

*WHEREAS the*

\_\_\_\_\_ [title of treaty, convention, agreement, etc.]

*was*

\_\_\_\_\_ [concluded, adopted, opened for signature, etc.]

*at*

\_\_\_\_\_ [place]

*on*

\_\_\_\_\_ [date].

*AND WHEREAS the said*

\_\_\_\_\_ [treaty, convention, agreement, etc.]

*has been signed on behalf of the Government of*

\_\_\_\_\_ [name of State]

*on*

\_\_\_\_\_ [date].

*NOW THEREFORE I,*

\_\_\_\_\_ [name and title of the Head of State, Head of Government or Minister for Foreign Affairs]

*declare that the Government of*

\_\_\_\_\_ [name of State],

*having considered the above mentioned*

\_\_\_\_\_ [treaty, convention, agreement, etc.],

\_\_\_\_\_ [ratifies, accepts, approves]

*the same and undertakes faithfully to perform and carry out the stipulations therein contained.*

*IN WITNESS WHEREOF, I have signed this instrument of*

\_\_\_\_\_ [ratification, acceptance, approval]

*at*

\_\_\_\_\_ [place]

*on*

\_\_\_\_\_ [date]

\_\_\_\_\_ [Signature]

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**UN HANDBOOK ANNEX 5**  
**MODEL INSTRUMENT OF ACCESSION**

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

**ACCESSION**

*WHEREAS the* \_\_\_\_\_  
[title of treaty, convention, agreement, etc.]

*was* \_\_\_\_\_  
[concluded, adopted, opened for signature, etc.]

*at* \_\_\_\_\_ *on* \_\_\_\_\_  
[place] [date],

*NOW THEREFORE I,* \_\_\_\_\_  
[name and title of the Head of State, Head of Government or Minister for Foreign Affairs]

*declare that the Government of* \_\_\_\_\_  
[name of State],

*having considered the above mentioned* \_\_\_\_\_  
[treaty, convention, agreement, etc.],

*accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.*

*IN WITNESS WHEREOF, I have signed this instrument of accession*

*at* \_\_\_\_\_ *on* \_\_\_\_\_  
[place] [date].

\_\_\_\_\_  
[Signature]

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Annexure 3

**Model  
Instrument of  
Accession**

**UN handbook  
annex 5**

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**UN HANDBOOK ANNEX 6**

**MODEL INSTRUMENTS OF RESERVATION/DECLARATION**

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

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Annexure 4

**Model  
Instrument of  
Reservation or  
Declaration**

**UN handbook  
annex 6**

**[RESERVATION / DECLARATION]**

I, \_\_\_\_\_  
[name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

*HEREBY DECLARE that the Government of* \_\_\_\_\_  
[name of State]

*makes the following* \_\_\_\_\_  
[reservation / declaration]

*in relation to article(s) [ ] of the* \_\_\_\_\_  
[title and date of adoption of the treaty, convention, agreement, etc.]:

\_\_\_\_\_  
[Substance of reservation / declaration]

*IN WITNESS WHEREOF, I have hereunto set my hand and seal.*

*Done at* \_\_\_\_\_ *on* \_\_\_\_\_  
[place] [date].

\_\_\_\_\_  
[Signature and title]

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(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

**MODIFICATION OF RESERVATION**

*WHEREAS the Government of*

\_\_\_\_\_ [name of State]

\_\_\_\_\_ [ratified, approved, accepted, acceded to]

*the*

\_\_\_\_\_ [title and date of adoption of the treaty, convention, agreement, etc.]

*on*

\_\_\_\_\_ [date],

*AND WHEREAS, upon*

\_\_\_\_\_ [ratification, approval, acceptance of / accession to]

*the*

\_\_\_\_\_ [treaty, convention, agreement, etc.],

*the Government of*

\_\_\_\_\_ [name of State]

*made (a) reservation(s) to article(s) [ ] of the*

\_\_\_\_\_ [treaty, convention, agreement, etc.],

*NOW THEREFORE I,*

\_\_\_\_\_ [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

*declare that the Government of*

\_\_\_\_\_ [name of State],

*having reviewed the said reservation(s), hereby modifies the same as follows:*

\_\_\_\_\_ [Substance of modification]

*IN WITNESS WHEREOF, I have hereunto set my hand and seal.*

*Done at*

\_\_\_\_\_ [place]

*on*

\_\_\_\_\_ [date].

\_\_\_\_\_ [Signature and title]

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(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

**WITHDRAWAL OF RESERVATION (S)**

*WHEREAS the Government of*  
\_\_\_\_\_

[name of State]

\_\_\_\_\_  
[ratified, approved, accepted, acceded to]

*the*

\_\_\_\_\_

[title and date of adoption of the treaty, convention, agreement, etc.]

*on*

\_\_\_\_\_

[date].

*AND WHEREAS, upon*

\_\_\_\_\_

[ratification, approval, acceptance of / accession to]

*the*

\_\_\_\_\_

[treaty, convention, agreement, etc.],

*the Government of*

\_\_\_\_\_

[name of State]

*made (a) reservation(s) to article(s) [ ] of the*

\_\_\_\_\_

[treaty, convention, agreement, etc.],

*NOW THEREFORE I,*

\_\_\_\_\_

[name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

*declare that the Government of*

\_\_\_\_\_

[name of State],

*having reviewed the said reservation(s), hereby withdraws the same.*

*IN WITNESS WHEREOF, I have hereunto set my hand and seal.*

*Done at*

\_\_\_\_\_

[place]

*on*

\_\_\_\_\_

[date].

\_\_\_\_\_  
[Signature and title]

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## **International Covenant on Civil and Political Rights**

**Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966**

**entry into force 23 March 1976, in accordance with Article 49**

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Annexure 5

**Text of ICCPR**

### **PREAMBLE**

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

### **PART I**

#### **Article 1**

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.

### **PART II**

#### **Article 2**

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

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 4**

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 5**

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.

**PART III****Article 6**

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.

**Article 7**

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.

**Article 8**

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;

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(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.

#### **Article 9**

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.

