

The United Nations Human Rights System

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I was given one hour only to present the UN Human Rights System including human rights treaties, plus a question and answer period. When I taught this course in Strasbourg, I was given a whole week to do it. The most I can do today is to give you a bird's eye view of the system and provide you with information for the practical exercises you must complete today.

UN Commission on Human Rights

The UN Commission on Human Rights is the main human rights body of the United Nations with a mandate to promote and protect human rights worldwide. In 1946 the UN Economic and Social Council (ECOSOC) established the Commission which held its first session in 1947. At its annual meetings in Geneva the Commission deals with major human rights violations in the world. The Commission consists of 53 member States that are elected to the Commission on a regional basis: 15 members from Africa; 12 from Asia; 5 from Eastern Europe; 11 from Latin America and the Caribbean and 10 from Western and other States. Over 100 other States attend the Commission meetings as observers as do other UN bodies such as United Nations Development Program (UNDP), the Office of the UN High Commissioner for Refugees, United Nations Children's Fund (UNICEF) and specialized agencies such as the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Numerous non-governmental organizations (NGOs) also participate in Commission meetings such as Amnesty International, the International Commission of Jurists and Human Rights Watch.

I have attended sessions of the UN Commission for the past six years as a member of an NGO which has ECOSOC consultative status which allows us to attend meetings, make oral statements and circulate written statements within the UN system. Observer states attend the annual sessions in Geneva especially because of agenda item 9 "the question of the violations of human rights and fundamental freedoms in any part of the world." This allows member states to raise the human rights situation of any country and to take action as appropriate.

In terms of NGOs, article 71 of the UN Charter stipulates that ECOSOC may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Over one thousand NGOs attend Commission meetings and raise a number of country situations and speak out on thematic issues such as torture, impunity, human rights defenders, children's rights and indigenous issues. The role of NGOs at the UN Commission is key in providing first hand information from their partners in work directly in the field. If the UN Commission on Human Rights was made up only of states, they would be prone to complimenting each other on their human rights records rather than raising violations perpetrated by member states.

For NGOs involved in defending human rights in your country or your region, the UN Commission is an important mechanism on which to focus and in which to become involved. If you belong to an NGO with ECOSOC consultative status, you should consider attending a session of the Commission held annually in Geneva. In the case of the NGO I work with, we accredited some 50 of our members from 17 countries who attended the Commission. It allowed them to bring information to the attention of Commission members and to advocate on behalf of the victims of human rights violations in their countries.

In fulfilling its mandate, the UN Commission has created, since 1947, mechanisms for promoting and protecting human right and for monitoring human rights violations worldwide. I will describe some of them and they include: the Sub-commission on Promotion and Protection of Human Rights, human rights treaties and treaty bodies, working groups, Special Rapporteurs (thematic) Special Rapporteurs/Special Representatives (Country), and technical cooperation (advisory services, training, fellowships, and promotional activities). I will deal with some of them in more detail.

UN Sub-Commission on Promotion and Protection of Human Rights

The Sub-commission on the Promotion and Protection of Human Rights is another important UN body. Created in 1947, it consists of 26 independent experts who are elected according to a geographic distribution. At the outset, the Sub-commission focused its attention on issues of discrimination and the protection of minorities. Over time, the Sub-commission expanded its mandate to include a wide variety of human rights issues and the situation of human rights in countries. Even though the UN Commission on Human Rights has reduced the Sub-commission area of activity, it continues to conduct important research and studies in areas which are not dealt with by the Commission.

Historically, the Sub-Commission was the first UN body to raise and take seriously the issue of indigenous peoples, creating a working group and developing a declaration on indigenous peoples. For NGOs, the Sub-commission represents a forum for raising situations of human rights violations and for making statements on issues during the annual meetings which take place in Geneva, in August. The Sub-commission has also developed mechanisms for conducting its work, such as special rapporteurs, experts, working groups and studies.

UN High Commissioner for Human Rights

The UN High Commissioner for Human Rights is at the centre of the United Nations human rights activities. The present High Commissioner is a prestigious figure, Mary Robinson, who was formerly the President of Ireland. She reports to the Secretary General and to the Economic and Social Council (ECOSOC). She is responsible for overseeing and highlighting human rights issues at the General Assembly and worldwide.

The mandate of the Office of the United Nations High Commissioner for Human Rights derives from articles of the Charter of the United Nations, the Vienna Declaration and Programme of Action and the Assembly resolution by which the Assembly established the position.

