

**MINORITIES AND THE UNITED NATIONS:
HUMAN RIGHTS TREATY BODIES
AND COMPLAINT MECHANISMS**

Summary: The United Nations' treaty-based human rights system includes legal procedures through which members of minorities can seek protection of their rights. This pamphlet describes six major international human rights treaties that deal with civil and political rights; economic, social, and cultural rights; racial discrimination; children's rights; women's rights; and torture, respectively. The first section outlines the system of State reporting common to all human rights treaties and suggests ways in which minorities and their representatives can raise their concerns before international treaty bodies. The second section describes complaint mechanisms that are available under four of the treaties to individuals who believe their rights have been violated.

UN Human Rights Treaties

There are six major, legally binding international human rights treaties within the UN human rights system that deal with a broad range of human rights (see chart below). To use them, you must know to which treaties your country is a party. The full text of each treaty can be found on the OHCHR web site (www.unhchr.ch) under "Treaties"; a list of the countries that have ratified the treaties can be viewed through a link on the text of each treaty.

Each of these treaties has a committee that monitors the way in which States Parties are fulfilling their human rights obligations under the respective treaty. The committees, also known as treaty bodies, vary in size from 10 to 23 members and are composed of international human rights experts. Committee members serve for four-year terms and, although they are elected by the States Parties, they serve in their personal capacity and not as representatives of their governments. Members generally do not take part in deliberations concerning their own country. The committees meet for several weeks each year, usually in Geneva. The Committee on the Elimination of Discrimination Against Women meets in New York; and the Human Rights Committee meets once in New York and twice in Geneva each year.

If your country is not a party to a relevant treaty, you cannot invoke the treaty's procedures formally to redress violations of the treaty's protections. In these cases, however, you may be able to use the Charter-based procedures created by the UN Commission on Human Rights and other bodies, which are described in Pamphlet No. 3 of this series.

HUMAN RIGHTS TREATIES AND THEIR SUPERVISORY BODIES

HUMAN RIGHTS TREATY	NAME OF SUPERVISORY BODY	NUMBER OF MEMBERS	NUMBER AND VENUE OF SESSIONS	NUMBER OF GENERAL COMMENTS OR RECOMMENDATIONS ADOPTED AS AT 1 MAY 2001	NUMBER OF GENERAL DISCUSSION DAYS HELD AS AT 1 MAY 2001	AVAILABILITY OF INDIVIDUAL COMPLAINTS PROCEDURE	INQUIRIES INTO GRAVE OR SYSTEMATIC VIOLATIONS
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee	18 members	3 sessions per year: 2 in Geneva, 1 in New York	28	-	YES UNDER FIRST OPTIONAL PROTOCOL to the ICCPR	-
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights	18 members	2 sessions per year in Geneva	14	19	-	-
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	Committee on the Elimination of Racial Discrimination (CERD)	18 members	2 sessions per year in Geneva	27. In addition, 2 statements have been adopted, including one on the human rights of the Kurdish people.	1 (on the Roma)	YES THROUGH ACCEPTANCE OF ARTICLE 14 of ICERD	-
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC)	10 members	3 sessions per year in Geneva	1	9	-	-
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Committee on the Elimination of Discrimination Against Women (CEDAW)	23 members	2 sessions per year in New York	24	-	YES UNDER OPTIONAL PROTOCOL to the CEDAW	YES UNDER OPTIONAL PROTOCOL TO CEDAW
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Committee against Torture (CAT)	10 members	2 sessions per year in Geneva	1	-	YES THROUGH ACCEPTANCE OF ARTICLE 22 of CAT	YES THROUGH ACCEPTANCE OF ARTICLE 20 OF CAT

There are two ways in which the committees monitor a State Party's implementation of its treaty obligations. The first is by considering reports submitted periodically by governments on their implementation of the treaties. States Parties are legally obliged to submit these reports, which inform the supervisory body about actions the State has taken to implement its obligations under the particular treaty, both through legislation and by other means.

The committees also monitor treaty compliance by considering complaints, generally called "communications", made by individuals that their rights under a particular treaty have been violated. Four treaty bodies deal with such complaints. The complaint procedures are discussed in greater detail below.