#### **Article 10**

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.

#### **Article 11**

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

#### **Article 12**

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.

#### **Article 13**

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.

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**Article 14**

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.

**Article 15**

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.

**Article 16**

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

**Article 17**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home 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 18**

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.

**Article 19**

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.

**Article 20**

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.

**Article 21**

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.

**Article 22**

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.

**Article 23**

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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**Article 24**

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.

**Article 25**

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.

**Article 26**

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.

**Article 27**

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.

**PART IV****Article 28**

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

**Article 29**

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

**Article 30**

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
  2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
  3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
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4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

**Article 31**

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

**Article 32**

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

**Article 33**

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

**Article 34**

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

**Article 35**

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

**Article 36**

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

**Article 37**

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
  2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
  3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.
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**Article 38**

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

**Article 39**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
  - (a) Twelve members shall constitute a quorum;
  - (b) Decisions of the Committee shall be made by a majority vote of the members present.

**Article 40**

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
  - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
  - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

**Article 41**

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
    - (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
    - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
    - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
    - (d) The Committee shall hold closed meetings when examining communications under this article;
    - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
    - (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
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(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### **Article 42**

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

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8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

**Article 43**

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

**Article 44**

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

**Article 45**

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

**PART V****Article 46**

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

**Article 47**

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

**PART VI****Article 48**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

**Article 49**

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

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**Article 50**

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

**Article 51**

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

**Article 52**

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

**Article 53**

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

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**Optional Protocol to the International Covenant on Civil and Political Rights  
Adopted and opened for signature, ratification and accession by  
General Assembly resolution 2200A (XXI) of 16 December 1966  
entry into force 23 March 1976, in accordance with Article 9**

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

**Article 1**

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

**Article 2**

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

**Article 3**

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

**Article 4**

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.
2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

**Article 5**

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
2. The Committee shall not consider any communication from an individual unless it has ascertained that:
  - (a) The same matter is not being examined under another procedure of international investigation or settlement;
  - (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
3. The Committee shall hold closed meetings when examining communications under the present Protocol.
4. The Committee shall forward its views to the State Party concerned and to the individual.

**Article 6**

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

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**Article 7**

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

**Article 8**

1. The present Protocol is open for signature by any State which has signed the Covenant.
2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

**Article 9**

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

**Article 10**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

**Article 11**

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

**Article 12**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

**Article 13**

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under article 8;
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(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

**Article 14**

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

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## **Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty**

**Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989**

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,

Have agreed as follows:

### **Article 1**

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

### **Article 2**

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

### **Article 3**

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

### **Article 4**

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

### **Article 5**

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

### **Article 6**

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
  2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.
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**Article 7**

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

**Article 8**

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

**Article 9**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

**Article 10**

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under article 8 thereof.

**Article 11**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
  2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.
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## **International Covenant on Economic, Social and Cultural Rights**

**Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966**

**entry into force 3 January 1976, in accordance with article 27**

### **PREAMBLE**

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

### **PART I**

#### **Article 1**

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.

### **PART II**

#### **Article 2**

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

#### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

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**Article 4**

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

**Article 5**

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 to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

**PART III****Article 6**

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

**Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

**Article 8**

1. The States Parties to the present Covenant undertake to ensure:
    - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
    - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
    - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
    - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
  2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
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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 apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

#### **Article 9**

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

#### **Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### **Article 11**

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
  - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

#### **Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

#### **Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
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2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Article 14**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### **Article 15**

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

### **PART IV**

#### **Article 16**

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

- (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.
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**Article 17**

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

**Article 18**

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

**Article 19**

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

**Article 20**

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

**Article 21**

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

**Article 22**

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

**Article 23**

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

**Article 24**

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

**Article 25**

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

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**PART V****Article 26**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

**Article 27**

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

**Article 28**

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

**Article 29**

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

**Article 30**

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

**Article 31**

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
  2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.
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## **International Convention on the Elimination of All Forms of Racial Discrimination**

**Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965**

**entry into force 4 January 1969, in accordance with Article 19**

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

### **PART I**

#### **Article 1**

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

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2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

#### **Article 2**

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure sure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case ensure tail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

#### **Article 3**

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

#### **Article 4**

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

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**Article 5**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

**Article 6**

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

**Article 7**

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

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**PART II****Article 8**

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;  
  
(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

**Article 9**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:
  - (a) within one year after the entry into force of the Convention for the State concerned; and
  - (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.
2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

**Article 10**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

**Article 11**

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
  2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
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3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

#### **Article 12**

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

#### **Article 13**

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

#### **Article 14**

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

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3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

#### **Article 15**

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

#### **Article 16**

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

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**PART III****Article 17**

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 18**

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 19**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

**Article 20**

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

**Article 21**

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

**Article 22**

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

**Article 23**

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

**Article 24**

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
  - (b) The date of entry into force of this Convention under article 19;
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(c) Communications and declarations received under articles 14, 20 and 23;

(d) Denunciations under article 21.

**Article 25**

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

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Annexure 7

**Text of ICERD**

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**Convention on the Elimination of All Forms of Discrimination against Women**  
**Adopted and opened for signature, ratification and accession by General**  
**Assembly resolution 34/180 of 18 December 1979**  
**entry into force 3 September 1981, in accordance with article 27(1)**

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

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**PART I****Article 1**

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

**Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

**Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

**Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

**Article 5**

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

**Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

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## **PART II**

### **Article 7**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

### **Article 8**

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

### **Article 9**

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

## **PART III**

### **Article 10**

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

### **Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
  - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
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(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

#### **Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

#### **Article 13**

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

#### **Article 14**

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;



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- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
  - (f) To participate in all community activities;
  - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
  - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

#### **PART IV**

##### **Article 15**

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

##### **Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - (a) The same right to enter into marriage;
  - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
  - (c) The same rights and responsibilities during marriage and at its dissolution;
  - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
  - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
  - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
  - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
  - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

#### **PART V**

##### **Article 17**

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.
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2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

#### **Article 18**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

#### **Article 19**

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

#### **Article 20**

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

#### **Article 21**

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

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**Article 22**

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

**PART VI****Article 23**

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

**Article 24**

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

**Article 25**

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 26**

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

**Article 27**

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Article 28**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

**Article 29**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
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2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 30**

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

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## **Optional Protocol to the Convention on the Elimination of Discrimination against Women**

**Adopted by General Assembly resolution A/54/4 on 6 October 1999 and opened for signature on 10 December 1999, Human Rights Day entry into force 22 December 2000**

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Annexure 8a

**Text of  
OP – CEDAW**

The States Parties to the present Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Also noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the International Covenants on Human Rights Resolution 2200 A (XXI), annex. and other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women<sup>4</sup> ("the Convention"), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

### **Article 1**

A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with article 2.

