

Pamphlet No. 1

**MINORITIES, THE UNITED NATIONS AND REGIONAL
MECHANISMS**

This series of pamphlets is designed to provide members of minorities with practical information on the operations and procedures of the United Nations, its various agencies, and regional mechanisms that have been established in Africa, the Americas, and Europe. This introductory pamphlet begins with an overview of the UN's purposes and structure and then describes in greater detail those bodies that are likely to be the most important in promoting and protecting the rights of persons belonging to minority groups. The second section provides a brief outline of human rights norms and international law, so that minority rights may be understood in their proper context.

AN OVERVIEW OF THE UNITED NATIONS SYSTEM

Summary: The United Nations is an international organization, composed of a number of separate bodies that are responsible for addressing security, economic, humanitarian, and other issues. The UN Charter sets forth the organization's purposes, which include maintaining peace and security; promoting economic, social, cultural, and humanitarian cooperation; and promoting and encouraging respect for human rights. Since adoption of the Universal Declaration of Human Rights in 1948, contemporary international human rights law has been supplemented and expanded by a number of other treaties and declarations. Although rights of concern to minorities are found in most of these documents, instruments and procedures specifically devoted to the rights of persons belonging to minorities have largely been developed only during the past decade.

The establishment of the United Nations

As the Second World War drew to a close, the victorious powers decided to establish a world organization that would prevent further conflict and help build a better world. This new organization was the United Nations, known as the UN, which was founded in 1945. The founders of the UN saw the organization as having essentially three purposes - to ensure international peace and security, to promote social and economic development, and to promote the observance of human rights. In pursuit of these goals, the UN has developed a large, complex network of organizations that have an impact on virtually every area of human activity.

The United Nations is a *voluntary* association of independent and sovereign member States. Its 189 member States include almost every State in the world, from all regions and encompassing all political and economic systems.

The UN is *not* a world government with powers to compel its members to take particular actions, such as to observe human rights. The only exception to this rule is that the UN Security Council may require States to take certain actions to maintain or restore international peace and security; by joining the UN, States agree to abide by the Security Council's decisions.

The UN is only as effective as its member governments enable it to be and can only act with the agreement of a majority of those members. Within the authority given to it by States, however, the UN is able to provide assistance and advice to States, promote international cooperation, and even bring political pressure to bear on States through UN organs and institutions.

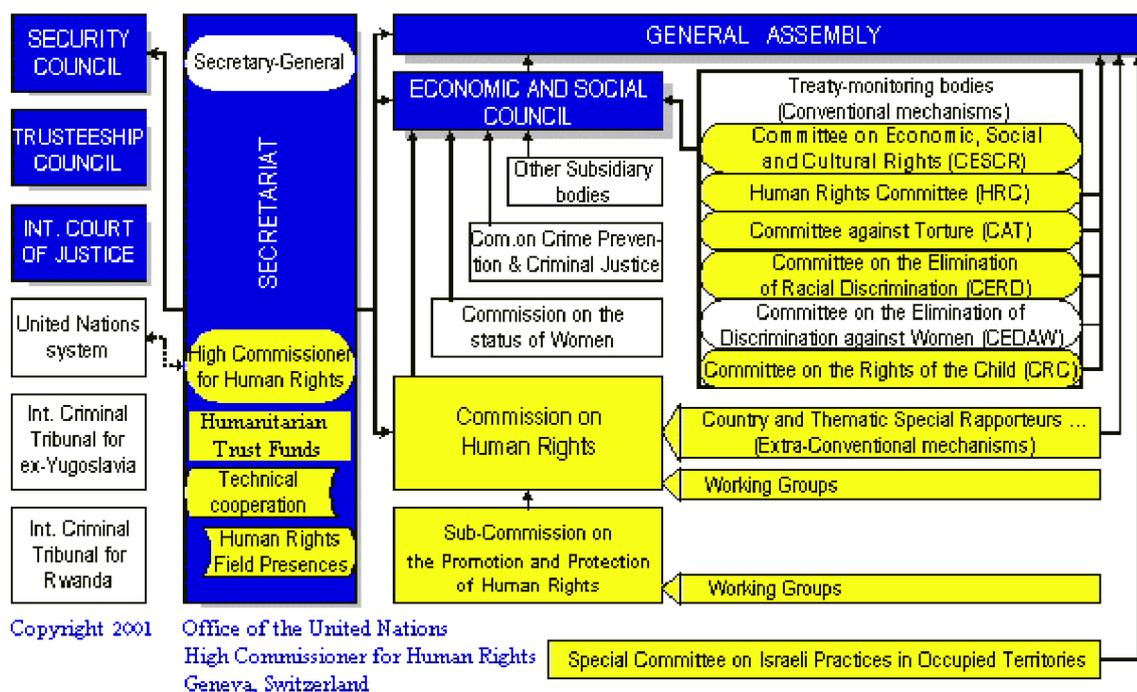
Neither non-governmental organizations (NGOs) nor members of the public have any decision-making role in the UN's deliberations. However, NGOs are essential to the UN's work, both in providing support for UN programs and in lobbying the UN and its member States to adopt new initiatives or act with greater effectiveness. At some levels, the UN does allow NGOs to participate in its meetings, but final decision-making is restricted to member