The Office of the United Nations High Commissioner for Human Rights:

- (a) Promotes universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the United Nations;
- (b) Plays the leading role on human rights issues and emphasizes the importance of human rights at the international and national levels;
- (c) Promotes international cooperation for human rights;
- (d) Stimulates and coordinates action for human rights throughout the United Nations system;
- (e) Promotes universal ratification and implementation of international standards;
- (f) Assists in the development of new norms;
- (g) Supports human rights organs and treaty monitoring bodies;
- (h) Responds to serious violations of human rights;
- (i) Undertakes preventive human rights action;

- (j) Promotes the establishment of national human rights infrastructures;
- (k) Undertakes human rights field activities and operations;
- (l) Provides education, information advisory services and technical assistance in the field of human rights.

The Office of the United Nations High Commissioner for Human Rights is divided into organizational units, as described below. The Office is headed by a High Commissioner with the rank of Under-Secretary-General.

The office of the High Commissioner is useful for NGOs as a source of information and access to various studies they have conducted and reports on country situations and on thematic issues; thus it is a very important structure for human rights activists and defenders. The High Commissioner's web site is accessible at: www.unhchr.ch.

Special Rapporteurs

Among the various mechanisms of the UN Commission, the role of Special Rapporteur is probably the most important as well as the most controversial. Special Rapporteurs are appointed by the Commission or the Secretary General of the UN to conduct studies of human rights violations in countries or to conduct studies on thematic issues such as religious intolerance, torture, racism, and violence against women.

The Special Rapporteurs on country situations are appointed on the basis of their competence in human rights and their objectivity, and they are normally from a country other than the one under review. Their role is to investigate a country, if the government will allow him/her to visit, and report on the human rights situation to the UN Commission on Human Rights as well as to the General Assembly. It is the mechanism that countries fear, since they view the appointment of a Special Rapporteur as a sign of their failure to respect their international human rights obligations. Presently, there are Special Rapporteurs for Afghanistan, Burundi, Equatorial Guinea, Haiti, Cuba, Iran, Iraq, Myanmar, Somalia, Sudan, Cambodia, and the Democratic Republic of the Congo. The Commission has also appointed a number of thematic rapporteurs on the issues of: torture, religious tolerance, freedom of opinion and expression, racism, independence of the judiciary, summary or arbitrary execution and others.

Special Rapporteurs are willing to meet with and receive first-hand information from NGOs about human rights violations or on thematic issues. If your country is one of the countries under review by a Special Rapporteur or if you are interested in one of the thematic rapporteurs, you can contact them through the Office of the High Commissioner for Human Rights in Geneva.

Human rights treaties

Human rights treaties can be defined as international agreements between states for specific undertakings and action in the promotion and protection of human rights. The four major human rights instruments constitute the International Bill of Rights which includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its Optional Protocol and the International Covenant on Economic, Social and Cultural Rights. These general treaties concern all or a large number of rights and have been adopted worldwide. They are the foundation blocks for ensuring a culture of rights in countries.

The treaties are open to states for signature, ratification and accession. When a member state signs a treaty, it indicates that it commits itself to ratify or accede to a Convention in the future. By signing, a state also commits itself to respect the principles contained in a particular treaty. Following signature, a state moves to ratification and is thereby legally bound to implement the obligations contained therein. If a state has not signed a convention, but wishes to endorse the treaty directly without signing, it does so by acceding to the treaty, thereby becoming legally bound by the obligations.

If you want to refer to treaties in your work in the defense of human rights in your country, it is incumbent upon you to inquire whether the government of your country has acted on any of the human rights treaties by signing, ratifying or acceding to a convention. If your country has ratified or acceded to a particular treaty, this provides a stronger basis for advocating for the rights and freedoms of people whose rights are violated.

Enforcement mechanisms for the implementation of treaties

i) Reports

When a state ratifies a human rights treaty, it commits itself to submit periodic reports on the measures it has undertaken and the progress made toward realizing the rights contained in the treaty.

In Canada, the government publishes its reports and distributes them to major libraries across the country. However, in many countries the reports are not made public and often people do not know which human treaties their government has ratified. You may not have access to these reports. Once the reports have been deposited at the UN, they become public documents and are discussed publicly by the relevant treaty body. Some NGOs attend these public meetings to provide additional information or to consult with committee members.