### **Article 2**

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

### **Article 3**

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

### **Article 4**

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

2. The Committee shall declare a communication inadmissible where:

- (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
  - (b) It is incompatible with the provisions of the Convention;
  - (c) It is manifestly ill-founded or not sufficiently substantiated;
  - (d) It is an abuse of the right to submit a communication;
  - (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.
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**Article 5**

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

**Article 6**

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

**Article 7**

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the present Protocol.
3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.
4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

**Article 8**

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.
3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

**Article 9**

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.
  2. The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.
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**Article 10**

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.
2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

**Article 11**

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

**Article 12**

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

**Article 13**

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

**Article 14**

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.

**Article 15**

1. The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.
2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 16**

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

**Article 17**

No reservations to the present Protocol shall be permitted.

**Article 18**

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
  2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
  3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.
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**Article 19**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

**Article 20**

The Secretary-General of the United Nations shall inform all States of:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 18;
- (c) Any denunciation under article 19.

**Article 21**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 25 of the Convention.

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## **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984**

**entry into force 26 June 1987, in accordance with article 27 (1)**

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

### **PART I**

#### **Article 1**

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

#### **Article 2**

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

#### **Article 3**

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

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**Article 4**

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

**Article 5**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

- (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State;
- (c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

**Article 6**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

**Article 7**

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

**Article 8**

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

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4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

#### **Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

#### **Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

#### **Article 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

#### **Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

#### **Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

#### **Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

#### **Article 15**

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

#### **Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

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**PART II****Article 17**

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

**Article 18**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

**Article 19**

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

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3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

#### **Article 20**

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

#### **Article 21**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article; (e) Subject to the provisions of subparagraph

(c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

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(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

### **Article 22**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned. 5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

### **Article 23**

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

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**Article 24**

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

**PART III****Article 25**

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

**Article 29**

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

**Article 30**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

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**Article 31**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General .
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

**Article 32**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

**Article 33**

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
  2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.
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## **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

**Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.**

Protocol is available for signature, ratification and accession as from 4 February 2003 (i.e. the date upon which the original of the Protocol was established) at United Nations Headquarters in New York.

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Annexure 9a

**Text of  
OP – CAT**

### **PREAMBLE**

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

### **PART I**

*General principles*

#### **Article 1**

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

#### **Article 2**

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

#### **Article 3**

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the

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prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

#### **Article 4**

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

### **PART II**

#### *Subcommittee on Prevention*

#### **Article 5**

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

#### **Article 6**

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

#### **Article 7**

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States

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Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

- (a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;
- (b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;
- (c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

#### **Article 8**

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

#### **Article 9**

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1(d).

#### **Article 10**

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.
2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
  - (a) Half the members plus one shall constitute a quorum;
  - (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
  - (c) The Subcommittee on Prevention shall meet in camera.
3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

### **PART III**

#### *Mandate of the Subcommittee on Prevention*

#### **Article 11**

1. The Subcommittee on Prevention shall:
    - (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
    - (b) In regard to the national preventive mechanisms:
      - (i) Advise and assist States Parties, when necessary, in their establishment;
      - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
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(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

#### **Article 12**

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

#### **Article 13**

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

#### **Article 14**

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

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**Article 15**

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

**Article 16**

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.
4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

**PART IV***National preventive mechanisms***Article 17**

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

**Article 18**

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

**Article 19**

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

**Article 20**

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

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- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
  - (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
  - (c) Access to all places of detention and their installations and facilities;
  - (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
  - (e) The liberty to choose the places they want to visit and the persons they want to interview;
  - (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

**Article 21**

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

**Article 22**

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

**Article 23**

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

**PART V***Declaration***Article 24**

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

**PART VI***Financial provisions***Article 25**

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

**Article 26**

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
  2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.
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## **PART VII**

### *Final provisions*

#### **Article 27**

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### **Article 28**

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

#### **Article 29**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 30**

No reservations shall be made to the present Protocol.

#### **Article 31**

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

#### **Article 32**

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

#### **Article 33**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.
3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

#### **Article 34**

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the
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purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

**Article 35**

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

**Article 36**

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

**Article 37**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

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## **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

**Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000**

**entry into force 12 February 2002**

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, *inter alia*, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, *inter alia*, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

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Annexure 10a

**Text of  
OP – CRC – AC**

As all Commonwealth countries have already ratified the CRC itself, the text of this instrument is not included

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Have agreed as follows:

**Article 1**

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

**Article 2**

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

**Article 3**

1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary;
- (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- (c) Such persons are fully informed of the duties involved in such military service;
- (d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

**Article 4**

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

**Article 5**

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

**Article 6**

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

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**Article 7**

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

**Article 8**

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

**Article 9**

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

**Article 10**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

**Article 11**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

**Article 12**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

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3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

**Article 13**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

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## **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

**Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000**

**entered into force on 18 January 2002**

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

### **Article 1**

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

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Annexure 10b

**Text of  
OP – CRC – SC**

As all Commonwealth countries have already ratified the CRC itself, the text of this instrument is not included

**Article 2**

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

**Article 3**

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

- (a) In the context of sale of children as defined in article 2:
  - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
    - a. Sexual exploitation of the child;
    - b. Transfer of organs of the child for profit;
    - c. Engagement of the child in forced labour;
  - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

**Article 4**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

- (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
- (b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

**Article 5**

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

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2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

#### **Article 6**

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

#### **Article 7**

States Parties shall, subject to the provisions of their national law:

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:
  - (i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;
  - (ii) Proceeds derived from such offences;
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

#### **Article 8**

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

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4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
  5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
  6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

**Article 9**

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

**Article 10**

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

**Article 11**

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

**Article 12**

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
  2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.
  3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.
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**Article 13**

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary- General of the United Nations.