States. (The only exception to this general rule is the International Labour Organization , whose unique tripartite system gives equal representation to trade unions and employers' organizations, in addition to governments.

This series of pamphlets describes the many possible avenues open to members of minority groups to influence the UN and to benefit from the support that it can offer.

Structure of the United Nations

The United Nations is a large and complex organization, and it is useful to be familiar with its overall organisational structure. Figure 1 shows those parts of the UN that are particularly relevant to minorities.



The highest body of the UN is the *General Assembly*, in which each member state has one vote. The UN General Assembly meets annually from September to December at the UN's headquarters in New York and sets policies to guide all of the UN's activities. Its resolutions may carry significant political importance, but it cannot directly make international law or take decisions (except on internal matters, such as the budget) that are binding on its member States.

Many people believe that the *Security Council* is the most powerful body of the UN, although it is much smaller than the General Assembly. As its name implies, the Security Council deals with issues relating to peace and security. It has the power to take decisions which are binding on UN members, such as imposing trade sanctions on a particular country or even authorizing military intervention. The Security Council is composed of fifteen member States, ten of which are elected every two years by the General Assembly. The other five states (Peoples' Republic of China, France, Russian Federation, United Kingdom of Great

Britain and Northern Ireland, and the United States of America) are known as the "permanent members," and all five of them must agree before the Security Council can adopt a decision that is binding on other States. In recent years, the Security Council has been increasingly willing to act or make recommendations in situations where human rights -- including minority rights -- are violated.

Below the General Assembly are a great number of subsidiary bodies covering issues as diverse as disarmament, economic development, refugees, women's issues, crime prevention and control, international law, human rights, and the environment. Many of these bodies come under the umbrella of the *Economic and Social Council* (ECOSOC), which reports to the General Assembly.

Subsidiary to ECOSOC is the central human rights body in the UN, the 53-member *Commission on Human Rights*. It meets every year for six weeks in Geneva and adopts resolutions, hears reports, and debates human rights issues arising all over the world. The Commission is composed of government representatives, unlike its *Sub-Commission on Promotion and Protection of Human Rights*, which is made up of independent experts elected by the Commission. These two bodies (and various working groups and special rapporteurs that report to them) are the most significant bodies dealing with human rights in the UN system, and they are described in Pamphlet No. 3. The only minority-specific UN organ is the *Working Group on Minorities*, a group of five independent experts that reports to the Sub-Commission; its work is described in Pamphlet No. 2.

The UN civil service is called the *Secretariat* and is composed of permanent and temporary employees from all over the world. Most UN officials are based at UN Headquarters in New York, but most human rights work (as well as some other issues) is done at the UN's office in Geneva, Switzerland. The most senior UN official is the *Secretary-General*, currently Mr. Kofi Annan.

The chief human rights official in the UN is the *UN High Commissioner for Human Rights*, whose office is based in Geneva. The High Commissioner's staff is responsible for servicing nearly all of the UN's human rights bodies and implementing the various procedures that are described in this series of pamphlets. The High Commissioner is appointed by the Secretary-General; the current High Commissioner is Ms. Mary Robinson.

The UN system also includes a number of important international organizations that are related to the UN but which have their own structures, mandates, and membership. These bodies are known as *specialised agencies*, and those which might be of particular interest to minorities include the UN Educational, Scientific and Cultural Organization (UNESCO, based in Paris), the and the International Labour Organization (ILO, based in Geneva). The *UN High Commissioner for Refugees* is similar to the High Commissioner for Human Rights in that he is appointed by the Secretary-General and based in Geneva; the current High Commissioner is Mr. Ruud Lubbers.