In some instances, NGOs have presented alternative reports to the treaty bodies responsible for examining government reports. For example, when Canada submitted its first report after having acceded to the Convention on the Rights of the Child, a coalition of children's organizations prepared and presented an alternative report to the Committee. When the Canadian government delegation met with the Committee to discuss their report, Committee members referred to the NGO report in their questions.

In another case, a group of 60 Brazilian NGOs prepared a 150 page alternative report on the human rights in Brazil for presentation to the Committee on Economic, Social and Cultural Rights at its 2000 meeting in Geneva. Brazil had ratified the International Covenant on Economic, Social and Cultural Rights in 1992 and had still not presented its report to the Committee which was due in 1994.. In view of the government's inaction, the Brazilian NGOs had drafted their own report. The NGOs requested that the NGO I work with in Geneva arrange a meeting with the Committee.

Ten representatives of the Brazilian NGOs came to Geneva and met informally with the Committee on its first day of meetings. They informed Committee members of their alternative report and requested a meeting with them. Since the NGOs did not represent the government of Brazil, the Committee agreed to meet them in an informal session over lunch. All Committee members attended the meal except one, who had a previous engagement. The Brazilian group presented their alternative report to the President of the Committee who accepted it in an unofficial capacity. In her short speech, the President of the Committee informed the audience which included a representative of the government of Brazil, that if the government did not present its official report, the Committee would formally discuss the report prepared by the Brazilian NGOs.

Two weeks later, the government of Brazil informed the Committee that it would present its report in the very near future. This is an example of creative use of existing UN mechanisms and the importance of NGOs to build relationships with international NGO partners who can facilitate action at the UN level.

ii) Treaty bodies (committees)

Human rights treaty bodies (committees) are established once a treaty enters into force. The treaty bodies are: the Human Rights Committee (HRC, the Committee on Economic, Social and Cultural Rights), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on the Elimination of Racial Discrimination (CERD) and the Committee Against Torture (CAT). Members of committees are usually persons of high moral character and recognized competence in human rights. They are elected in their personal capacity.

One of the prominent treaty bodies is the UN Human Rights Committee, established in 1977, which is responsible for overseeing the implementation of the International Covenant on Civil and Political Rights and its Optional Protocol. The main purpose of the Committee is to ensure that countries live up to their obligations under the Covenant, to receive and comment on reports prepared by states parties to the treaty and, finally, to receive and deal with complaints under the Optional Protocol. Article 31(2) states that 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 system.

When the committee was being set up, Canada submitted the name of the late Professor Walter Tarnopolsky as a candidate for election. He was subsequently elected and served in his personal capacity as a committee member until his appointment to the Ontario Court of Appeal in 1983. He was very influential in the formative years of the committee in helping to establish procedures and insisting on a more liberal and open interpretation of its mandate. When Walter Tarnopolsky resigned, he was replaced by the first woman on the committee, Professor Gisèle Harper-Côté of Laval University, who completed his term of office.

iii) Individual complaints mechanism

The individual complaints mechanism is found in some treaties such as the Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Discrimination, the Convention Against Torture and the Optional Protocol attached to the Convention on the Elimination of Discrimination Against Women. By agreeing to the individual complaints mechanism, a state recognizes the competence of the appropriate committee to receive and consider communications from individuals who claim to be victims of discrimination by that State Party. This mechanism means that a country declares when it ratifies or accedes to the Optional Protocol that an individual citizen of that country can make a case. Before considering a complaint, the committee must ensure that 1) the same matter is not being examined under another procedure of international organization or settlement; and, 2) the individual has exhausted all available domestic remedies (in Canada this would include a recourse to the Supreme Court).

One of the most significant complaints against Canada under the Optional Protocol was the Sandra Lovelace case. It concerned an Indian woman from the Tobique Reserve in New Brunswick, Sandra Lovelace, who had lost her Indian status upon marrying a non-Indian as a result of Section 12(10)(b) of the Indian Act, which declared that "the following persons are not entitled to be registered, namely...a woman who married a person who is not an Indian..." Her case was accepted by the UN Human Rights Committee notwithstanding the fact that she

had not exhausted all domestic remedies, i.e., by going to the Supreme Court of Canada. The Committee accepted the fact that in the 1973 Lavell case another native woman had already gone on a similar issue before the Supreme Court and had lost. Thus Sandra Lovelace stated in 1977 that Canada had infringed a number of rights contained in the International Covenant on Civil and Political Rights including the right to protection from discrimination as provided under articles 2(1) and 26; equality of men and women under article 3; protection of the family under article 23(1); equality of rights and responsibilities in terms of marriage under article 23(4); and, the right to enjoy her own culture under article 27.