**Article 14**

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

**Article 15**

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

**Article 16**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

**Article 17**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

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## **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

**Adopted by General Assembly resolution 45/158 of 18 December 1990**

### **PREAMBLE**

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No. 151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105), Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

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Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

## **PART I: SCOPE AND DEFINITIONS**

### **Article 1**

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

### **Article 2**

For the purposes of the present Convention:

1. The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.
  2. (a) The term “frontier worker” refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;  
(b) The term “seasonal worker” refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;  
(c) The term “seafarer”, which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;  
(d) The term “worker on an offshore installation” refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;  
(e) The term “itinerant worker” refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;  
(f) The term “project-tied worker” refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;  
(g) The term “specified-employment worker” refers to a migrant worker:
    - (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
    - (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
    - (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;
  - (h) The term “self-employed worker” refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.
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**Article 3**

The present Convention shall not apply to:

- (a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;
- (b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;
- (c) Persons taking up residence in a State different from their State of origin as investors;
- (d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;
- (e) Students and trainees;
- (f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

**Article 4**

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

**Article 5**

For the purposes of the present Convention, migrant workers and members of their families:

- (a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;
- (b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

**Article 6**

For the purposes of the present Convention:

- (a) The term "State of origin" means the State of which the person concerned is a national;
- (b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;
- (c) The term "State of transit," means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

**PART II: NON-DISCRIMINATION WITH RESPECT TO RIGHTS****Article 7**

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

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## **PART III: HUMAN RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES**

### **Article 8**

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that 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 part of the Convention.

2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

### **Article 9**

The right to life of migrant workers and members of their families shall be protected by law.

### **Article 10**

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **Article 11**

1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

3. Paragraph 2 of the present article shall not be held to preclude, in States 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.

4. For the purpose of the present article the term "forced or compulsory labour" shall not include:

(a) Any work or service not referred to in paragraph 3 of the present article 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;

(b) Any service exacted in cases of emergency or clamity threatening the life or well-being of the community;

(c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

### **Article 12**

1. Migrant workers and members of their families 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 their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.

2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.

3. Freedom to manifest one's religion or belief 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. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### **Article 13**

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families 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 their choice.

3. The exercise of the right provided for in paragraph 2 of the present 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:

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- (a) For respect of the rights or reputation of others;
  - (b) For the protection of the national security of the States concerned or of public order (ordre public) or of public health or morals;
  - (c) For the purpose of preventing any propaganda for war;
  - (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

**Article 14**

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

**Article 15**

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

**Article 16**

1. Migrant workers and members of their families shall have the right to liberty and security of person.
  2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.
  3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.
  4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.
  5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
  6. Migrant workers and members of their families who are 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 while awaiting trial they 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 the occasion arise, for the execution of the judgement.
  7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:
    - (a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;
    - (b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;
    - (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.
  8. Migrant workers and members of their families who are deprived of their 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 their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.
  9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.
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**Article 17**

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.
4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.
5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.
6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.
7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.
8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

**Article 18**

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
  2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
  3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:
    - (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;
    - (b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;
    - (c) To be tried without undue delay;
    - (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;
    - (e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
    - (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
    - (g) Not to be compelled to testify against themselves 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. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.
  6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the
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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 that person.

7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

**Article 19**

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

**Article 20**

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

**Article 21**

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

**Article 22**

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.

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9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

**Article 23**

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

**Article 24**

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

**Article 25**

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

**Article 26**

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

**Article 27**

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

**Article 28**

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of

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treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

**Article 29**

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

**Article 30**

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

**Article 31**

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin. 2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

**Article 32**

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

**Article 33**

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

- (a) Their rights arising out of the present Convention;
- (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State. 2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.

3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

**Article 34**

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

**Article 35**

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in part VI of the present Convention.

**PART IV: OTHER RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION****Article 36**

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

**Article 37**

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the

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remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

**Article 38**

1. States of employment shall make every effort to authorize migrant workers and members of the families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.
2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

**Article 39**

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.
2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that 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 Convention.

**Article 40**

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.
2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

**Article 41**

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

**Article 42**

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.
2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.
3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

**Article 43**

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:
    - (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;
    - (b) Access to vocational guidance and placement services;
    - (c) Access to vocational training and retraining facilities and institutions;
    - (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;
    - (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;
    - (f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;
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(g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

#### **Article 44**

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

#### **Article 45**

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

#### **Article 46**

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

(a) Upon departure from the State of origin or State of habitual residence;

(b) Upon initial admission to the State of employment;

(c) Upon final departure from the State of employment;

(d) Upon final return to the State of origin or State of habitual residence.

#### **Article 47**

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers

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shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.

2. States concerned shall take appropriate measures to facilitate such transfers.

#### **Article 48**

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

(a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

(b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families. 2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

#### **Article 49**

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

#### **Article 50**

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.

2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.

3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

#### **Article 51**

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

#### **Article 52**

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

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(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

#### **Article 53**

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.

2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

#### **Article 54**

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

- (a) Protection against dismissal;
- (b) Unemployment benefits;
- (c) Access to public work schemes intended to combat unemployment;
- (d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

#### **Article 55**

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

#### **Article 56**

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.

2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.

3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

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## **PART V: PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES**

### **Article 57**

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part m and, except as modified below, the rights set forth in part IV.

### **Article 58**

1. Frontier workers, as defined in article 2, paragraph 2 (a), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

### **Article 59**

1. Seasonal workers, as defined in article 2, paragraph 2 (b), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

### **Article 60**

Itinerant workers, as defined in article 2, paragraph 2 (A), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

### **Article 61**

1. Project-tied workers, as defined in article 2, paragraph 2 (of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 45, paragraph I (b), and articles 52 to 55.