In addition, many of the treaty bodies adopt General Comments or Recommendations that interpret or elaborate treaty provisions. Several of the treaty bodies also hold general discussion days on particular themes or on the content of treaty provisions. Occasionally, general discussion days have contributed to the formulation and adoption of a treaty body's general comments or recommendations. For example, the Committee on the Elimination of Racial Discrimination held its first thematic discussion on 15 and 16 August 2000 on the question of discrimination against Roma. Following the discussion, the Committee adopted its General Recommendation XXVII on Discrimination against Roma and indicated its intention

to organize other thematic discussions at future sessions. A compilation of all treaty bodies' general comments or recommendations is prepared and issued at regular intervals. The latest compilation is contained in document HRI/GEN/1/Rev.5.

The Rights Protected

This section summarizes some of the articles in each of the six treaties that may be of particular interest to minorities. However, minorities are entitled to *all* of the rights accorded to those who live within the jurisdiction of the State. Non-governmental organizations (NGOs) and others should use the mechanisms outlined in this pamphlet whenever they feel that a State could do a better job guaranteeing human rights, whether the problems identified are specific to minorities or more general. The last page of this pamphlet contains a list of guides and web site addresses offering further details on how NGOs may provide information to particular treaty bodies.

International Covenant on Civil and Political Rights

The ICCPR protects a wide range of rights, many of which are similar to rights often called “civil rights” or “civil liberties” in domestic law. The ICCPR is the only global treaty that includes a provision specifically referring to minority rights (European mechanisms concerned with minorities are discussed in Pamphlets Nos. 7, 8 and 9):

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 practice their own religion, or to use their own language.

This article technically applies only to “persons belonging to... minorities”, not to minority groups or communities themselves, although the collective aspect of this right is underscored in the next phrase “in community with the other members of their group”. The articulation of minority rights is relatively narrow and is confined to those areas concerned with identity and culture, i.e., the rights to culture, to the free exercise of religion, and to use one's own language. The wording “shall not be denied” may give the impression that the State has merely to refrain from certain actions rather than be obliged to adopt positive measures to promote or assist minorities in exercising their rights. However, the Human Rights Committee has observed that States may be required to adopt “positive measures of protection” to protect rights from being violated not only by the government but also by other persons. You should consult the full text of the committee's General Comment No. 23/50 on article 27, which was adopted in 1994.

Although the introductory phrase of article 27 may appear to exclude newly arrived immigrants, the Human Rights Committee has interpreted the article broadly to include all those within a State's jurisdiction, including migrant workers and visitors. The committee also has suggested that a State may need to ensure the “effective participation of members of minority communities in decisions which affect them” in order to guarantee full enjoyment of the right to culture.

A number of other rights in the ICCPR may be particularly relevant to minorities, along with the general protections that apply to all individuals:

Article 1 sets forth the right of “all peoples” to self-determination, which includes the right to determine their political status and freely pursue their economic, social and cultural development. Peoples also may freely dispose of their natural wealth and resources. However, according to the Human Rights Committee, this right does not belong to minorities per se, even though the distinction between “peoples” and “minorities” may be difficult to discern.

Article 2.1 guarantees that the rights protected by the Covenant apply to all individuals, 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. This entitlement applies to all individuals within the territory or under the jurisdiction of a State (see also General Comment No. 18).

Article 3 provides for the equal enjoyment of all rights for men and women (see also General Comment No.28).

Article 12 guarantees free movement and choice of residence for everyone lawfully within the territory of a State, as well as the right to leave any country and to enter one's own country (see also General Comment No. 27).

Article 17 protects against interference with a person's privacy, family, home, or correspondence, as well as against attacks on honor and reputation.

Article 18 is essential to minorities and protects freedom of thought, conscience, and religion. Minorities may manifest their religion in public or private through worship, observance, practice, and teaching, and parents are free to ensure that the religious and moral education of their children conforms to their own convictions (see also General Comment No. 22).

Article 19 protects freedom of opinion and expression. This is basic to the ability of minorities to communicate in their own language and includes “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.” As is true for many other rights, freedom of expression may be legitimately restricted by law, but only where such restrictions are necessary to protect the rights of others or to protect national security, public order, public health, or public morality.

Article 20 requires governments to prohibit by law any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence (see also General Comment No. 11).

Article 22 guarantees freedom of association. While most of its provisions concern trade unions, this article also protects the right to form and participate in minority educational, cultural, political, and other organizations.