In its 1981 decision, the Human Rights Committee declared that Sandra Lovelace had lost her rights prior to the entering into force of the Covenant on Civil and Political Rights and that her right to enjoy her family was only indirectly at stake. However, the Committee concluded in her favor by ruling that the effects of her loss of rights continued after the Covenant had come into force and that the particular right being denied was the right to enjoy her culture in her community. Following the release of the statement of the Human Rights Committee, the Canadian government agreed to modify the Indian Act to bring it in harmony with the Covenant.

It took four years for Sandra Lovelace's case to be decided at the UN and another four years for the Indian Act to be amended. The Government of Canada first introduced legislation in June 1984 to amend the Indian Act in order to remove the discriminatory clause. The amendment was re-introduced in the new parliamentary session in 1985 and became law in June 1985, thereby putting an end to sexual discrimination in the Indian Act. The result was that Sandra Lovelace and many other indigenous people in Canada who were prejudiced by the article regained their Indian status. The Lovelace case is an example of how an international human rights mechanisms can help in affecting social change in a country.

iv) States complaints mechanism

The states complaints mechanism deals with inter-state complaints. For example, article 41 of the International Covenant on Civil and Political Rights declares that “a State party to the 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 another State Party is not fulfilling its obligations under the present Covenant”. Some thirty-seven states, mainly from the Western European and others Group (WEOG), have declared under article 41.

It is time now for the question period. I would suggest that you ask questions either about the UN human rights system or questions related to the practical exercises that you have been asked to do.

Questions from participants

Participant

Thank you for your presentation. I have a few questions to clarify. I was reading about the Committee on the Elimination of Racial Discrimination. When I look at all those rights of people, they look wonderful, as if we are going to make a Utopian society. But I see some disparity here. I would appreciate if you would comment on those disparities, what is going on in the world. For example, article 5, subsection d: the right to own property alone, as well as in association with others. But there are other countries, especially in the Middle East, where people don't have that right to own property. I want to know what is being done.

Philippe LeBlanc

I believe that you are referring to the International Convention on the Elimination of All Forms of Racial Discrimination which entered into force in January 1969 and which has been ratified by more than 132 countries. As such, the Convention is an international document which has the support of the majority of members of the UN and which can therefore be used by NGOs in the struggle against racism. The Convention encompasses the international norms adopted by member states to eliminate racism. However, the primary responsibility for the implementation of the treaty rests upon State parties which have ratified it. This is normally done in collaboration with NGOs and civil society.

The monitoring body for the implementation of the treaty obligations is the Committee on the Elimination of All Forms of Racial Discrimination which was established in 1970. Since then, the Committee has led the way in developing monitoring tools and has conducted a number of studies to enable states to better understand their obligations under the treaty.

In terms of your question related to the right to own property, article 5(d) of the Convention declares that State parties undertake to prohibit and eliminate racial discrimination in all its forms ...notably in the enjoyment of a number of rights including "the right to own property, alone as well as in association with others". If the countries which you referred to have ratified the Convention, you can examine their reports to the UN, if they are available, to see how they have reported on the implementation of the article related to the right to property.

Participant

Thank you for your explanations, which were very interesting. I would like to raise two points. First, I think it is important to mention the concept of the reservation, which I feel empties the covenant of its force and content. I am referring in particular to the use of the reservation in Convention on the Elimination of Discrimination against Women (CEDAW) by many countries. Secondly, with regard to the Optional Protocol, I think there is still an escape hatch. No individual complaint will be considered if the country of the individual has not signed and ratified the Protocol. We know that with regard to the Optional Protocol for the Convention on the Elimination of Discrimination against Women, many countries - among others, Morocco - have not signed it. And the Optional Protocol did not come into force until the year 2000. So what can NGOs do to make the Optional Protocol procedure more effective and dynamic?

Philippe LeBlanc

First of all, thank you very much for bringing up the issue of reservations. Human rights treaties include the right of a State party to make reservations. However, it is clear that a reservation incompatible with the object and purpose of a convention is not permitted. For example, when Canada ratified the Convention on the Rights of the Child, it made a reservation under an article that required concrete action on the part of the government. Canada made a reservation to article 7(b) of the Rights of the Child Convention, which stipulates that "every child deprived of liberty shall be separated from adults," in other words, that children must be separated from adults in prisons. I have argued both orally and in writing that Canada's reservation is incompatible with the object and purpose of the Convention.

