CHAPTER – II
EVOLUTION OF INTERNATIONAL HUMAN RIGHTS LAW:
THE UNITED NATIONS NINE CORE HUMAN RIGHTS TREATIES

2.1 Introduction:

Internationalization of the concept of human rights is a post-second world war phenomenon, although as an idea and as an issue in religious, political and moral philosophy, the concepts of human rights and human dignity can be traced in all cultures and civilizations. The international legal protection of human rights has undergone dramatic growth and evolution since the end of the Second World War. The globalization of human rights took place when the Charter of the United Nations Organization (UNO/UN) came into existence in the year 1945, and the subsequent adoption, by the UN General Assembly, of the Universal Declaration of Human Rights (UDHR) on 10 December 1948, laid firm foundation for internationalization of human rights.

Although the historical origins of the concept of human rights are often linked with the idea of natural rights and there had been legal instruments adopted earlier in different States aimed at acknowledging and ensuring the protection of human rights by the rule of law, the proclamation and adoption of the UDHR on 10 December 1948 marked the real beginning of the momentous international journey towards ensuring that human rights are protected universally by the rule of law. Thus, the UDHR is considered today as the legal baseline for modern international human rights

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3 See note 2 in Chapter 1- Introduction.
4 For example, Magna Carta Libertatum (1215), the French Declaration of the Rights of Citizens (1789), and the American Declaration of the Rights and Duties of Man (July 1948). In her speech at the UN General Assembly at the adoption of the UDHR, Eleanor Roosevelt, chairperson of the Human Rights Commission, said: “We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind. This Declaration may well become the international Magna Carta for all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation in 1789 (the French Declaration of the Rights of Citizens), the adoption of the Bill of Rights by the People of the US, and the adoption of comparable Declarations at different times in other Countries”.
law, and 10 December 2008 marked the 60th anniversary of the setting of that legal baseline.

Although not intended as a legally binding instrument at the time of its adoption, the UDHR clearly acknowledged in its preamble, the essential need to protect human rights through the rule of law. The UN General Assembly then proclaimed the UDHR to be “a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this UDHR constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”.

From that humble beginning in 1948, international human rights law has evolved tremendously in different perspectives over the last six decades. Commemorating the 60th anniversary of the UDHR in 2008, the former UN High Commissioner for Human Rights, Louise Arbour, observed that “it is difficult to imagine today just what a fundamental shift the Universal Declaration of Human Rights represented when it was adopted 60 years ago”.

2.2 The UN Charter and the Development of International Human Rights Law:

The UN has been the major international institution that has consistently promoted, within the context of its Charter, the protection of international human rights through the rule of law. The drafting and adoption of the UDHR was itself undertaken within the context of the UN Charter. Thus, the significance of the UDHR as the baseline for international human rights law would be better appreciated with a brief analysis of the UN Charter in relation to the background and development of international human rights law prior to the adoption of the UDHR.

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6 The Preamble of the UN Charter says that “It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.
7 UDHR, Preamble, para. 8.
2.2.1 Pre UN Developments:

Prior to the creation of the UN in 1945, earlier attempts at including specific human rights provisions in the Covenant of the League of Nations after the First World War in 1919 were unsuccessful.\(^9\) The only substantive human rights provision in the Covenant of League of Nations, 1919, was on labour rights in its Article 23, stating that members of the League “will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend and undertake to secure just treatment of the native inhabitants of territories under their control”\(^10\) However, there emerged separate minority protection treaties and State declarations guaranteeing the protection of the rights of minorities, with the League of Nations performing a supervisory role over the obligations created, which were considered of international concern.\(^11\)

At about the same time, in 1919, International Labour Organization (ILO) was founded for the purpose of improving the conditions of workers. It was an organization founded on human rights principles and its subsequent work has elaborated on and detailed aspects of economic and social rights. The mandate of the ILO was echoed in the Covenant of the League of Nations in which all members pledged themselves “to secure and maintain fair and humane conditions of labor for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend.” They agreed to support enforcement of agreements to combat traffic in women and children, as well as drugs, and to take

\(^9\) Prior to creation of League of Nations (LoN) there were Conventions that aimed at protecting persons involved in war. The First two Geneva Conventions were in force prior to the creation of LoN. First, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1864. Second, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1906. Third, Geneva Convention relative to the Treatment of Prisoners of War, 1929. Fourth, Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949. All these Four Geneva Conventions were revised and expanded in 1949. Today this branch of international law is called as International Humanitarian Law and apply during armed conflict. Though the common object of International Humanitarian Law and International Human Rights Law is to protect human rights but the former applies in time of armed conflict and the latter in peace time.

\(^10\) Article 23(a) Covenant of the League of Nations, 1919, states that: “Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League: (a) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations; (b) undertake to secure just treatment of the native inhabitants of territories under their control;....”

\(^11\) For example Article 12 of the Polish Minorities Treaty (1920).
steps to prevent and control disease. By 1933 the ILO had adopted forty conventions, covering hours of work, maternity leave, unemployment, conditions of labor at night for women and children, equality of pay, minimum age at sea, forced labor, and freedom of association. At present, more than 100 Conventions have been adopted by the ILO.

Nevertheless, private endeavours continued both within and outside the League of Nations for the realization of an international human rights legal regime. In 1929, the Institute of International Law, a private body of distinguished authorities on international law in Europe, America and Asia, adopted the Declaration of the Rights of Man, in which it considered that it was the duty of every State to recognize, inter alia, the equal rights of every individual to life, liberty and property. The Institute also considered that every State had a duty to accord to everyone within its territory the full and entire protection of these rights without distinction as to nationality, sex, race, language or religion. Although the Declaration was not a legally binding document, it contributed to the popularization of the idea of an international human rights legal regime in the years immediately after its adoption. Commenting on the Declaration of the Rights of Man, Marshall Brown, writing in 1930, observed: “This declaration … states in bold and unequivocal terms the rights of human beings, ‘without distinction of nationality, sex, race, language and religion,’ to the equal right to life, liberty and property, together with all the subsidiary rights essential to the enjoyment of these fundamental rights. It aims not merely to assure to individuals their international rights, but it aims also to impose on all nations a standard of conduct towards all men, including their own nationals. It thus repudiates the classic doctrine that States alone are subjects of international law. It marks a new era which is more concerned with the interests and rights of sovereign individuals than with the rights of sovereign states”.12

2.2.2 Post UN Developments:

The atrocities committed during the Second World War further provoked significant humanitarian concerns and moved the world community to call for formal international measures aimed at ensuring the legal protection of human rights and achievement of world peace and security. Thus, the Allies determined even before the

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end of the war that an international commitment to the protection of human rights should be a part of the post-war settlement.\textsuperscript{13}

In 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the United Nations Charter. The delegates deliberated on the basis of proposals worked out by the representatives of China, the Soviet Union, the United Kingdom and the United States at Dumbarton Oaks, United States in August-October 1944. The Charter was signed on 26 June 1945 by the representatives of the 50 countries.\textsuperscript{14}

Consequently, in the preamble of the UN Charter that emerged after the Second World War, the Member States, after declaring their determination “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind”,\textsuperscript{15} also declared their determination “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.\textsuperscript{16}

The Charter also provided substantively in its Article 1(3) that one of the purposes of the UN would be “to achieve international co-operation in … promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”. Article 13 (1) (b) mandates General Assembly to strive for realization of human rights and fundamental freedoms for all. Furthermore, Article 55 provided that: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote… inter alia universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.