Article 25 sets forth the rights and opportunities of citizens to participate in the conduct of public affairs, to vote and be elected and to have access to public service (see also General Comment No. 25).

Article 26 is a general non-discrimination clause that guarantees equality before the law and equal protection for all. This right does not preclude the State from making reasonable distinctions among categories of people, such as the need to speak the official language under

certain circumstances, but it prohibits any unreasonable distinction based on one's status as a member of a minority group (see also General Comment No. 18).

Further information of interest to minorities is contained in the Human Rights Committee's contribution to the preparatory process of the Durban World Conference against Racism (document A/CONF.189/PC.2/14). Jurisprudence arising from the consideration of individual cases (namely Communications Nos. 197/1985, 196/1985, 167/1984, 511/1992, and 694/1996) may also be helpful. The full text of these cases can be found on OHCHR's web site (www.unhchr.ch) in the treaty bodies database, jurisprudence section.

International Covenant on Economic, Social and Cultural Rights

While the ICESCR clearly sets out economic, social and cultural rights, it allows States greater flexibility in how they respect these rights than does the ICCPR with regard to civil and political rights. Some have described many of the rights in ICESCR as creating obligations of result rather than obligations of conduct. In other words, States enjoy a wide degree of discretion in determining how best to protect these rights, given the different circumstances in each country.

Article 2(1) of the Covenant recognizes the different capacities among countries to provide services such as health care and education. At the same time, article 2(1) establishes that each State party has committed itself "to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant, including particularly the adoption of legislative measures."

While governments may try to use the language of "progressive realization" as an excuse for inaction, the Committee on Economic, Social and Cultural Rights has made it clear that concrete steps must be taken towards meeting the goals of the ICESCR. In particular, no State may deliberately take retrogressive measures without providing acceptable justification for doing so. The Committee also has indicated that States are obliged, at a minimum, to ensure that essential levels of basic foodstuffs, primary health care, basic housing, and at least the most basic forms of education are available, commensurate with the resources at the State's disposal. The ICESCR also includes a non-discrimination clause (in Article 2[2]) to guarantee that rights will be exercised without discrimination of any kind. This non-discrimination provision must be applied immediately, rather than only progressively.

There are other articles in the ICESCR of particular interest to minorities:

Article 3 requires States to ensure the equal enjoyment of all rights for men and women.

Articles 6 and 7 concern the right to work, including the opportunity to gain one's living by work freely chosen, as well as the right to enjoy just and favorable conditions of work.

Article 11 sets forth the right to an adequate standard of living, including adequate food, clothing, housing, and the continuous improvement of living conditions.

Article 12 requires States to ensure the highest attainable standard of physical and mental health, including an obligation to reduce infant mortality and to promote the healthy development of the child.

Articles 13 and 14 set forth the right of everyone to education, including a provision that primary education must be compulsory and free for all. Of particular interest to minorities is the liberty of “individuals and bodies” to establish and direct educational institutions, as long as these institutions conform to whatever minimum standards may be established by the State.

Article 15 states that everyone has the right to take part in cultural life and to have his/her intellectual property protected.

In order to clarify the meaning of some of these rights, the Committee has adopted a number of General Comments, which can be found on the OHCHR’s web site (www.unhchr.ch) These General Comments help define, among other things, the right to housing (General Comments Nos. 4 and 7); the right to an adequate standard of living, in particular the right to food (General Comment No. 12); the right to education, including primary education (General Comments Nos. 11 and 13); and the right to health (General Comment No. 14).

The Committee holds general days of discussion on particular themes and issues, many of which are of direct interest to minority representatives and NGOs. NGOs have participated regularly in those discussions.

International Convention on the Elimination of All Forms of Racial Discrimination

Many people, including members of minority groups, make the mistake of assuming that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) applies only to what is traditionally thought of as “racial” discrimination, i.e., formal legal schemes that discriminate based on colour. In fact, the application of the ICERD is much more expansive, since “racial discrimination” is defined as “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” (emphasis added). In fact, the Committee on the Elimination of Racial Discrimination (CERD) has consistently considered discrimination against minorities in its examination of the periodic reports submitted to it by States, and it should be a primary focus of minority representatives who wish to provide complementary or alternative information to a government's description of the situation of minorities in a country.