The final major component of the UN system is the *International Court of Justice* (ICJ). Its functions include deciding disputes between States which have accepted its jurisdiction; interpreting disputes between States that may arise from the interpretation of a treaty (including some human rights treaties) to which the States are parties; and offering advisory opinions on legal matters when requested by a UN organ (such as the Security Council or

General Assembly) or a specialized agency. Only States can be parties before the Court, and neither individuals nor NGOs can invoke the Court's jurisdiction.

Non-governmental organizations (NGOs)

Although they are not specifically provided for in the UN Charter itself, non-governmental organizations are vital to many of the UN's functions. The Economic and Social Council has adopted arrangements for appropriate NGOs to be granted "consultative status" with ECOSOC, which enables the organizations to receive UN documentation and participate in many UN meetings. Both international and national NGOs are eligible to apply for consultative status, so long as they are concerned with issues that are relevant to the UN's work. There are approximately 1,000 NGOs in consultative status with the UN at this time.

Organizations applying for consultative status must fill in a questionnaire and provide detailed information about their structure, finances, and other matters. The application process and other matters relating to NGOs are handled by the Non-Governmental Organizations Section of the Department of Economic, Social and Cultural Affairs (DESA) in the United Nations in New York.

BASIC HUMAN RIGHTS PRINCIPLES

Summary: Human rights are commonly understood as being those rights which are inherent in the mere fact of being human. The concept of human rights is based on the belief that every single human being is entitled to enjoy his or her rights without unreasonable distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Human rights are legally protected under international human rights law, which obliges States to guarantee rights under treaties which they have accepted or under the norms of customary law which apply to all States. A variety of mechanisms and procedures has been developed to assist in ensuring that human rights norms are fully implemented.

The following are some of the most important characteristics of human rights:

Human rights are founded on respect for the *inherent dignity and worth of each person*.

Human rights are *universal*, meaning that they are applied equally and without discrimination to all people. While the significance of national and regional particularities and various historical, cultural, and religious backgrounds should be borne in mind, all States, regardless of their political, economic, and cultural systems, have a duty to promote and protect all human rights and fundamental freedoms.

Human rights are *indivisible, interdependent, and interrelated*. One cannot respect some human rights and not others. In practice, the violation of one right will often affect respect for several other rights, and all human rights should therefore be seen as having equal importance.

International Human Rights Law

A great number of international human rights treaties and other instruments have been adopted by the United Nations and accepted by States since 1945. Other instruments have been adopted at a regional level, reflecting the particular human rights concerns of the region. Every State's domestic constitution or other laws also formally protect basic human rights. In many States, the language used to proclaim human rights has been drawn directly from international instruments.

Treaties

The most common way in which a State expresses its agreement to be bound by international law is through a treaty. A treaty is a formal agreement among States to be bound by particular rules and may be designated by many different names, such as covenant, charter, protocol, convention, accord, and agreement. A treaty is legally binding on those States which have consented to be bound by its provisions – in other words are party to the treaty. Most of the principal international human rights treaties have been ratified by well over 100 States, and some enjoy near universal acceptance.

A State becomes a party to a treaty by whatever formal means of consent is required under its own law, as well as by the terms of the treaty itself. Depending on the precise timing and other factors, this process may lead to ratification, accession, adhesion, or succession to a treaty; all have the same legal effect. Merely signing a treaty expresses a State's intention to ratify it at a later date but does not by itself bind the State to the full set of treaty obligations.

When ratifying a treaty, a State may enter reservations to that treaty. These statements indicate that, while it consents to be bound by most of the treaty's provisions, the State does not agree to be bound by certain specific provisions. If you seek to hold a State accountable for human rights treaties it has ratified, it is essential to check to see whether the State has entered any reservations to the treaty which would limit its acceptance of certain obligations.

The legal effect of a treaty in a country's domestic law depends on the State's legal system. In some countries, treaties are "self-executing" and are considered to be superior to domestic legislation and even the constitution. In other States, treaties may prevail over domestic law but not over the constitution. In yet other States, a treaty will have no domestic legal effect unless it is formally incorporated into domestic law by the appropriate legislative process. Whatever a treaty's status may be domestically, a State is legally bound to observe its provisions at the international level.

Pamphlet No. 4 on Human Rights Treaty Bodies gives further information about how the treaty bodies can be used to promote and protect minority rights.