\textsuperscript{13} See the Atlantic Charter of 1941. Available at: http://avalon.law.yale.edu/wwii/atlantic.asp. Visited on 04-09-2012 at 10.04 p.m.
\textsuperscript{14} Poland, which was not represented at the Conference, signed it later and became one of the original 51 Member States. The United Nations officially came into existence on 24 October 1945, when the Charter had been ratified by China, France, the Soviet Union, the United Kingdom, and the United States and by a majority of other signatories. United Nations Day is celebrated on 24 October each year. The name "United Nations", coined by United States President Franklin D. Roosevelt was first used in the Declaration by United Nations of 1 January 1942, during the Second World War, when representatives of 26 nations pledged their Governments to continue fighting together against the Axis Powers.
\textsuperscript{15} UN Charter, Preamble, para 1.
\textsuperscript{16} Ibid, para 2.
The UN Member States then pledged themselves under Article 56 of the Charter “to take joint and separate action in co-operation with the Organization for the achievement of the purpose stated in Article 55”.17

Although the Charter did not list the specific contents of the human rights and fundamental freedoms referred to, it signalled the dawn of the international human rights legal regime. To take the international human rights initiative forward, the Charter provided for the establishment of an Economic and Social Council (ECOSOC) whose functions included making “recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all”,18 and the powers to “set up commissions … for the promotion of human rights, and such other commissions as may be required for the performance of its functions”.19 The basic objective of the (now disbanded) International Trusteeship System created under the Charter for the administration of the Trust Territories also included the requirement “to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world”.20

By virtue of these Charter provisions, seen in the context of Article 103,21 the UN Member States are obliged to observe, promote and encourage universal respect for human rights. Today, the UN Charter is widely considered as the basis of an international “constitutional order”22 that imposes obligations on member states to uphold international co-operation in promoting and encouraging respect for human rights.23 Louis Henkin has concisely described the development as follows: The UN

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17 In its opinion on The legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 260 (1970), ICJ Reports, 58 (1971), para. 29, the ICJ stated: “To establish instead, and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin, which constitutes a denial of fundamental human rights, is a flagrant violation of the purposes and principles of the Charter”.
18 Article 62 (2) of the UN Charter.
19 Article 68 of the UN Charter.
20 Article 76 (c) of the UN Charter.
21 Article 103 of the UN Charter states: “In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”.
Charter ushered in a new international law of human rights. The new law buried the old dogma that the individual is not a “subject” of international politics and law and that a government’s behaviour towards its own nationals is a matter of domestic, not international concern… It gave the individual a part in international politics and rights in international law, independently of his government. It also gave the individual protectors other than his government, indeed protectors and remedies against his government.24

2.3 The Legal Status of Charter Provisions on Human Rights:

The fact that the Charter does not define what human rights States are obliged to respect and observe for, has raised an important issue on the justiciability of Charter provisions on human rights. Jurists differ on the question whether the human rights provisions of the U.N. Charter could ever constitute binding legal obligations. The school of thought represented by the eminent Jurist, Manely O Hudson has held the view that the Charter is limited to setting out a programme of action for the organization of the United Nations to pursue, in which the Members are pledged to co-operate. As a member of the International Law Commission, Hudson stated in 1949 that “whenever the question of respect for human rights appeared in the charter -Articles 1(3), 13 (1) (b), 55(c), 62(2) and 76(c) - it was an aim to be achieved. The Charter did not in any way impose on the Members of the United Nations a legal obligation to respect human rights and fundamental freedoms”.25

Another equally eminent Jurist Hans Kelsen was also of the similar view. According to him Charter does not impose upon the Members a strict obligation to grant to their subjects the rights and freedoms mentioned in the preamble or in the text of the Charter.26

On the other hand, the rival school led by Prof. Sir Hersch Lauterpacht, holds that the Charter provisions on human rights are binding obligations. According to him there is a distinct element of legal duty in the undertaking expressed in Article 56 in which “all Members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55. Any construction of the Charter, according to which Members of United

25 Manely O. Hudson, Integrity of International Instruments, 42, AIIC 1948, pp 105-108.
Nations are, in law entitled to disregard-and to violate – human rights and fundamental freedoms is destructive of both the legal and the moral authority of the Charter as a whole.27

Philip Jessup, an eminent Judge of the International Court was also of the same view, when he said “It is already the law, at least for members of the United Nations, that, respect for human dignity and fundamental human rights is obligatory. The duty is imposed by the Charter, a treaty to which they are parties”.28

Professor Quincy Wright has also supported the view that “Article 56 imposes an obligation upon its Members to take joint or separate action, in co-operation with the organization for the achievement of universal respect for and observance of human rights. Certainly, the latter obligation required Members to see that their organs of Government respect and observe human rights in carrying out their normal functions”.29

2.3.1 Judicial Pronouncement on the Question:

No account of the binding legal obligations of the provisions of U.N. Charter on human rights and international aspect of human rights would be complete without a mention of the views of the International Court of Justice (I.C.J.). They are progressive, developmental and helpful to the cause of human rights.

The I.C.J. has left no stone unturned in evolving human rights jurisprudence and strengthening the law concerning human rights whenever an opportunity is offered in a case brought before it. Even in exceptional cases where the Court omits or fails to refer to the concept of human right, the Members of the Court have, at no point, failed to elaborate that aspect in their independent or separate supporting opinions or even give vent to their thinking in dissenting opinions. It is needless to say that, a legal right finds its due recognition before a court of law alone. In this context it would not be out of place to mention some of very important cases in which the court or its members have given expression on the subject of human rights.

2.3.1(i) Human Rights in Contentious Cases:

**U.S.A v Iran**,\(^{30}\) in which the I.C.J. was dealing the capture of U.S. Hostages by Iran, observed;

“Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights”.

What is important to note here is that, the Court emphasized the legal importance of the U.D.H.R., 1948, apart from the obligations created by the U.N. Charter. The court specifically mentions that the U.D.H.R. enunciates “fundamental principles” of International Law.

2.3.1(b) Human Rights in Advisory Opinions:

The most celebrated Advisory opinion on the Question is the Advisory Opinion on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa)*\(^{31}\) case. The continued presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council’s Resolution 276(1970), the Court in it’s Advisory Opinion, came to the categorical conclusion that:

“Under the Charter of United Nations the former Mandatory had pledged itself to observe and respect in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead and enforce, distinctions, exclusion, restrictions and limitations exclusively based on grounds of race, color, descent or national or ethnic origin, which constitutes a denial to fundamental human rights, is a flagrant violation of the purposes and principles of the Charter”.