Since 1993, the Committee has developed mechanisms towards preventing serious violations of the Convention called early warning measures, which are designed to prevent existing problems from escalating into conflicts, and urgent action procedures, which are intended to address problems requiring immediate attention. The Committee also issues statements, such as that released in 1999 on the human rights of the Kurdish people.

The ICERD also specifically allows States to adopt “special measures” to ensure that certain racial or ethnic groups or individuals can enjoy equal rights in practice, provided that such measures do not lead to the permanent maintenance of separate rights for different racial groups. These measures are often known as “affirmative action” or “positive discrimination”, and they may be adopted to correct historical injustices and to ensure that minorities are treated fairly.

A State's obligation under the ICERD extends not only to its own actions and those of other public authorities. It also must prohibit and bring to an end racial discrimination by any private person, group, or organization (Article 2[1][d]). States must punish, by law, the dissemination of ideas based on racial superiority or hatred and must prohibit organizations from promoting and inciting racial discrimination (Article 4[a]). States must also 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” (Article 7).

The rights that must be guaranteed without racial discrimination are specified in Article 5 and parallel those in other international human rights treaties. They include equal treatment before judicial bodies, the right to participate in public affairs and have equal access to public service, freedom of movement and residence, freedom of opinion and expression, and the right of access to any place or service intended for use by the general public.

Convention on the Rights of the Child

With 191 States Parties, this is the most widely ratified human rights treaty. It focuses on the promotion and protection of children's rights (children are defined as persons below 18 years of age), and it extends to children most of the rights guaranteed to “everyone” under other international instruments. The following are among the articles that may be of particular interest to minorities:

Article 2 provides that the rights in the Convention must be guaranteed without discrimination on the basis of, among other qualities, race, colour, language, religion, or national or ethnic origin.

Article 3 sets forth the basic principle of the Convention, which is that the best interests of the child should be the primary consideration in all actions concerning children.

Article 6 recognizes the child's right to life, survival and development.

Article 7 requires that children be registered immediately after birth and have the right to a name and nationality.

Article 12 recognizes respect for the views of the child.

Article 17 encourages the mass media to cooperate in producing and disseminating material from diverse cultural sources and “to have particular regard to the linguistic needs of the child who belongs to a minority group”.

Article 20 provides that due regard should be paid to a child's ethnic, religious, cultural, and linguistic background, when it is necessary to place the child in a home other than that of his/her family.

Article 24 recognizes the child's right to health.

Article 28 provides for the child's right to education, including access to primary education.

Article 29 reflects the fundamental purpose of education, and states, among other things, that a child's education shall be directed to developing respect for: human rights and fundamental freedoms; his/her own cultural identity, language, and values; the national values of the country in which the child lives and from which he or she may have originated; and the values of other civilizations (see also General Comment 1).

Article 30 essentially extends to children the provisions of article 27 of ICCPR regarding the right to enjoy one's culture, practice one's religion, and use one's own language.

Article 31 calls upon States to respect and promote a child's right to participate in cultural and artistic life.

Convention on the Elimination of All Forms of Discrimination Against Women

The Committee on the Elimination of Discrimination Against Women supervises this Convention, which deals with the rights of women. These rights include the right to equal treatment under the law; equality in education, political participation, employment, health, and the economy; freedom from sexual exploitation; and the possibility of temporary special measures to overcome inequality. In addition to agreeing to eliminate discrimination against women by “any person, organization or enterprise”, States agree to take appropriate measures “to modify or abolish existing laws, regulations, *customs and practices*” that discriminate against women (emphasis added).

The Committee on the Elimination of Discrimination Against Women has consistently spoken out about the situation of women during armed conflict and about gender-based violence. In 1992, the Committee adopted a general comment (No.19) on violence against women, reflecting a major international concern: that women continue to suffer multiple discrimination because of their gender.

Certain articles of the Convention on the Elimination of Discrimination Against Women may be of particular relevance to minority women. For example:

Article 5 obliges States to take “all appropriate measures... [t]o modify the social and cultural patterns of conduct of men and women” in order to eliminate “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.”

Article 7 concerns the right of women to participate in public life and to hold public office (see also General Recommendation No.23).

Article 10 requires that educational programmes eliminate stereotyped concepts of the roles of men and women.

Article 12 requires the elimination of discrimination against women with respect to access to health care services (see also General Recommendation No.24).