Secondly, you asked about the Optional Protocol to Convention on the Elimination of Discrimination Against Women (CEDAW). Yes, a country must accede or ratify both CEDAW and the Optional Protocol before individuals from that country can make complaints. On the other hand, nearly 70 State parties have ratified the Optional Protocol to the International Covenant on Civil and Political Rights and, therefore, a complaint could be registered under the individual complaints mechanism of the Protocol if your country has ratified both instruments. The complaint would need to be crafted in such a way that it

conforms to the rights protected under the International Covenant and meets the requirements of the Optional Protocol. It is important that you look into the treaties your governments have ratified and the reservations they have made.

Participant

Thanks for your good presentation. I want to know about the presence of Special Rapporteurs in those countries in which the UN has imposed sanctions. For example, in Iraq or Afghanistan.

Philippe LeBlanc

In the case of Iraq, the Special Rapporteur has never been able to visit the country and so he has to rely on other sources of information in order to make his report. In terms of Afghanistan, I believe that the same difficulty occurs. However, special rapporteurs can obtain information from NGOs, UN bodies and from other sources to prepare their reports.

Participant

My other question is regarding individual complaints: If the rights of an individual are violated in another state, can he complain against a state other than his state of origin?

Philippe LeBlanc

Normally, an individual cannot make a complaint against another state other than his own under the Optional Protocol to the International Covenant on Civil and Political Rights. However, if the individual has legal standing in another state than his own, he probably could make a complaint if that country has ratified the relevant treaties, if he has exhausted all domestic remedies and if the state recognizes his right to make complaints.

Participant

Thanks for your presentation. My organization is an NGO from Taiwan, which unfortunately is not admitted to be a state and which is not allowed to be a member of the UN. So I doubt that all the mechanisms that you have just mentioned could be of any use in our country.

Philippe LeBlanc

In your situation, you could refer to the Universal Declaration of Human Rights which is universally accepted and has moral, and in some cases legal, standing in the world and which your state could use, but not these mechanisms.

Furthermore, it would be interesting for you to explore the resolution 1503 procedure which is a confidential procedure by which the UN Sub-commission can examine complaints against states. If they receive a large number of complaints against one country, the Sub-commission can contact the country for information and, ultimately, could publicly identify the country under review at the UN Commission on Human Rights. You would have to do some research to determine if Taiwan could fall under the purview of resolution 1503.

Participant

My question borders on the UN system: I am happy that you are talking from the subjective level of an NGO. Now, my problem with the UN system is that I know that they have a perfect structure that could work in normal situations. My question is, why does the UN respond swiftly to certain situations, but folds its hands in others?

Philippe LeBlanc

You seem to speaking generally about the UN system. I understand it as referring to decisions made by the UN Security Council which, in my view, has become more involved in dealing with serious human rights situations such as ethnic cleansing in some countries. In the case of Kosovo, the UN Commission on Human Rights was in session during the bombings, and the UN High Commissioner for Human Rights presented weekly reports from a human rights perspective on the situation in that country. However, it was obvious that the decisions in that situation were being made elsewhere and not at the UN Commission.

Participant

In the context of individual complaints, what happens where an individual is precluded from exhausting all domestic remedies by the state?

Philippe LeBlanc

Excellent question. The committee could consider a complaint coming from a country where the judicial system is so biased, compromised or corrupt that an individual could never be able to exhaust the system. Article 5(2) (b) of the Optional Protocol to the International Covenant on Civil and Political Rights states that as one of the conditions of accepting the complaints, the individual must have exhausted all available domestic remedies. However, it adds the following: "This shall not be the rule where the application of remedies is unreasonably prolonged." The Human Rights Committee can refer to this section to decide on the admissibility of cases such as the one you referred to in your question.

Participant

Is there anything in the human rights system that imposes on the state a responsibility or liability, either direct or vicarious, on the actions of its trans-national corporations?

Philippe LeBlanc

This topic has come under serious discussion for a years at the UN Sub-Commission on Promotion and Protection of Human Rights. The Sub-Commission has appointed two experts (Weissbrodt-USA; Eide-Norway) to conduct studies on human rights guidelines for trans-national corporations in the conduct of their business. This is becoming an important issue also at the UN Commission on Human Rights especially in view of the impact of globalization on developing countries.

Thank you very much for your questions.