When the Court speaks of “conformity with the international obligations assumed – under the Charter”, or talks of “a violation of the purposes and principles of

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\(^{30}\) (United States Diplomatic and Consular Staff in Tehran Case) I.C.J. Reports 1980, para 91.

the Charter”, or mentions the pledge to observe and respect human rights and fundamental freedoms for all and much more so when it finds that certain actions “constitute a denial of fundamental human rights” and classifies them as a “flagrant violation of the purposes and principles of the charter” does impose on the members of the United Nations legal obligations in the human rights field.

2.3.1(c) Human Rights in Separate or Dissenting Opinions:

The earliest mention of the “right of man” in the history of the International Court of Justice is to be found in the individual opinion of Judge Azevedo in the Advisory opinion rendered by the Court in 1947 on Admission of a State to the U.N.32

In the Interpretation of Peace Treaties case (2nd phase), Judge Read, in his dissenting opinion, spoke of the importance of human rights in the following lines:

“The importance of the maintenance of human rights and fundamental freedoms is emphasized by their inclusion in the purposes of the United Nations as set forth in Article 1 of the Charter and by the Central position taken by the Human Rights Articles of the Treaties of Peace”.33

In the Liechtenstein v. Guatemala (Nottebohm Case),34 Judge Guggenheim, in his dissenting opinion, emphasized the importance of nationality in relation to the exercise of the right of diplomatic protection. He observed as follows:

“The protection of the individual which is so precarious under existing international law would be weakened even further and I consider that this would be contrary to the basic principle embodied in Article 15(1) of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 8th December 1948, according to which everyone has the right to nationality. Furthermore, refusal to exercise protection is not in accordance with the frequent attempts made at the present time to prevent the increase in number of cases of stateless persons and to provide protection against acts violating the fundamental human rights recognized by international law as a

32 I.C.J. Reports 1947-48, p.78
33 I.C.J. Reports 1950, p.231.
34 I.C.J. Reports 1955 Pp 63-64.
minimum standard, without distinction as to nationality, religion or race”.

In South-West Africa cases, the dissenting opinions of Judge Jessup\textsuperscript{35} and Judge Tanaka\textsuperscript{36} made pertinent remarks on human rights while condemning the policy of apartheid.

Though dissenting opinions have no binding force but they still represent the thinking of eminent jurists on a subject of vital importance to the individual and that too in a legal system wherein the State is primary subject of the law.

2.4 The UDHR as a Common Standard of Achievement:

Efforts by some countries and non-governmental organizations (NGOs) attending the San Francisco Conference for the inclusion of an International Bill of Rights in the UN Charter failed mainly because they were opposed by the major powers.\textsuperscript{37} Soon after the adoption of the UN Charter, ECOSOC, acting on its mandate and powers under the Charter, established a Commission on Human Rights in 1946 with the mandate to develop the framework for an International Bill of Rights that set out clearly the specific contents of the international human rights recognized under the Charter. The Commission, appointed a Drafting Committee chaired by Eleanor Roosevelt, which drafted the UDHR between January 1947 and December 1948 as the first part of the so-called International Bill of Human Rights.\textsuperscript{38}

Adopted by the General Assembly on 10 December 1948, the UDHR is a foundational document of the UN human rights system. Its adoption marked the first time in history that the international community collectively\textsuperscript{39} agreed upon a body of fundamental rights and freedoms to which all persons, simply by virtue of their humanity, were entitled. Indeed, the principle of the universality of human rights is the cornerstone of international human rights law.

\textsuperscript{35} I.C.J. Reports 1962 Pp 355-356 (Preliminary Objection).
\textsuperscript{36} I.C.J. Reports 1966 Pp 310-315 (Second Phase).
\textsuperscript{38} The so-called International Bill of Rights consists of the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
\textsuperscript{39} With eight states out of the then 58 UN Members States abstaining.
The UDHR contains a preamble and 30 Articles, which include a general prohibition of discrimination and set forth various types of rights and obligations, including political and civil rights (Articles 3 to 21), economic, social and cultural rights (Articles 22 to 28). As a common standard of achievement, the rights covered by the UDHR are the following: right to life, liberty and security of person (Article 3); prohibition of slavery or involuntary servitude (Article 4); prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 5); right to recognition as a person before the law (Article 6); right to equality before the law, non-discrimination, and equal protection of the law (Article 7); right to an effective legal remedy (Article 8); right to freedom from arbitrary arrest, detention, or exile (Article 9); right in full equality to a fair and public hearing by an independent and impartial tribunal (Article 10); right to be presumed innocent until proved guilty according to law, right not to be held guilty for any act or omission which did not constitute an offence at the time committed, and right not to be punished with a heavier penalty than applicable at the time of committing an offence (Article 11); right to freedom from arbitrary interference with privacy, family, home or correspondence and attacks on one’s honour and reputation (Article 12); right to freedom of movement and residence within state borders and right to leave any country and to return to one’s own country (Article 13); right to seek and enjoy asylum (Article 14); right to nationality and right to change nationality (Article 15); right to marry and found a family (Article 16); right to property (Article 17), right to freedom of thought, conscience and religion (Article 18); right to freedom of opinion and expression (Article 19); right to freedom of peaceful assembly and association (Article 20); right to take part in the government of one’s country, have access to public service, and take part in elections (Article 21); right to social security (Article 22); right to work, to equal pay for equal work, and to form and join trade unions (Article 23); right to rest and leisure, limitation of working hours, and periodic holidays with pay (Article 24); right to a standard of living adequate for health and well-being, including food, clothing, housing and medical care, and necessary social services, and right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond one’s control (Article 25); right to education (Article 26); right to participate freely in cultural life and to enjoy the arts and share in scientific advancement, and right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is
the author (Article 27); and right to a social and international order in which the rights and freedoms can be fully realized (Article 28).

The catalogue of rights in the UDHR covered both civil and political rights, as well as economic, social and cultural rights without distinction, and thus recognized indivisibility, interdependence and interrelatedness of all human rights from the beginning. It also recognized that “everyone has duties to the community in which alone the free and full development of his personality is possible”. The unique feature of the language used in UDHR is that it addresses individual and not the States. Although UDHR is not a legally binding instrument (i.e. it does not create legal obligations for States), it has over time been widely accepted as a universal agreement on fundamental human rights norms that duty bearers are expected to respect, protect and fulfill. It therefore carries significant moral weight, and some of its provisions now constitute customary international law. The significance of UDHR is that it provides an authoritative content, adapted by the UN General Assembly, to the interpretation of the UN Charter in respect of its human rights provisions. Its considerable practical importance, in that regard, has been demonstrated through its invocation by the International Court of Justice (ICJ), the International Criminal Court (ICC), regional and domestic courts as an aid to interpretation of relevant human rights treaties, and national constitutional provisions protecting human rights. The Declaration has also been referred to in a number of cases involving human rights issues. At the regional level, Article 60 of the African Charter on Human and Peoples’ Rights (African Charter or ACHPR), ratified by 53 African states, and specifically requires the African Commission on