Article 14 concerns the particular problems faced by rural women, many of whom may be members of minorities.

Article 16 reiterates that women and men shall be equal in all matters related to marriage and family, including the right to marry freely and only with full and free consent. It also provides that no legal effect may be given to the betrothal or marriage of a child (see also General Recommendation No.21).

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Members of minorities have the same right to be protected against torture and other cruel, inhuman, or degrading treatment or punishment as any other individual. The Torture Convention requires States to make torture a crime and to punish or extradite alleged torturers whenever they may be found within a country's jurisdiction.

How to Use the Reporting System

All major international human rights treaties, including those discussed in this pamphlet, require States Parties to submit a report to the supervisory committees every two to five years on how the government is fulfilling its treaty obligations. Each report should contain detailed information on what efforts the State has made to realize the human rights contained in the treaty, including areas in which progress has been made and where the State has encountered obstacles or problems. For example, the UN's *Manual on Human Rights Reporting* states that information submitted on Article 27 of the International Covenant on Civil and Political Rights should identify the minority groups that exist in the country, describe the "positive measures" adopted by States to preserve those minorities' identities, and describe any measures taken "to provide minorities with equal economic and political opportunities".

The respective treaty bodies review the reports with representatives from the State concerned in public sessions. After considering the State's report, the committee adopts its "Concluding Observations", a public document that evaluates the State's performance by recognizing positive developments, highlighting areas of concern, and providing suggestions and recommendations on specific issues. (The latest listing of States reports due and considered under the principal international human rights treaties is contained in HRI/GEN/4/Rev.1; the latest compilation of the "Guidelines on the Form and Content of Reports to be submitted by States Parties to the International Human Rights Treaties" is contained in document HRI/GEN/2/Rev.1.)

The reporting system encourages openness and constructive dialogue between the State and the committee. In practice, however, problems do arise. Not all reports are reviewed in a timely fashion; not all governments give sufficient attention to the comments, suggestions,

and recommendations of the committees; and not enough publicity is given to the whole process.

Nevertheless, this review process offers an opportunity for any individual or group to help a treaty committee better understand the situation of minorities in a country. There are a number of activities you can undertake to make the best possible use of the reporting system, most of which are relevant to all the treaty bodies discussed above. Special rules or practices of some of the committees are mentioned under the appropriate headings, but you can follow the advice below to raise issues before any of the committees.

Encourage the government to make a comprehensive and accurate report

A government department or agency, or sometimes several of them, is responsible for preparing the country's reports for submission to the relevant supervisory committee. It is important to find out who is responsible for preparing these reports and when they are being prepared. The Ministry for Foreign Affairs often coordinates the preparation of a country's report and should be able to provide this information.

The reports themselves will become public UN documents after they are submitted to a committee, but there is no formal requirement that States discuss their reports with their own citizens or invite outside individuals or bodies to help prepare them. However, many governments do allow or even encourage such participation, and minority individuals and organizations should take advantage of this possibility. Whether or not it is possible to participate in the drafting of a report, you can publicize the fact, in the media and elsewhere, that a government report on human rights is being prepared. Once a government's report is completed and sent to the relevant committee, minority-specific organizations or more mainstream human rights NGOs may wish to submit their own supplementary information to the committee.

Prepare an alternative (also called complementary, shadow or parallel) report

In some countries, alternative reports are coordinated by established human rights or community organizations with a special interest in the treaty's field of human rights. This enables various groups to contribute to the report and provides a more comprehensive view of the government's performance. Most of the treaties discussed here include issues of specific concern to minorities. You should consider how you can contribute to a discussion of these issues within the larger context of the entire report.

In some cases, it might be appropriate to prepare a specific alternative report wholly devoted to minority concerns. While this is likely to bring attention to specific minority issues, it also involves a great deal of work and resources, both financial and human.

In either case, an alternative report should directly address specific articles of the relevant treaty and specific observations set forth in the government's report. It should be concise, factually accurate, and free of unnecessary political comment. Publication and submission of an alternative report can itself draw attention to the human rights problems discussed in the report. For example, a media launch of an alternative report could be the first step in a continuing campaign to highlight omissions in the State's report and to publicize ongoing human rights issues.

The fact that a report has not been submitted on time does not preclude minorities' involvement in the reporting process. Some committees review the situation in non-reporting States Parties in the absence of a report precisely to encourage the submission of State reports. When a country is scheduled for review under this procedure, information from NGOs and other groups can be helpful to committees.