Customary international law

Customary international law is the term used to describe a widely accepted practice followed by States which derives from a sense of legal obligation. Because customary law is, by definition, not found by looking at a text, there is a great deal of disagreement over its exact content. However, most people today would agree that, at a minimum, the following human rights norms have become part of customary law: prohibition against genocide, prohibition against slavery, prohibition against torture and prohibition against systematic racial discrimination (such as apartheid).

Customary law is binding on *all* States (except those that may have objected to it during its formation), whether or not they have ratified any relevant treaty.

Declarations and resolutions adopted by UN organs

Neither the UN General Assembly nor other UN bodies have the authority to create rules of law that are legally binding on States, but they have adopted a wide range of *declarations, proclamations, recommendations, guidelines, and principles*. These statements, particularly when they are adopted unanimously or by consensus, represent important political and moral commitments by States that may influence their conduct of international relations. The most important of these statements are usually designated declarations, such as the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minority Rights). Another important declaration is the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Declaration on Religious Intolerance). Even though they do not have binding legal effect, such formal statements may be seen as declaratory of broadly

accepted principles by the international community, and States that support their adoption may be expected to live up to the political commitments they have freely undertaken.

Defining human rights

The writing or drafting of human rights standards can be a long and difficult process. The governments involved represent peoples from all parts of the world, with differing political, economic, and social systems. Since the most effective instruments are generally those that enjoy a high degree of agreement, governments generally prefer to have consensus on the text. This makes it more likely that a treaty will be widely ratified or that a declaration represents a meaningful political commitment by States. However, even treaties that are adopted by consensus become legally binding on an individual State only after it ratifies the treaty.

Most human rights are not absolute, and they can be limited in specific circumstances. For example, if an individual is found guilty of a crime after a fair trial, the State may lawfully restrict his or her freedom of movement by imprisonment; freedom of expression does not extend to libel and slander; and freedom of assembly does not allow you to gather a crowd in a busy intersection. While every treaty has slightly different provisions, among the legitimate reasons that a State may limit the exercise of certain rights are to protect the rights of others, national security, public order (*ordre public*), public health, or public morality. But any limits a State places on rights must be *provided by law* (not simply by executive fiat), *necessary* to achieve the stated purpose, and *consistent with the concept of a democratic society*.

In a legitimate state of emergency that is publicly declared, a State can take measures which suspend or derogate from certain rights. Again, however, such derogations are permitted only to the extent absolutely necessary in the specific situation and may never involve discrimination based on race, colour, sex, language, religion, or social origin. Certain rights -- known as "non-derogable rights" -- may never be suspended even in situations of war and armed conflict. These include the right to life, freedom from torture, freedom from slavery, and freedom of thought, conscience, and religion. Even in times of armed conflict, where humanitarian law or the law of war applies, human rights law continues to afford protection. The Committee on Economic, Social and Cultural Rights has also argued that States may never derogate from action to protect the "core content of economic, social and cultural rights".

Implementing and enforcing human rights

The obligation to promote, protect and ensure the enjoyment of human rights (more commonly phrased as the obligation to respect, protect and fulfil human rights) is primarily a responsibility of States and their governments. Most human rights must be guaranteed by States to all people within their territories, whether they are citizens, aliens, tourists, or even illegal entrants. Certain human rights may apply only to particular groups of people; for example, the right to vote in elections may be restricted to those who are citizens of the State. A State's responsibilities include the obligation to take affirmative measures to ensure that human rights are protected, as well as abstaining from interfering with the free exercise of certain rights. States must provide effective domestic remedies for persons who allege that their rights have been violated.

Ensuring that human rights are observed is also a legitimate concern of the international community. Under Article 55 of the UN Charter, the UN is to promote universal respect for and observance of human rights, and all UN member States pledge to take joint and separate action in cooperation with the UN to achieve this goal. In addition, over 125 States are party to one of the three main regional conventions on human rights.

Various mechanisms have been created by treaties or by the actions of international organizations to promote and protect human rights, and the remaining pamphlets in this series describe many of them in detail. Some mechanisms are based on legally binding obligations that States have assumed under the various treaties, and it may be possible to invoke one of these formal treaty mechanisms if you believe that your rights under a treaty have been violated. Some treaties offer the possibility of filing complaints about human rights violations, and most enable NGOs to contribute at least informally to examinations of a country's compliance with its treaty obligations.