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40 Article 29 (1) of UDHR.
41 Ian Brownlie, “Principles of Public International Law”, 7th ed., Oxford University Press, Oxford, 2008, p. 559. For example right against torture or to cruel, inhuman or degrading treatment or punishment, right against slavery.
42 The I.C.J. invoked the UDHR in relation to the detention of hostages ‘in conditions of hardship’. See USA v. Iran –Case Concerning United States Diplomatic and Consular Staff in Tehran, ICJ Reports, 3 (1980), para. 91, at p. 42.
43 See Pre-Trial Chamber I, Situation in Darfur, Sudan: in the Case of the Prosecutor v Omar Hassan Ahmad Al Bashir, No. ICC-02/05-01/09 (4 March 2009), para. 156.
44 For example the European Court of Human Rights in the Golder case, ILR 57, 201 at pp. 216–17.
45 For example Supreme Court of Uganda, Attorney General v Susan Kigula and 417 Others, Constitutional Appeal No. 03 of 2006, Judgment of 21 January 2009.
46 See M.N. Shaw, International Law, 6th ed., Cambridge University Press, Cambridge, 2008, p. 280, citing the following cases: In re Flesche 16 AD, 266, at 269; The State (Duggan) v Tapley 18 ILR, 336, at 342; Robinson v Secretary-General of the UN 19 ILR, 494, at 496; Extradition of Greek National case, 22 ILR 520 at 524; Beth El Mission v Minister of Social Welfare 47 ILR, 205 at 207; Corfu Channel case, ICJ Reports, 4 (1949), at p. 22; Filartiga v Pena-Irala 630 F.2d 876 (1980).
Human and Peoples’ Rights to draw inspiration, inter alia, from the UDHR when interpreting the African Charter. Some national Constitutions also accord the UDHR a special status by their reference to it, with some explicitly providing for the interpretation of the constitutions in conformity with the UDHR. For example, Article 102 of the Spanish Constitution of 1978 provides that “The norms relative to basic rights and liberties which are recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreement on those matters ratified by Spain”. Similarly, Article 75(22) of the Constitution of Argentina (as amended) confers constitutional rank on various human rights instruments, including the UDHR, by declaring that these instruments “have a higher hierarchy than law”.

This confirms the view that over the years the UDHR has indeed acquired a legal or normative character as envisaged by its designation as “a common standard of achievement for all peoples and all nations” in its Preamble when it was adopted on 10th December 1948.

2.5 Translating UDHR content into binding Covenants: International Bill of Human Rights (IBHR):

In continuance of its mandate of drafting the international bill of rights, the UN Commission on Human Rights commenced, in earnest after the adoption of the UDHR, the drafting of a legally binding international human rights treaty under the UN system. Eventually, two binding Covenants were produced after nearly 20 years of drafting debates and disagreements regarding whether or not to combine civil and political rights and economic, social and cultural rights in one single Covenant. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted in 1966 and both entered into force in 1976. The two Covenants, together with the UDHR, constitute International Bill of Rights (IBHR). The rights protected in the two Covenants cover and enlarge most of the rights recognized under the UDHR and

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47 Article 60 of The African Charter on Human and Peoples’ Rights reads as: “The Commission shall draw inspiration from international law on human and peoples’ rights, particularly from the provisions of various African instruments on human and peoples’ rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples’ rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members”.

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thereby protect nearly all the basic values cherished by all States and every human society. In addition, many other ancillary international treaties and declarations on the rights of women, children, refugees, stateless persons, diplomatic agents, minorities, persons with disabilities, etc., have been adopted under the UN system. There are also specific international human rights treaties for the protection of a person against atrocities such as genocide, racial discrimination, apartheid, slavery, forced labour, torture, enforced disappearance etc.48

2.6 An Overview of UN Nine Core International Human Rights Treaties (including ICCPR & ICESCR):

The nine core international human rights treaties dealing with specific human rights are:49

1. The International Covenant on Civil and Political Rights, 1966 (ICCPR).
5. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT).

48 See Office of UN High Commissioner for Human Rights at http://www2.ohchr.org/english/bodies/ratification/.
49 As of 09-09-2012, the total States Parties to the nine core human rights treaties are as follows: ICESCR, 160; ICCPR, 167; ICERD, 175; CEDAW, 187; CAT, 151; CRC, 193; ICRMW, 46; CPD, 119; ICPED, 34. For the current state of ratification, see Office of UN High Commissioner for Human Rights at http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en or http://www2.ohchr.org/english/bodies/ratification/ visited on 09-09-2012 at 09.10 pm.
These treaties create obligations on States Parties\textsuperscript{50} to establish and enact laws promoting and protecting human rights at the national level. A treaty enters into force once a certain number of States (as determined by the treaty itself) have ratified or acceded to it. Some treaties are supplemented by Optional Protocols, which States Parties to the treaty may ratify. Optional Protocols normally contain provisions regarding a specific issue and/or allow for specific procedures, such as individual complaints or inquiries.

\textbf{2.6.1 ICCPR:}

The ICCPR follows the structure of the UDHR and ICESCR, with a preamble and fifty-three Articles, divided into six parts.

Part 1 (Article 1) recognizes the right of all peoples to self determination, including the right to “freely determine their political status”, pursue their economic, social and cultural goals, and manage and dispose of their own resources. It recognizes a negative right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self governing and trust territories (colonies) to encourage and respect their self-determination.

Part 2 (Articles 2 – 5) obliges States Parties to legislate where necessary to give effect to the rights recognized in the Covenant, and to provide an effective legal remedy for any violation of those rights.\textsuperscript{51} It also requires the rights be recognized “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,” and to ensure that they are enjoyed equally by women.\textsuperscript{52} The rights can only be limited “in time of public emergency which threatens the life of the nation,”\textsuperscript{53} and even then no derogation is permitted from the rights to life, freedom from torture and slavery, the freedom from retrospective law, the right to personhood, and freedom of thought, conscience and religion.\textsuperscript{54}

Part 3 (Articles 6 – 27) lists the civil and political rights.

\textsuperscript{50} Through ratification or accession, States have assumed a legal obligation to implement the rights recognized in a treaty.
\textsuperscript{51} Article 2 (2).
\textsuperscript{52} Article 2 (1) and 3.
\textsuperscript{53} Article 4 (1).
\textsuperscript{54} Article 4 (2)- “No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision”.
Part 4 (Articles 28 – 45) governs the establishment and operation of the Human Rights Committee and submission of periodic reports by the States Parties of efforts taken to implement the Covenant rights at the domestic level and monitoring of the Covenant implementation. It also allows parties to recognize the competence of the Committee to resolve disputes between parties on the implementation of the Covenant (Articles 41 and 42).

Part 5 (Articles 46 – 47) clarifies that the Covenant shall not be interpreted as interfering with the operation of the United Nations or "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources".

Part 6 (Articles 48 – 53) governs ratification, entry into force, and amendment of the Covenant.

2.6.1(i) Core Provisions -Articles 6 to 27- Civil and Political Rights:

Rights to physical integrity:

Article 6 recognizes the individual's "inherent right to life" and requires it to be protected by law. It is a “supreme right” from which no derogation can be permitted, and must be interpreted widely. It therefore requires parties to take positive measures to reduce infant mortality and increase life expectancy, as well as forbidding arbitrary killings by security forces.