Participate in committee meetings

Additional information, whether on specific issues or in the context of an alternative NGO report, is usually sent directly to the relevant supervisory committee in Geneva or New York. Even if the government has not publicized the fact that a report is being prepared, schedules of when reports are being considered by committees may be obtained from the High Commissioner's web site. It is important that the relevant committee receives your information well before the committee meets to consider the State's report. You should contact the Office of the High Commissioner in Geneva or the Department for the Advancement of Women in New York to make sure that the information you wish to provide is disseminated in time.

The most effective approach is to coordinate your information with that of other organizations that are also providing alternative reports on the same treaty. This allows the committee to receive a comprehensive alternative view to the State's report, instead of just a large quantity of uncoordinated information. It is best to organize the information you submit according to the sequence in which the rights are set forth in the particular treaty. When available, you should refer to relevant authorities and supporting material, such as statistical evidence, official reports, court decisions, or materials from other bodies within the UN system (such as UNESCO, the International Labour Organization, or even other treaty bodies). If possible, you should send 20 copies of your materials to the appropriate committee, together with a written request that they be distributed to all committee members, wherever this is permitted.

Although it may require a considerable outlay of resources, you also might consider going to Geneva or New York when the committee meets to consider the State's report, in order to provide information directly to committee members. This can prove useful in clarifying points that may have been unclear in the written information prepared by NGOs or minority representatives.

The rules covering the participation of NGO representatives vary from committee to committee. Probably the most extensive opportunity for both written and oral submissions exists before the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights.

The Committee on the Rights of the Child accepts written information and may invite NGOs to participate in its pre-session working group. NGOs may attend but not participate in the committee's formal session, in which the public discussion with State representatives occurs. An informal "NGO Group for the Convention on the Rights of the Child" helps coordinate NGO participation in committee sessions and has prepared a useful guide for participants which is available on its web site (www.defence-for-children.org).

The Committee on Economic, Social and Cultural Rights allocates the afternoon of the first day of each session to hearing NGOs, and NGOs also may speak during part of the

committee's pre-session meetings. In 2000, the Committee adopted a paper on NGO participation (document number E/C.12/2000/6) which outlines how NGOs can best contribute to the Committee's work. A guide on how NGOs can use this committee is available electronically via www.cohre.org.

Even if a committee does not provide for formal participation in meetings, you can always seek out individual committee members outside of the formal sessions to speak to them about your concerns. While you should be careful not to badger or unnecessarily intrude on members, you should not hesitate to present them with useful, diplomatically phrased information.

If possible, it may help to seek the advice of experienced NGOs and organizations in Geneva that facilitate participation in UN human rights meetings. There also are a number of publications designed to help NGOs navigate effectively through the UN (see references at the end of this pamphlet).

Formal accreditation as an NGO in "consultative status" with the United Nations is not always required in working with the treaty bodies, but it may be helpful in gaining access to the committees. If you are planning to attend a committee session, it is a good idea to contact the Office of the High Commissioner or the Division for the Advancement of Women well in advance to ensure that you are aware of current practices. The Secretariat will generally be able to help you obtain access to committee venues.

Publicize the committee's review and monitor the government's follow-up to the committee's recommendations

None of the work of the treaty bodies means much if knowledge of the outcome of that work remains in Geneva or New York. You should consider ensuring that a committee's conclusions and recommendations are made known to the media and the general public in your country as soon as possible after they are issued, at the end of each session. You can obtain a copy of a committee's conclusions in person, via the UN's human rights web site, or through human rights NGOs based in Geneva. You should also be able to obtain the committee's conclusions from the government concerned, although there are often delays in producing these records. Again, all information related to the committee's review of a State report should be public.

Committee conclusions on a country's performance in protecting minority rights should be used to generate media and public awareness of the problem. If you have contacted domestic NGOs and media outlets prior to the committee's review, they are more likely to want to learn how the process turned out. You may wish to issue a press release once the committee's concerns and recommendations are issued, highlighting both the positive and negative conclusions reached by the committee.