2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.

4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

### **Article 62**

1. Specified-employment workers as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs I (b) and (c), article 43, paragraph I (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).

2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

### **Article 63**

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.

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2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

## **PART VI: PROMOTION OF SOUND, EQUITABLE, HUMANE AND LAWFUL CONDITIONS IN CONNECTION WITH INTERNATIONAL MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES**

### **Article 64**

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

### **Article 65**

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia :

- (a) The formulation and implementation of policies regarding such migration;
- (b) An exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;
- (c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;
- (d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

### **Article 66**

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

- (a) Public services or bodies of the State in which such operations take place;
- (b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;
- (c) A body established by virtue of a bilateral or multilateral agreement.

2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

### **Article 67**

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

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**Article 68**

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

- (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
- (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;
- (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

**Article 69**

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

**Article 70**

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

**Article 71**

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.

2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

**PART VII: APPLICATION OF THE CONVENTION****Article 72**

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");

(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;

(b) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus

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nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 73**

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.

#### **Article 74**

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental

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organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

#### **Article 75**

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The Committee shall normally meet annually.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

#### **Article 76**

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

(i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

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(ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### **Article 77**

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under the present article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of the present article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

#### **Article 78**

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

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## **PART VIII: GENERAL PROVISIONS**

### **Article 79**

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

### **Article 80**

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

### **Article 81**

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

- (a) The law or practice of a State Party; or
- (b) Any bilateral or multilateral treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

### **Article 82**

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

### **Article 83**

Each State Party to the present Convention 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 persons seeking such a remedy shall have his or her claim reviewed and decided 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 84**

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

## **PART IX: FINAL PROVISIONS**

### **Article 85**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

### **Article 86**

1. The present Convention shall be open for signature by all States. It is subject to ratification.
  2. The present Convention shall be open to accession by any State.
  3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
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**Article 87**

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

**Article 88**

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

**Article 89**

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.
3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

**Article 90**

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

**Article 91**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

**Article 92**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
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2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.

3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

**Article 93**

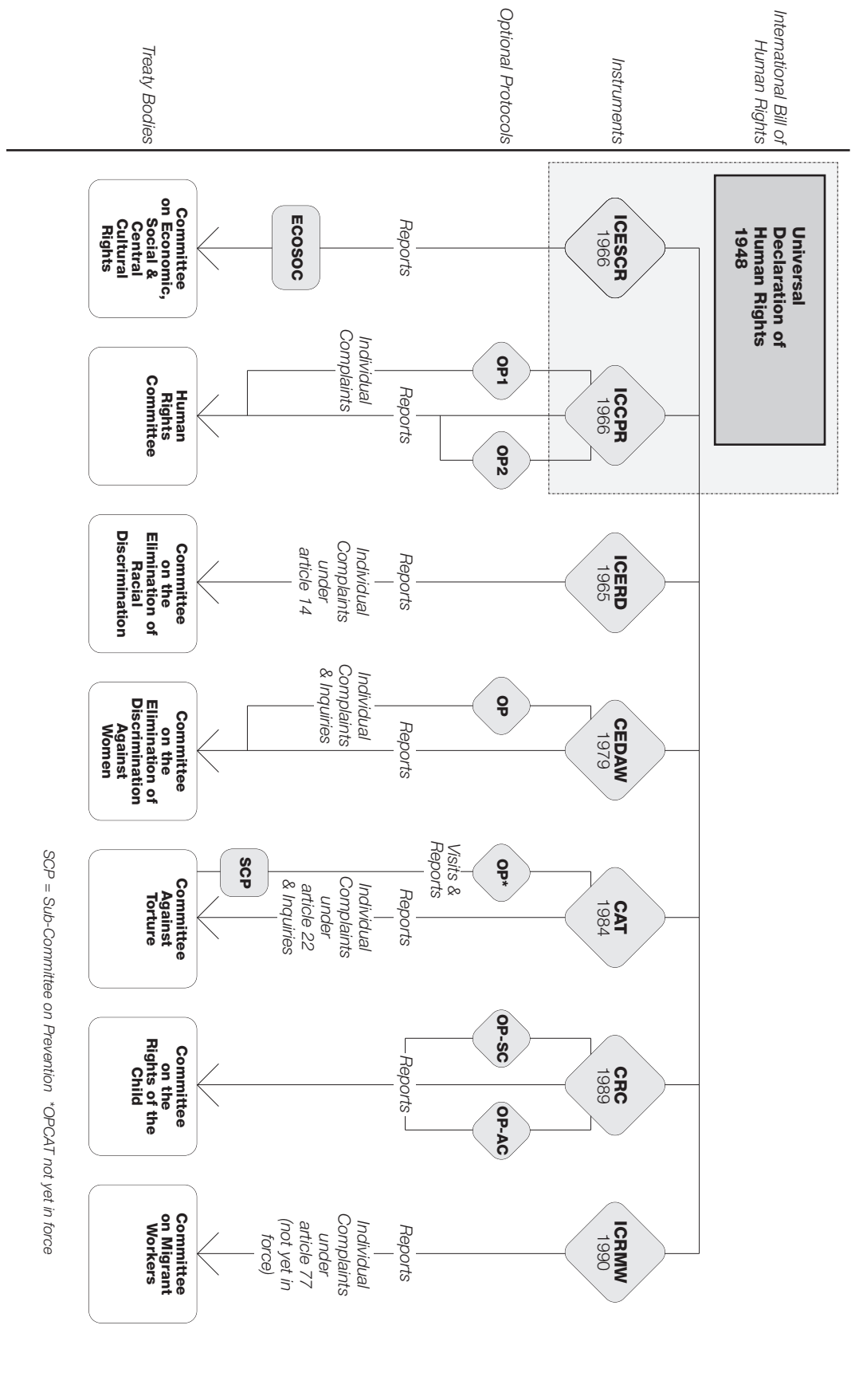
1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

# The United Nations Human Rights Treaty System

showing the treaties and mandates of the treaty bodies





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## **Vienna Convention on the Law of Treaties signed at Vienna 23 May 1969**

### **Entry into force: 27 January 1980**

The States Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,

Noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

## **PART I: INTRODUCTION**

### **Article 1**

*Scope of the present Convention*

The present Convention applies to treaties between States.