While Article 6 does not prohibit the death penalty, it restricts its application to the “most serious crimes” and forbids it to be used on children and pregnant women or in a manner contrary to the Convention on the Prevention of Crime of Genocide. The Human Rights Committee (CCPR) interprets the Article as “strongly suggesting that abolition is desirable”, and regards any progress towards abolition of the death penalty as advancing this right.\textsuperscript{55} The OP2-ICCPR commits its signatories to the abolition of the death penalty within their borders.

Article 7 prohibits torture and cruel, inhuman or degrading punishment. As with Article 6, it cannot be derogated from under any circumstances. The Article is now interpreted to impose similar obligations to those required by the CAT, including not just prohibition of torture, but active measures to prevent its use and a prohibition

\textsuperscript{55} CCPR General Comment No.06 and 14 of 1982 and 1984 respectively on the Right to Life (Article 6). See Official Website of OHCHR for all General Comments made by CCPR at http://www2.ohchr.org/english/bodies/hrc/comments.htm. Visited on 07-12-20012 at 2.14 pm.
on refoulement. This Article explicitly includes a prohibition on medical and scientific experimentation without consent.\textsuperscript{56}

Article 8 prohibits slavery and enforced servitude in all situations. The Article also prohibits forced labour, with exceptions for criminal punishment, military service and civil obligations.

\textbf{Liberty and Security of Person:}

Article 9 recognizes the rights to liberty and security of the person. It prohibits arbitrary arrest and detention, requires any deprivation of liberty to be according to law, and obliges parties to allow those deprived of their liberty to challenge their imprisonment through the courts. These provisions apply not just to those imprisoned as part of the criminal process, but also to those detained due to mental illness, drug addiction, or for educational or immigration purposes.

Articles 9.3 and 9.4 impose procedural safeguards around arrest, requiring anyone arrested to be promptly informed of the charges against them, and to be brought promptly before a judge. It also restricts the use of pre-trial detention, requiring it to be imposed only in exceptional circumstances and for as short a period of time as possible.\textsuperscript{57}

Article 10 requires anyone deprived of liberty to be treated with dignity and humanity. This applies not just to prisoners, but also to those detained for immigration purposes or psychiatric care. The right complements the Article 7 prohibition on torture and cruel, inhuman or degrading treatment. The Article also imposes specific obligations around criminal justice, requiring prisoners in pretrial detention to be separated from convicted prisoners, and children to be separated from adults. It requires prisons to be focused on reform and rehabilitation rather than punishment.\textsuperscript{58}

Article 11 prohibits the use of imprisonment as a punishment for breach of contract.

\textbf{Procedural fairness and rights of the accused:}

Article 14 recognizes and protects a right to justice and a fair trial. Article 14.1 establishes the ground rules: everyone must be equal before the courts, and any

\textsuperscript{56} CCPR General Comment No.07 of 1982.
\textsuperscript{57} CCPR General Comment No.08 of 1982.
\textsuperscript{58} CCPR General Comment No.09 of 1982.
hearing must take place in open court before a competent, independent and impartial tribunal, with any judgment or ruling made public. Closed hearings are only permitted for reasons of privacy, justice, or national security, and judgments may only be suppressed in divorce cases or to protect the interests of children. These obligations apply to both criminal and civil hearings, and to all courts and tribunals.

The rest of the Article imposes specific and detailed obligations around the process of criminal trials in order to protect the rights of the accused and the right to a fair trial. It establishes the presumption of innocence and forbids double jeopardy. It requires that those convicted of a crime be allowed to appeal to a higher tribunal, and requires victims of a miscarriage of justice to be compensated. It establishes rights to a speedy trial, to counsel, against self-incrimination, and for the accused to be present and call and examine witness.59

Article 15 prohibits prosecutions under *ex post facto law* and the imposition of retrospective criminal penalties, and requires the imposition of the lesser penalty where criminal sentences have changed between the offence and conviction.

Article 16 requires States Parties to recognize everyone as a person before the law.

**Individual Liberties:**

Article 12 guarantees freedom of movement, including the right of persons to choose their residence and to leave a country. These rights apply to legal aliens as well as citizens of a State, and can be restricted only where necessary to protect national security, public order or health, and the rights and freedoms of others. The Article also recognizes a right of people to enter their own country. The Human Rights Committee interprets this right broadly as applying not just to citizens, but also to those stripped of or denied their nationality. They also regard it as near-absolute; “there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable”.60

Article 13 forbids the arbitrary expulsion of resident aliens and requires such decisions to be able to be appealed and reviewed.

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59 CCPR General Comment No.13 of 1984.
60 CCPR General Comment No.27 of 1999.
Article 17 mandates the right of privacy. This provision, specifically Article 17(1), protects private adult consensual sexual activity, thereby nullifying prohibitions on homosexual behaviour, however, the wording of this Covenant's marriage right (Article 23) excludes the extrapolation of a same-sex marriage right from this provision. Article 17 also protects people against unlawful attacks to their honor and reputation. Article 17 (2) grants the protection of the Law against such attacks.  

Article 18 mandates freedom of religion. Article 19 mandates freedom of expression. Article 20 mandates prohibition of any propaganda for war as well as any advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law. Articles 21 and 22 mandate freedom of association. These provisions guarantee the right to freedom of association, the right to trade unions.

Article 23 mandates the right of marriage. The wording of this provision neither requires nor prohibits same sex marriage.

Article 24 mandates the right to a nationality. Article 25 mandates the right to participate in public affairs including the right to vote and contest in elections. Article 26 mandates equality before the law and equal protection law. This Article contains a revolutionary norm by providing an autonomous equality principle which is not dependant upon another right under the convention being infringed. This has the effect of widening the scope of the non-discrimination principle beyond the scope of ICCPR.

Article 27 mandates the rights of ethnic, religious and linguistic minority to enjoy their own culture, to profess their own religion, and to use their own language.

2.6.1(ii) Optional Protocols:

There are two Optional Protocols to the Covenant. The First Optional Protocol to ICCPR (OP1-ICCPR) was adopted along with the ICCPR in 1966. The Second Optional Protocol to ICCPR (OP2-ICCPR) was adopted in 1989. Both came into force in 1976 and 1991 respectively. The OP1-ICCPR establishes an individual complaints mechanism, allowing individuals to complain to the Human Rights

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61 CCPR General Comment No.16 of 1988.
62 As of 09-09-2012 there are 114 States Parties to OP1-ICCPR.
63 As of 09-09-2012 there are 75 States Parties to OP2-ICCPR.
Committee of ICCPR (CCPR) about violations of the rights recognized in the ICCPR. This has led to the creation of a complex jurisprudence on the interpretation and implementation of the ICCPR.

The OP2-ICCPR abolishes the death penalty; however, countries were permitted to make a reservation allowing for use of death penalty for the most serious crimes of a military nature, committed during wartime.

**2.6.2 ICESCR:**

The Covenant follows the structure of the UDHR and ICCPR, with a preamble and thirty-one Articles, divided into five parts.