Some governments are responsive to the recommendations of the treaty committees, but others may need to be encouraged by NGOs and public opinion to implement the committees' conclusions. Although most committees now try to follow up on their recommendations formally, it may be useful to publicize the government's report, the committee's observations, and the government's responses to the committee. The UN treaty-monitoring system can only work if it is actively supported by those most interested in seeing it become effective, i.e., affected minority groups and organizations themselves.

Making complaints (“communications”) about human rights violations

The ICCPR, ICERD, CAT, and CEDAW have mechanisms that enable individuals to send a formal complaint, generally called a “communication”, to the corresponding committee, alleging that their rights have been violated. However, complaints mechanisms are optional, and a State Party may choose not to permit its citizens or other individuals to complain against it under the treaty procedures. You should ensure that the State concerned has not filed a reservation to any of the treaty's provisions, which limits the State's obligations.

The optional provisions are set out in the first Optional Protocol to the ICCPR, Article 14 of CERD, Article 22 of CAT, and the Optional Protocol to CEDAW, which entered into force on 22 December 2000. The procedure for handling complaints is similar for all four treaties; this pamphlet can only summarize the most important factors. Because the process is quasi-judicial and constrained by the particular provisions of each treaty, you should be certain to consult the exact language of the treaty before filing a complaint.

In every case, the relevant committee considers a complaint, along with the comments of the government concerned, and adopts “views” or “opinions” as to whether or not a violation has occurred. (The designation of the committee's conclusions as “views” or “opinions” underscores the fact that the committee cannot issue legally binding judgements or decisions.) The committee's conclusions are based on its evaluation of written information rather than on oral hearings. Even though a committee's “views” are not legally binding, ignoring them exposes a government to domestic and international criticism that it is not complying with its international obligations. A committee may make recommendations to the government and request follow-up information on what actions, if any, the government has taken.

Several of the committees have developed model forms to facilitate their examination of complaints; these forms can be found on the OHCHR web site (www.unhchr.ch) under “OHCHR Programme, Conventional Mechanisms, Communications, complaints procedures”. Use of these forms is not required, but they do offer guidance on what kind of information should be included in a communication. Every communication should clearly indicate the name of the committee to which it is addressed and should be sent to the Office of the High Commissioner for Human Rights in Geneva.

The first step a committee takes in considering a complaint is to determine whether the complaint is admissible. This means that the complaint meets the minimum requirements for consideration.

The first requirement is that the complainant be a *victim* of a human rights violation. ICCPR and CAT allow only individuals to submit complaints; CERD and CEDAW allow groups of individuals to complain. Individuals or groups may be represented by a lawyer or others acting on their behalf. The complaint must allege specific violations of rights; no general complaints about the human rights situation in a country are allowed. Many NGOs have helped victims gain access to the committees.

The most demanding requirement is that *all domestic remedies in the State concerned must have been exhausted*. Whenever possible, you should submit formal complaints to the local authorities or invoke judicial procedures where available before filing a complaint at the international level. However, you need not do this if domestic remedies are unduly delayed,

the judicial system is inherently unfair or does not function independently, or theoretically available remedies would be hopeless. For example, a complaint that a law is racially discriminatory or that existing laws do not adequately provide for use of a minority language may be made without going through judicial motions if, for example, the judiciary in the country does not have the authority to declare a law contrary to international norms. If a government claims that an applicant has not exhausted domestic remedies, it is up to the government to specifically identify the remedies that it believes are available.

There are also a number of more *technical requirements* for admissibility, although these do not usually present problems. Communications must not be anonymous, although you may request that your name not be divulged to the State if you believe there is any danger of retaliation. However, this may make it more difficult for a State to respond to the allegations. A complaint cannot be written in insulting or abusive language; and a complaint cannot be considered if the same situation is being investigated under another international procedure.

As much relevant information as possible should be included in the initial communication in support of the *substantive allegations* made. This information should include statements or affidavits from the author of the complaint, witnesses, family members, or others who have relevant information about the specific issues raised. If the authorities are involved, include information such as the number and kind of police or security services, details of any arrests or searches, etc. You should include texts of relevant laws and directives, legal judgements, and copies of any publications or documents that may have been seized as annexes. If the situation does not obviously constitute a human rights violation, you should try to refer to relevant international opinions, both within and outside the United Nations. Although it is not required, it is usually a good idea to seek legal advice from someone who understands the UN system.