Other mechanisms are founded on the inherent authority of international organs to consider matters within their competence. These mechanisms also may provide an option for individuals or NGOs to file communications alleging violations in a State (e.g., UNESCO and the "1503 procedure") or for direct participation in discussions about human rights in more "political" forums within the UN, such as the Commission on Human Rights. (see Pamphlet No. 3) The Working Group on Minorities of the UN Sub-Commission on Promotion and Protection of Human Rights, which is described in Pamphlet No. 2, provides an opportunity for those concerned with minority rights to review the practical realization of the UN "Declaration on Minority Rights", examine solutions to problems involving minorities and recommend measures for the promotion and protection of the rights of persons belonging to minorities.

Figure 2 summarizes some of the international instruments that are particularly relevant to minorities, setting out which instruments are legally binding and which are not. It also indicates the possible range of actions available under each type of instrument, depending on whether or not your country is a party to the treaty in question.

Figure 3 summarizes some of the regional instruments that are particularly relevant to minorities and indicates the possible range of actions available under the different instruments. Fuller details of the different regional mechanisms are contained in pamphlets on the Inter-American system, African Regional Mechanisms, the European Convention on Human Rights and the Framework Convention for the Protection of the Rights of National Minorities, pamphlets numbers 5, 6, 7 and 8, respectively.

TYPES OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

TYPE OF INSTRUMENT	NAME OF INSTRUMENT	POSSIBLE ACTION ON VIOLATIONS
<p>LEGALLY-BINDING, WITH A COMPLAINTS MECHANISM</p>	<p>INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS</p> <p>CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION</p> <p>CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN</p> <p>CONVENTION AGAINST TORTURE</p>	<p>DECISIONS ON FORMAL COMPLAINTS OR COMMUNICATIONS BY A TREATY BODY</p> <p>COMMENT ON OR CRITICISM OF A STATE'S PERIODIC REPORT</p>
<p>Legally binding, but no complaints mechanism</p>	<p>International Covenant on Economic, Social and Cultural Rights</p> <p>Convention on the Rights of the Child</p>	<p>Comment on or criticism of a State's periodic report</p>
<p>Not legally binding</p>	<p>Universal Declaration of Human Rights</p> <p>Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities</p> <p>Declaration on Religious Intolerance</p>	<p>Public criticism by UN bodies of violations in specific countries</p> <p>Discussion of issues of concern to minorities</p> <p>Development of new principles, guidelines, etc., in order to influence State conduct</p>

TYPES OF REGIONAL INSTRUMENTS

NAME OF REGIONAL INSTRUMENT	POSSIBLE ACTIONS
European Convention on Human Rights	Legally binding judgments by the European Court of Human Rights, based on formal complaints.
European Framework Convention for the Protection of National Minorities	Periodic state reports filed by parties; conclusions and recommendations adopted by Council of Europe, Council of Ministers, based on opinions submitted to it by an Advisory Committee. The Advisory Committee usually conducts an on-site mission and consults with non-governmental groups and others when it considers State reports; all actions are normally made public.
European Charter for Regional or Minority Languages	A Committee of Experts examines periodic reports submitted by State parties and prepares a report and proposals for recommendations which are submitted to the Council of Ministers.
American Convention on Human Rights	Formal complaints first considered by Inter- American Commission on Human Rights, which may issue public report with recommendations; for those States that have accepted its jurisdiction, there is a possible appeal to the Inter-American Court of Human Rights for a legally binding judgment. A complaint may brought by one State against another, but only if both have accepted this optional inter-State jurisdiction. The Court also has the power to give Advisory Opinions, if requested to do so by a State Party or the Commission.
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"	Right of petition to the Inter-American Commission on Human Rights for alleged violation of trade union or education rights, as set forth in the Additional Protocol.
Charter of the Organization of American States and Declaration on the Rights and Duties of Man	The Inter-American Commission on Human Rights may prepare country reports on the human rights situation in any OAS member State or may investigate and adopt a report and recommendations based on an individual petition filed with respect to any OAS member State.
African Charter on Human and Peoples Rights	Individual petitions may be considered confidentially by the African Commission on Human and Peoples' Rights, which may eventually make its decisions and recommendations public. The Commission also can decide to refer to the OAU Assembly of Heads of State and Government communications relating to "special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights". The Commission considers periodic reports from States in public. NGOs recognized as "Observers may be invited specially to be present at closed sessions dealing with issues of particular interest to them."
Protocol to the African Charter on Human and Peoples' Rights` establishing and African Court on Human and Peoples' Rights	After it is ratified by 15 States, the 1998 Protocol will create an African Court on Human and Peoples' Rights, which will have the authority to issue legally binding decisions on individual complaints. Not yet in force as of mid-2001.