Part 1 (Article 1) recognizes the right of all peoples to self determination, which is similar to Article 1 of ICCPR as discussed above.

Part 2 (Articles 2 – 5) establishes the principle of “progressive realization”. It also requires the rights be recognized “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The rights can only be limited by law, in a manner compatible with the nature of the rights, and only for the purpose of “promoting the general welfare in a democratic society”.

Article 2 of the Covenant imposes a duty on all parties 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 by all appropriate means, including particularly the adoption of legislative measures.

This is known as the principle of "progressive realization". It acknowledges that some of the rights (for example, the right to health) may be difficult in practice to achieve in a short period of time, and that States may be subject to resource constraints, but requires them to act as best they can within their means.

The principle differs from that of the ICCPR, which obliges parties to “respect and to ensure to all individuals within its territory and subject to its jurisdiction” the rights in that Convention. However, it does not render the Covenant meaningless. The requirement to “take steps” imposes a continuing obligation to work towards the

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64 CESCR General Comment No. 20 of 2009 on Non-discrimination in Economic, Social and Cultural Rights (Article 2.2). See official website of OHCHR for all General Comments made by CESCR at http://www2.ohchr.org/english/bodies/cescr/comments.htm. Visited on 07-12-20012 at 1.25 pm.
realization of the rights. It also rules out deliberately regressive measures which impede that goal. The Committee on Economic, Social and Cultural Rights also interprets the principle as imposing minimum core obligations to provide, at the least, minimum essential levels of each of the rights. If resources are highly constrained, this should include the use of targeted programmes aimed at the vulnerable.65

Part 3 (Articles 6 – 15) lists the economic, social and cultural rights.

Part 4 (Articles 16 – 25) governs reporting and monitoring of the Covenant and the steps taken by the parties to implement it. It also allows the monitoring body – originally the ECOSOC – now the CESCR– to make general recommendations to the UN General Assembly on appropriate measures to realize the rights (Article 21)

Part 5 (Articles 26 – 31) governs ratification, entry into force, and amendment of the Covenant.

2.6.2(i) Core Provisions- Articles 6 to 15- Economic, Social and Cultural Rights.

Right to Work (Labour Rights):

Article 6 of the Covenant recognizes the right to work, defined as the opportunity of everyone to gain their living by freely chosen or accepted work. Parties are required to take “appropriate steps” to safeguard this right, including technical and vocational training and economic policies aimed at steady economic development and ultimately full employment. The right implies States Parties must guarantee equal access to employment and protect workers from being unfairly deprived of employment. They must prevent discrimination in the workplace and ensure access for the disadvantaged. The fact that work must be freely chosen or accepted means parties must prohibit forced or child labour.66

The work referred to in Article 6 must be decent work. This is effectively defined by Article 7 of the Covenant, which recognizes the right of everyone to “just and favourable” working conditions. These are in turn defined as fair wages with equal pay for equal work, sufficient to provide a decent living for workers and their dependants; safe working conditions; equal opportunity in the workplace; and sufficient rest and leisure, including limited working hours and regular, paid holidays.

65 CESCR General Comment No.03 of 1990 on the Nature of State Parties Obligations (Article 2.1).
66 CESCR General Comment No.18 of 2005 on Right to Work.
Article 8 recognizes the right of workers to form or join trade unions and protects the right to strike. It allows these rights to be restricted for members of the armed forces, police, or government administrators. Several parties have placed reservations on this clause, allowing it to be interpreted in a manner consistent with their constitutions (China, Mexico), or extending the restriction of union rights to groups such as fire-fighters (Japan).

**Right to Social Security:**[^67]

Article 9 of the Covenant recognizes “the right of everyone to social security, including social insurance.” It requires parties to provide some form of social insurance scheme to protect people against the risks of sickness, disability, maternity, employment injury, unemployment or old age; to provide for survivors, orphans, and those who cannot afford health care; and to ensure that families are adequately supported. Benefits from such a scheme must be adequate, accessible to all, and provided without discrimination. The Covenant does not restrict the form of the scheme, and both contributory and non-contributory schemes are permissible (as are community-based and mutual schemes).

The Committee on Economic, Social and Cultural Rights has noted persistent problems with the implementation of this right, with very low levels of access.

Several parties, including France and Monaco, have reservations allowing them to set residence requirements in order to qualify for social benefits. The Committee on Economic, Social and Cultural Rights permits such restrictions, provided they are proportionate and reasonable.

**Right to Family Life:**

Article 10 of the Covenant recognizes the family as “the natural and fundamental group unit of society”, and requires parties to accord it "the widest possible protection and assistance.” Parties must ensure that their citizens are free to establish families and that marriages are freely contracted and not forced. Parties must also provide paid leave or adequate social security to mothers before and after childbirth, an obligation which overlaps with that of Article 9. Finally, parties must take “special measures” to protect children from economic or social exploitation,

[^67]: CESCR General Comment No.19 of 2008 on Right to Social Security.
including setting a minimum age of employment and barring children from dangerous and harmful occupations.

**Right to Adequate Standard of Living:**

Article 11 recognizes the right of everyone to seek an adequate standard of living. This includes, but is not limited to, the right to adequate food, clothing, housing, and “the continuous improvement of living conditions.” It also creates an obligation on parties to work together to eliminate world hunger.

The right to adequate food, also referred to as the right to food, is interpreted as requiring “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.” This must be accessible to all, implying an obligation to provide special programmes for the vulnerable. The right to adequate food also implies a right to water.

The right to adequate housing, also referred to as the right to housing, is “the right to live somewhere in security, peace and dignity.” It requires “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.” Parties must ensure security of tenure and that access is free of discrimination, and progressively works to eliminate homelessness. Forced evictions, defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”, are a prima facie violation of the Covenant.

**Right to Health:**

Article 12 of the Covenant recognizes the right of everyone to “the enjoyment of the highest attainable standard of physical and mental health.” “Health” is understood not just as a right to be healthy, but as a right to control one’s own health and body (including reproduction), and be free from interference such as torture or medical experimentation. States must protect this right by ensuring that everyone

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68 CESCR General Comment No.12 of 1999 on Right to Adequate Food.
69 CESCR General Comment No.07 of 1997 on Right to Adequate Housing.
70 CESCR General Comment No.14 of 2000 on Right to Health.
within their jurisdiction has access to the underlying determinants of health, such as clean water, sanitation, food, nutrition and housing, and through a comprehensive system of healthcare, which is available to everyone without discrimination, and economically accessible to all.

Article 12.2 requires parties to take specific steps to improve the health of their citizens, including reducing infant mortality and improving child health, improving environmental and workplace health, preventing, controlling and treating epidemic diseases, and creating conditions to ensure equal and timely access to medical services for all. These are considered to be “illustrative, non-exhaustive examples”, rather than a complete statement of parties' obligations. The right to health is interpreted as requiring parties to respect women's reproductive rights, by not limiting access to contraception or “censoring, withholding or intentionally misrepresenting” information about sexual health. They must also ensure that women are protected from harmful traditional practices such as female genital mutilation.