Either before or after a decision on admissibility is made, a complaint may be communicated to the government concerned for its response. This should be the minimum goal of any communication. If the State replies, a copy of the reply is sent to the complainant, who may then comment on the State's response. The committee sets time limits for the various responses. The failure of a State to respond does not prevent the committee from proceeding with its examination.

If a complaint is found to be admissible, the committee then examines the allegations, the responses, if any, from the State, and any counter-responses from the complainant. In some cases, admissibility issues may be "joined to the merits" of a case, so that both issues are decided at the same time. The committee eventually adopts its views and recommendations, which are made public immediately following the session at which they are adopted and sent to the complainant and the government. Most decisions on admissibility, even if they are negative, are also made public. All of the decisions are reproduced in the committee's annual report.

Perhaps the greatest advantage of the individual complaint process is that it treats the individual complainant and the State as equals and establishes the principle that formal international oversight of an individual's complaints against his/her government is legitimate. However, the entire process, from filing the complaint until adoption of the committee's views, is lengthy: it may take three or four years. In addition, the committees' deliberations are confidential, and there is no opportunity to call witnesses or to engage the government in an oral debate, as there would be in a domestic court. Although most committees have designated one of their members to follow up on how a State responds to the committee's

views, compliance with committee recommendations has been weak. However, the situation is slowly improving.

The complaint machinery is nevertheless a worthwhile last hope for minorities who have exhausted all other avenues to redress their grievances. States do sometimes respond positively to the process, and the mere fact that a well-founded case is brought to one of the committees may encourage a State to re-examine its policies or begin a dialogue with minority representatives. While communications must relate to specific violations, they may be used as part of a broader campaign to call attention to the human rights situation in a country. As is true for a committee's examination of periodic reports, much of the burden for using a complaint to encourage positive change rests on the complainant and others who are directly concerned with the effective implementation of minority rights.

Urgent Cases

If there is an imminent, real, and serious risk to someone's life, you can request that a committee adopt interim measures and immediately appeal to a State to either refrain from certain actions or undertake certain actions to protect that person. The rules of procedure of the Human Rights Committee, the Committee Against Torture and the Committee on the Elimination of Discrimination Against Women provide for this possibility. States are not obliged to comply, but they often do. Such a course should be adopted only when you have specific information about an imminent risk, e.g., a pending execution or deportation.

Further Information and Contacts

All the treaty bodies described in this pamphlet, except the Committee on the Elimination of Discrimination against Women, may be contacted in care of the Office of the UN High Commissioner for Human Rights:

OHCHR-UNOG

Palais des Nations

1211 Geneva 10, Switzerland

fax: +41 22-917-9022

The visiting address of the Office is Palais Wilson, 52 Rue des Pâquis, 1201 Geneva 1

You should identify the specific committee to which you are writing in the letter and address.

Communications regarding the Convention on the Elimination of All Forms of Discrimination Against Women should be directed in care of UN Headquarters in New York:

UN Division for the Advancement of Women

DC2, 12th Floor,

2 UN Plaza, New York, NY 10017, USA

fax: +1 212-963-3462

e-mail: daw@un.org

web site: www.un.org/womenwatch/daw

A number of works describe the practical aspects of using the treaty-based procedures described above. These include G. Alfredsson and E. Ferrer, *Minority Rights: A guide to United Nations Procedures and Institutions* (Minority Rights Group and Raoul Wallenberg Institute, 1998), and H. Hannum, *Guide to International Human Rights Practice* (Transnational, 1999).

Other useful guides on the work of particular treaty bodies are Atsuko Tanaka with Yoshinobu Nagamine, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs* (International Movement Against All Forms of Discrimination and Racism and Minority Rights Group International, 2001); Michael Banton, *Combating Racial Discrimination: the UN and its Member States* (Minority Rights Group International, 2000); Division for the Advancement of Women, *Assessing the Status of Women: A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination Against Women* (Commonwealth Secretariat, United Nations and International Women's Rights Action Watch, 2000).

NGO guides to other treaty bodies may be found at the following web sites:

UN Committee on Economic, Social and Cultural Rights: www.cohre.org/unframe.htm

Committee on the Rights of the Child: www.defence-for-children.org

Guidelines for National NGOs on Alternative Reporting to UN Treaty Bodies, including the Committee against Torture: www.ap.t.ch/cat/guidelines.htm

Anti-Racism Information Service (ARIS): www.antiracism-info.org