### **Article 2**

*Use of terms*

1. For the purposes of the present Convention:

- (a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;
  - (b) "ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;
  - (c) "full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;
  - (d) "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;
  - (e) "negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;
  - (f) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;
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- (g) “party” means a State which has consented to be bound by the treaty and for which the treaty is in force;
- (h) “third State” means a State not a party to the treaty;
- (i) “international organization” means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

### **Article 3**

#### *International agreements not within the scope of the present Convention*

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;
- (c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

### **Article 4**

#### *Non-retroactivity of the present Convention*

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

### **Article 5**

#### *Treaties constituting international organizations and treaties adopted within an international organization*

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

## **PART II: CONCLUSION AND ENTRY INTO FORCE OF TREATIES**

### **SECTION 1. CONCLUSION OF TREATIES**

#### **Article 6**

##### *Capacity of States to conclude treaties*

Every State possesses capacity to conclude treaties.

#### **Article 7**

##### *Full powers*

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

- (a) he produces appropriate full powers; or
- (b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

- (a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;
- (b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

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(c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

#### **Article 8**

*Subsequent confirmation of an act performed without authorization*

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

#### **Article 9**

*Adoption of the text*

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.
2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

#### **Article 10**

*Authentication of the text*

The text of a treaty is established as authentic and definitive:

- (a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or
- (b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

#### **Article 11**

*Means of expressing consent to be bound by a treaty*

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

#### **Article 12**

*Consent to be bound by a treaty expressed by signature*

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:
  - (a) the treaty provides that signature shall have that effect;
  - (b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or
  - (c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.
2. For the purposes of paragraph 1:
  - (a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;
  - (b) the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

#### **Article 13**

*Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty*

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

- (a) the instruments provide that their exchange shall have that effect; or
  - (b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect
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**Article 14**

*Consent to be bound by a treaty expressed by ratification, acceptance or approval*

1. The consent of a State to be bound by a treaty is expressed by ratification when:

- (a) the treaty provides for such consent to be expressed by means of ratification;
- (b) it is otherwise established that the negotiating States were agreed that ratification should be required;
- (c) the representative of the State has signed the treaty subject to ratification; or
- (d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

**Article 15**

*Consent to be bound by a treaty expressed by accession*

The consent of a State to be bound by a treaty is expressed by accession when:

- (a) the treaty provides that such consent may be expressed by that State by means of accession;
- (b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
- (c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

**Article 16.**

*Exchange or deposit of instruments of ratification, acceptance, approval or accession*

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

- (a) their exchange between the contracting States;
- (b) their deposit with the depositary; or
- (c) their notification to the contracting States or to the depositary, if so agreed.

**Article 17**

*Consent to be bound by part of a treaty and choice of differing provisions*

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

**Article 18**

*Obligation not to defeat the object and purpose of a treaty prior to its entry into force*

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
  - (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.
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## SECTION 2. RESERVATIONS

### Article 19

#### *Formulation of reservations*

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

### Article 20

#### *Acceptance of and objection to reservations*

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.
4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:
  - (a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
  - (b) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;
  - (c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.
5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

### Article 21

#### *Legal effects of reservations and of objections to reservations*

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:
  - (a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and
  - (b) modifies those provisions to the same extent for that other party in its relations with the reserving State.
2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.
3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

### Article 22

#### *Withdrawal of reservations and of objections to reservations*

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.
  2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.
  3. Unless the treaty otherwise provides, or it is otherwise agreed:
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(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

**Article 23***Procedure regarding reservations*

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.
2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.
4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

**SECTION 3. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES****Article 24***Entry into force*

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.
4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

**Article 25***Provisional application*

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:
  - (a) the treaty itself so provides; or
  - (b) the negotiating States have in some other manner so agreed.
2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

**PART III: OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES****SECTION 1. OBSERVANCE OF TREATIES****Article 26***Pacta sunt servanda*

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

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**Article 27***Internal law and observance of treaties*

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

**SECTION 2. APPLICATION OF TREATIES****Article 28***Non-retroactivity of treaties*

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

**Article 29***Territorial scope of treaties*

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

**Article 30***Application of successive treaties relating to the same subject-matter*

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the latter treaty.
4. When the parties to the later treaty do not include all the parties to the earlier one:
  - (a) as between States parties to both treaties the same rule applies as in paragraph 3;
  - (b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.
5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty, the provisions of which are incompatible with its obligations towards another State under another treaty.

**SECTION 3. INTERPRETATION OF TREATIES****Article 31***General rule of interpretation*

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
  2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
    - (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
    - (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
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3. There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

#### **Article 32**

##### *Supplementary means of interpretation*

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

#### **Article 33**

##### *Interpretation of treaties authenticated in two or more languages*

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

### **SECTION 4. TREATIES AND THIRD STATES**

#### **Article 34**

##### *General rule regarding third States*

A treaty does not create either obligations or rights for a third State without its consent.