Right to Education

Article 13 of the Covenant recognizes the right of everyone to free education (free for the primary level and “the progressive introduction of free education” for the secondary and higher levels). This is to be directed towards “the full development of the human personality and the sense of its dignity”, and enable all persons to participate effectively in society. Education is seen both as a human right and as “an indispensable means of realizing other human rights”, and so this is one of the longest and most important Articles of the Covenant.

Article 13.2 lists a number of specific steps parties are required to pursue to realize the right of education. These include the provision of free, universal and compulsory primary education, “generally available and accessible” secondary education in various forms (including technical and vocational training), and equally accessible higher education. All of these must be available to all without discrimination. Parties must also develop a school system (though it may be public, private, or mixed), encourage or provide scholarships for disadvantaged groups. Parties are required to make education free at all levels, either immediately or progressively; primary education shall be compulsory and available free to all”;

71 CESCR General Comment No.15 of 2002 on Right to Water.
72 CESCR General Comment No.13 of 1999 on Right to Education.
secondary education “shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education”; and “higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.”

Articles 13.3 and 13.4 require parties to respect the educational freedom of parents by allowing them to choose and establish private educational institutions for their children, also referred to as freedom of education. It also recognises the right of parents to “ensure the religious and moral education of their children in conformity with their own convictions”. This is interpreted as requiring public schools to respect the freedom of religion and conscience of their students, and as forbidding instruction in a particular religion or belief system unless non-discriminatory exemptions and alternatives are available.

The Committee on Economic, Social and Cultural Rights interpret the Covenant as also requiring States to respect the academic freedom of staff and students, as this is vital for the educational process. It also considers corporal punishment in schools to be inconsistent with the Covenant's underlying principle of the dignity of the individual.

Article 14 requires those parties which have not yet established a system of free compulsory primary education, to rapidly adopt a detailed plan of action for its introduction “within a reasonable number of years.”

**Right to Participation in Cultural Life:**

Article 15 of the Covenant recognises the right of everyone to participate in cultural life, enjoy the benefits of scientific progress, and to benefit from the protection of the moral and material rights to any scientific discovery or artistic work they have created. The latter clause is sometimes seen as requiring the protection of intellectual property, but the Committee on Economic, Social and Cultural Rights interprets it as primarily protecting the moral rights of authors and proclaiming the intrinsically personal character of every creation of the human mind and the ensuing durable link between creators and their creations. It thus requires parties to respect the

73 CESCR General Comment No.11 of 1999 on Plans of Action on Primary Education.
74 CESCR General Comment No.19 of 2008 on Right to Social Security.
right of authors to be recognized as the creator of a work. The material rights are interpreted as being part of the right to an adequate standard of living, and "need not extend over the entire lifespan of an author."\textsuperscript{75}

States Parties must also work to promote the conservation, development and diffusion of science and culture, “respect the freedom indispensable for scientific research and creative activity”, and encourage international contacts and cooperation in these fields.

**2.6.2(ii) Optional Protocol to ICESCR:**

The Optional Protocol to ICESCR providing for individual complaint mechanism was adopted in 2008\textsuperscript{76} and is not yet in force.\textsuperscript{77}

**2.6.3 ICERD:**

The Convention follows the structure of the UDHR, ICESCR and ICCPR, with a preamble and 25 Articles, divided into 3 Parts.

Part 1 (Articles 1 – 7) commits parties to the elimination of all forms of racial discrimination and to promoting understanding among all races (Article 2). Parties are obliged to not discriminate on the basis of race, not to sponsor or defend racism, and to prohibit racial discrimination within their jurisdictions. They must also review their laws and policies to ensure that they do not discriminate on the basis of race, and commit to amending or repealing those that do. Specific areas in which discrimination must be eliminated are listed in Article 5.

The Convention imposes a specific commitment on parties to eradicate racial segregation and the crime of apartheid within their jurisdictions (Article 3). Parties are also required to criminalize the incitement of racial hatred (Article 4), to ensure judicial remedies for acts of racial discrimination (Article 6), and to engage in public education to promote understanding and tolerance (Article 7).

Part 2 (Articles 8 – 16) governs reporting and monitoring of the Convention and the steps taken by the parties to implement it. It establishes the Committee on the

\textsuperscript{75} CESCR General Comment No.17 of 2005 on the Right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

\textsuperscript{76} The General Assembly adopted Resolution A/RES/63/117, on 10 December 2008.

\textsuperscript{77} It will come into force after 10 States ratify or accede to it (Article 18). As on 5-09-2012 only 8 States have ratified it (Argentina, Bolivia (Plurinational State of), Bosnia and Herzegovina, Ecuador, El Salvador, Mangolia, Slovakia and Spain).
Elimination of Racial Discrimination, and empowers it to make general recommendations to the UN General Assembly. It also establishes a dispute-resolution mechanism between parties (Articles 11 – 13), and allows parties to recognize the competence of the Committee to hear complaints from individuals about violations of the rights protected by the Convention (Article 14).

Part 3 (Articles 17 – 25) governs ratification, entry into force, and amendment of the Convention.

2.6.3(i) Core Provisions-Articles 1-7:

Definition of “Racial Discrimination”-

Article 1 of the Convention defines "racial discrimination" 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.

Distinctions made on the basis of citizenship (that is, between citizens and non-citizens) are specifically excluded from the definition, as are affirmative action policies and other measures taken to redress imbalances and promote equality.78

This definition does not distinguish between discrimination based on ethnicity and discrimination based on race, in part because the distinction between the ethnicity and race remains debatable among anthropologists. The inclusion of descent specifically covers discrimination on the basis of caste and other forms of inherited status.79

Discrimination need not be strictly based on race or ethnicity for the Convention to apply. Rather, whether a particular action or policy discriminates is judged by its effects. In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate

78 Article 1 (2).
79 CERD General Recommendation No.29 of 2002 on Article 1(1) regarding “descent”. See http://www2.ohchr.org/english/bodies/cerd/comments.htm Visited on 06-10-2012 at 1.44 pm.
impact upon a group distinguished by race, colour, descent, or national or ethnic origin.\textsuperscript{80}

The question of whether an individual belongs to a particular racial group is to be decided, in the absence of justification to the contrary, by self-identification.\textsuperscript{81}

**Prevention of discrimination:**

Article 2 of the Convention condemns racial discrimination and obliges parties to “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms”. It also obliges parties to promote understanding among all races. To achieve this, the Convention requires that signatories:

1. Not practice racial discrimination in public institutions;
2. Not “sponsor, defend, or support” racial discrimination;
3. Review existing policies, and amend or revoke those that cause or perpetuate racial discrimination;
4. Prohibit “by all appropriate means, including legislation,” racial discrimination by individuals and organisations within their jurisdictions;
5. Encourage groups, movements, and other means that eliminate barriers between races, and discourage racial division.