#### **Article 35**

##### *Treaties providing for obligations for third States*

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

#### **Article 36**

##### *Treaties providing for rights for third States*

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.
2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

#### **Article 37**

##### *Revocation or modification of obligations or rights of third States*

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or



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modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

#### **Article 38**

*Rules in a treaty becoming binding on third States through international custom*

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

### **PART IV: AMENDMENT AND MODIFICATION OF TREATIES**

#### **Article 39**

*General rule regarding the amendment of treaties*

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

#### **Article 40**

*Amendment of multilateral treaties*

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:
  - (a) the decision as to the action to be taken in regard to such proposal;
  - (b) the negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.
4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(b), applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:
  - (a) be considered as a party to the treaty as amended; and (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

#### **Article 41**

*Agreements to modify multilateral treaties between certain of the parties only*

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:
    - (a) the possibility of such a modification is provided for by the treaty; or
    - (b) the modification in question is not prohibited by the treaty and:
      - (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
      - (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.
  2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.
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## **PART V: INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES**

### **SECTION 1. GENERAL PROVISIONS**

#### **Article 42**

*Validity and continuance in force of treaties*

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.
2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

#### **Article 43**

*Obligations imposed by international law independently of a treaty*

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

#### **Article 44**

*Separability of treaty provisions*

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.
2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.
3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:
  - (a) the said clauses are separable from the remainder of the treaty with regard to their application;
  - (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and
  - (c) continued performance of the remainder of the treaty would not be unjust.
4. In cases falling under articles 49 and 50 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.
5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

#### **Article 45**

*Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty*

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

- (a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or
  - (b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.
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## SECTION 2. INVALIDITY OF TREATIES

### Article 46

*Provisions of internal law regarding competence to conclude treaties*

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

### Article 47

*Specific restrictions on authority to express the consent of a State*

If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent.

### Article 48

*Error*

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.
2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.
3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

### Article 49

*Fraud*

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

### Article 50

*Corruption of a representative of a State*

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

### Article 51

*Coercion of a representative of a State*

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

### Article 52

*Coercion of a State by the threat or use of force*

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

### Article 53

*Treaties conflicting with a peremptory norm of general international law (jus cogens)*

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

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**SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES****Article 54**

*Termination of or withdrawal from a treaty under its provisions or by consent of the parties*

The termination of a treaty or the withdrawal of a party may take place:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the other contracting States.

**Article 55**

*Reduction of the parties to a multilateral treaty below the number necessary for its entry into force*

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

**Article 56**

*Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal*

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

- (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
- (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

**Article 57**

*Suspension of the operation of a treaty under its provisions or by consent of the parties*

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

- (a) in conformity with the provisions of the treaty; or
- (b) at any time by consent of all the parties after consultation with the other contracting States.

**Article 58**

*Suspension of the operation of a multilateral treaty by agreement between certain of the parties only*

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

- (a) the possibility of such a suspension is provided for by the treaty; or
- (b) the suspension in question is not prohibited by the treaty and:
  - (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
  - (ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

**Article 59**

*Termination or suspension of the operation of a treaty implied by conclusion of a later treaty*

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

- (a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or
  - (b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.
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2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

#### **Article 60**

##### *Termination or suspension of the operation of a treaty as a consequence of its breach*

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.
2. A material breach of a multilateral treaty by one of the parties entitles:
  - (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:
    - (i) in the relations between themselves and the defaulting State, or
    - (ii) as between all the parties; (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
    - (c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.
3. A material breach of a treaty, for the purposes of this article, consists in:
  - (a) a repudiation of the treaty not sanctioned by the present Convention; or
  - (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.
4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.
5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

#### **Article 61**

##### *Supervening impossibility of performance*

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.
2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

#### **Article 62**

##### *Fundamental change of circumstances*

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:
    - (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
    - (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.
  2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:
    - (a) if the treaty establishes a boundary; or
    - (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.
  3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.
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**Article 63**

*Severance of diplomatic or consular relations*

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

**Article 64**

*Emergence of a new peremptory norm of general international law (jus cogens)*

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

**SECTION 4. PROCEDURE****Article 65**

*Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty*

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.
2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.
3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in article 33 of the Charter of the United Nations.
4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.
5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

**Article 66**

*Procedures for judicial settlement, arbitration and conciliation*

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

- (a) any one of the parties to a dispute concerning the application or the interpretation of articles 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;
- (b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

**Article 67**

*Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty*

1. The notification provided for under article 65 paragraph 1 must be made in writing.
2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

**Article 68**

*Revocation of notifications and instruments provided for in articles 65 and 67*

A notification or instrument provided for in articles 65 or 67 may be revoked at any time before it takes effect.

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**SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY**

**Article 69**

*Consequences of the invalidity of a treaty*

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.
2. If acts have nevertheless been performed in reliance on such a treaty:
  - (a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;
  - (b) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.
3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.
4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

**Article 70**

*Consequences of the termination of a treaty*

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:
  - (a) releases the parties from any obligation further to perform the treaty;
  - (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

**Article 71**

*Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law*

1. In the case of a treaty which is void under article 53 the parties shall:
  - (a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and
  - (b) bring their mutual relations into conformity with the peremptory norm of general international law.
2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:
  - (a) releases the parties from any obligation further to perform the treaty;
  - (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

**Article 72**

*Consequences of the suspension of the operation of a treaty*

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:
    - (a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;
    - (b) does not otherwise affect the legal relations between the parties established by the treaty.
  2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.
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**PART VI: MISCELLANEOUS PROVISIONS****Article 73**

*Cases of State succession, State responsibility and outbreak of hostilities*

The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

**Article 74**

*Diplomatic and consular relations and the conclusion of treaties*

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

**Article 75**

*Case of an aggressor State*

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

**PART VII: DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION****Article 76**

*Depositaries of treaties*

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.
2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

**Article 77**

*Functions of depositaries*

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

- (a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;
  - (b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;
  - (c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;
  - (d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;
  - (e) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;
  - (f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;
  - (g) registering the treaty with the Secretariat of the United Nations;
  - (h) performing the functions specified in other provisions of the present Convention.
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2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

#### **Article 78**

##### *Notifications and communications*

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

- (a) if there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;
- (b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;
- (c) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1 (e).

#### **Article 79**

##### *Correction of errors in texts or in certified copies of treaties*

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

- (a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;
- (b) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or
- (c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

- (a) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a proc-s-verbal of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;
- (b) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. The corrected text replaces the defective text ab initio, unless the signatory States and the contracting States otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a proc-s-verbal specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

#### **Article 80**

##### *Registration and publication of treaties*

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

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**PART VIII: FINAL PROVISIONS****Article 81***Signature*

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

**Article 82***Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 83***Accession*

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 84***Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article 85***Authentic texts*

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-third day of May, one thousand nine hundred and sixty-nine.

**ANNEX**

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint: (a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and (b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

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The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

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## Universal Declaration of Human Rights 1948

### PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

### The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### Article 3

Everyone has the right to life, liberty and security of person.

### Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### Article 6

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

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**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal 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 the penal offence was committed.

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13**

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17**

1. Everyone has the right to own property alone as well as in association with others.
  2. No one shall be arbitrarily deprived of his property.
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**Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20**

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

**Article 21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
  2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
  3. Parents have a prior right to choose the kind of education that shall be given to their children.
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**Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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## **The Harare Commonwealth Declaration, 1991**

**(Issued by Heads of Government in Harare, Zimbabwe)**

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Annexure 15

### **The Harare Commonwealth Declaration 1991**

1. The Heads of Government of the countries of the Commonwealth, meeting in Harare, reaffirm their confidence in the Commonwealth as a voluntary association of sovereign independent states, each responsible for its own policies, consulting and co-operating in the interests of their peoples and in the promotion of international understanding and world peace.

2. Members of the Commonwealth include people of many different races and origins, encompass every state of economic development, and comprise a rich variety of cultures, traditions and institutions.

3. The special strength of the Commonwealth lies in the combination of the diversity of its members with their shared inheritance in language, culture and the rule of law. The Commonwealth way is to seek consensus through consultation and the sharing of experience. It is uniquely placed to serve as a model and as a catalyst for new forms of friendship and co-operation to all in the spirit of the Charter of the United Nations.

4. Its members also share a commitment to certain fundamental principles. These were set out in a Declaration of Commonwealth Principles agreed by our predecessors at their Meeting in Singapore in 1971. Those principles have stood the test of time, and we reaffirm our full and continuing commitment to them today. In particular, no less today than 20 years ago:

- we believe that international peace and order, global economic development and the rule of international law are essential to the security and prosperity of mankind;
- we believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives;
- we recognise racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil;
- we oppose all forms of racial oppression, and we are committed to the principles of human dignity and equality;
- we recognise the importance and urgency of economic and social development to satisfy the basic needs and aspirations of the vast majority of the peoples of the world, and seek the progressive removal of the wide disparities in living standards amongst our members.

5. In Harare, our purpose has been to apply those principles in the contemporary situation as the Commonwealth prepares to face the challenges of the 1990s and beyond.

6. Internationally, the world is no longer locked in the iron grip of the Cold War. Totalitarianism is giving way to democracy and justice in many parts of the world. Decolonisation is largely complete. Significant changes are at last under way in South Africa. These changes, so desirable and heartening in themselves, present the world and the Commonwealth with new tasks and challenges.

7. In the last twenty years, several Commonwealth countries have made significant progress in economic and social development. There is increasing recognition that commitment to market principles and openness to international trade and investment can promote economic progress and improve living standards. Many Commonwealth countries are poor and face acute problems, including excessive population growth, crushing poverty, debt burdens and environmental degradation. More than half our member states are particularly vulnerable because of their very small societies.

8. Only sound and sustainable development can offer these millions the prospect of betterment. Achieving this will require a flow of public and private resources from the developed to the developing world, and domestic and international regimes conducive to the realisation of these goals. Development facilitates the task of tackling a range of problems which affect the whole global community such as environmental degradation, the problems of migration and refugees, the fight against communicable diseases, and drug production and trafficking.

9. Having reaffirmed the principles to which the Commonwealth is committed, and reviewed the problems and challenges which the world, and the Commonwealth as part of it, face, we pledge the Commonwealth and our countries to work with renewed vigour, concentrating especially in the following areas:

**The Harare  
Commonwealth  
Declaration  
1991**

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- the protection and promotion of the fundamental political values of the Commonwealth:
  - democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government;
  - fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief;
  - equality for women, so that they may exercise their full and equal rights;
  - provision of universal access to education for the population of our countries;
  - continuing action to bring about the end of apartheid and the establishment of a free, democratic, non-racial and prosperous South Africa;
  - the promotion of sustainable development and the alleviation of poverty in the countries of the Commonwealth through:
    - a stable international economic framework within which growth can be achieved;
    - sound economic management recognising the central role of the market economy;
    - effective population policies and programmes;
    - sound management of technological change;
  - the freest possible flow of multilateral trade on terms fair and equitable to all, taking account of the special requirements of developing countries;
  - an adequate flow of resources from the developed to developing countries, and action to alleviate the debt burdens of developing countries most in need;
  - the development of human resources, in particular through education, training, health, culture, sport and programmes for strengthening family and community support, paying special attention to the needs of women, youth and children;
  - effective and increasing programmes of bilateral and multilateral co-operation aimed at raising living standards;
  - extending the benefits of development within a framework of respect for human rights;
  - the protection of the environment through respect for the principles of sustainable development which we enunciated at Langkawi;
  - action to combat drug trafficking and abuse and communicable diseases;
  - help for small Commonwealth states in tackling their particular economic and security problems;
  - support of the United Nations and other international institutions in the world's search for peace, disarmament and effective arms control; and in the promotion of international consensus on major global political, economic and social issues.

10. To give weight and effectiveness to our commitments we intend to focus and improve Commonwealth co-operation in these areas. This would include strengthening the capacity of the Commonwealth to respond to requests from members for assistance in entrenching the practices of democracy, accountable administration and the rule of law.

11. We call on all the intergovernmental institutions of the Commonwealth to seize the opportunities presented by these challenges. We pledge ourselves to assist them to develop programmes which harness our shared historical, professional, cultural and linguistic heritage and which complement the work of other international and regional organisations.

12. We invite the Commonwealth Parliamentary Association and non-governmental Commonwealth organisations to play their full part in promoting these objectives, in a spirit of co-operation and mutual support.

13. In reaffirming the principles of the Commonwealth and in committing ourselves to pursue them in policy and action in response to the challenges of the 1990s, in areas where we believe that the Commonwealth has a distinctive contribution to offer, we the Heads of Government express our determination to renew and enhance the value and importance of the Commonwealth as an institution which can and should strengthen and enrich the lives not only of its own members and their peoples but also of the wider community of peoples of which they are a part.

20 October 1991

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