Parties are obliged “when the circumstances so warrant” to use affirmative action policies for specific racial groups to guarantee “the full and equal enjoyment of human rights and fundamental freedoms”. However, these measures must be finite, and “shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”.\textsuperscript{82}

Article 5 expands upon on the general obligation of Article 2 and creates a specific obligation to guarantee the right of everyone to equality before the law regardless of “race, colour, or national or ethnic origin”. It further lists specific

\textsuperscript{80} CERD General Recommendation No.14 of 1993 on Article 1(1). See http://www2.ohchr.org/english/bodies/cerd/comments.htm Visited on 06-10-2012 at 1.49 pm.
\textsuperscript{81} CERD General Recommendation No.08 of 1990 on Interpretation and application of Article 1(1) and (4) (Identification with a particular racial or ethnic group). http://www2.ohchr.org/english/bodies/cerd/comments.htm Visited on 06-10-2012 at 1.52 pm.
\textsuperscript{82} Article 2 (2).
rights this equality must apply to: equal treatment by courts and tribunals, security of
the person and freedom from violence, the civil and political rights affirmed in the
ICCPR, the economic, social and cultural rights affirmed in the ICESCR, and the right
of access to any place or service used by the general public, “such as transport hotels,
restaurants, cafes, theatres and parks.” This list is not exhaustive, and the obligation
extends to all human rights.

Article 6 obliges parties to provide “effective protection and remedies”
through the courts or other institutions for any act of racial discrimination. This
includes a right to a legal remedy and damages for injury suffered due to
discrimination.

Condemnation of apartheid:

Article 3 condemns apartheid and racial segregation and obliges parties to
“prevent, prohibit and eradicate” these practices in territories under their jurisdiction.
This Article has since been strengthened by the recognition of apartheid as a crime
against humanity in the Rome Statute of International Criminal Court.

The Committee on the Elimination of Racial Discrimination regards this
Article as also entailing an obligation to eradicate the consequences of past policies of
segregation, and to prevent racial segregation arising from the actions of private
individuals.

Prohibition of incitement:

Article 4 of the Convention condemns propaganda and organizations that
attempt to justify discrimination or are based on the idea of racial supremacism. It
obliges parties, “with due regard to the principles embodied in the Universal
Declaration of Human Rights”, to adopt “immediate and positive measures” to
eradicate these forms of incitement and discrimination. Specifically, it obliges parties
to criminalize hate speech, hate crimes and the financing of racist activities, and to
prohibit and criminalize membership in organizations that “promote and incite” racial
discrimination. A number of parties have reservations on this Article, and interpret it
as not permitting or requiring measures that infringe on the freedoms of speech,
association or assembly.
The Committee on the Elimination of Racial Discrimination regards this Article as a mandatory obligation of parties to the Convention,\textsuperscript{83} and has repeatedly criticized parties for failing to abide by it. It regards the obligation as consistent with the freedom of opinion and expression affirmed in the UNDHR and ICCPR\textsuperscript{84} and notes that the latter specifically outlaws inciting racial discrimination, hatred and violence. It views the provisions as necessary to prevent organized racial violence and the "political exploitation of ethnic difference.”

**Promotion of Tolerance:**

Article 7 obliges parties to adopt "immediate and effective measures", particularly in education, to combat racial prejudice and encourage understanding and tolerance between different racial, ethnic and national groups.

**Inter-State Complaint Mechanism:**

Articles 11 to 13 of the Convention establish inter-State complaint mechanism between States Parties. A State Party that believes another party is not implementing the Convention may complain to the Committee on the Elimination of Racial Discrimination.

Article 22 further allows any dispute over the interpretation or application of the Convention to be referred to the International Court of Justice (ICJ). This clause has been invoked only once, by Georgia against Russia.\textsuperscript{85}

**2.6.3 (ii) Individual Complaint Mechanism:**

Article 14 of the Convention establishes an inbuilt individual complaint mechanism similar to that of the OP1-ICCPR, OP-CPD and OP-CEDAW. States Parties may at any time recognize the competence of the Committee on the Elimination of Racial Discrimination to consider complaints from individuals or groups who claim their rights under the Convention have been violated. The

\textsuperscript{83} CERD General Recommendation No.07. http://www2.ohchr.org/english/bodies/cerd/comments.htm Visited on 06-10-2012 at 2.00 pm.

\textsuperscript{84} CERD General Recommendation No.15. http://www2.ohchr.org/english/bodies/cerd/comments.htm Visited on 06-10-2012 at 2.00 pm.

\textsuperscript{85} Application of the ICERD (Georgia v. Russian Federation) Dated 12\textsuperscript{th} August 2008. See http://www.icj-cij.org/docket/files/140/14657.pdf Visited on 06-10-2012 at 2.31 pm.
individual complaints mechanism came into operation in 1982, after it had been accepted by ten States Parties.\textsuperscript{86}

\textbf{2.6.4 CEDAW:}

On 18\textsuperscript{th} December 1979, the UN General Assembly adopted a new treaty which addressed a specific phenomenon; discrimination against women on the basis of sex. Sex discrimination, like racial discrimination, is proscribed under ICCPR and ICESCR in general terms. However, the CEDAW sets out in more detail what is meant by the prohibition of sex discrimination from the perspective of equality between women and men. It addresses a range of programmatic and policy aspects of the specific problem.

The Convention follows the structure of the ICESCR and ICCPR, with a preamble and 30 Articles, divided into 6 Parts. Part I (Articles 1 to 6) deals with definition of “discrimination against women” and measures necessary to eliminate the discrimination in this regard. Part II (Articles 7 to 9) deals with equal political rights, nationality rights of women. Part III (Articles 10 to 14) deals with equal rights in education, employment, work, health care facilities etc. Part IV (Articles 15 and 16) deals with right of equality before law and equal rights in the family establishment. Part V (Articles 17 to 22) deals with the creation of a Committee to monitor the implementation of CEDAW and submission of reports by the States Parties the Committee in this regard of the measures taken to implement the Convention at the domestic level. Part VI (Articles 23 to 30) deals with miscellaneous matters like signature and ratification etc.

It adopts a format modeled on ICERD, but contains a number of new issues reflecting developments in the 15 years since ICERD had been adopted. Like ICERD, the Convention begins by defining discrimination on the basis of sex.

\textsuperscript{86} See http://www2.ohchr.org/english/bodies/cerd/index.htm. Visited on 06-10-2012 at 2.51 pm.
2.6.4(i) Core Provisions:

What is “discrimination against women”?  

Article 1 defines the term “discrimination against women” as:

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

The States Parties “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake”, in particular (Article 2): to embody the principle of equality of men and women in their national laws and to ensure the practical realization of this principle; “to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women”; to establish effective legal protection of the equal rights of women through national tribunals or other public institutions; “to refrain from engaging in any act or practice of discrimination against women”; “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”; and “to repeal all national penal provisions which constitute discrimination against women”.87

The initial Articles oblige States Parties to refrain from sex-based discrimination in their own dealing and take measures towards achieving factual as well as legal equality in all spheres of life, including by cubing discriminatory attitudes, customs and practices in society. Article 6 explicitly requires States to suppress all forms of trafficking in women and exploitation of prostitution even though these phenomena may implicitly fall within the prohibitions of slavery and forced labour contained in other instruments. Articles 7 and 8 detail the obligations to ensure equal participation of women with men in public and political life. Articles 9 and 10 expand on equality in nationality and education, in Articles 11, 12 and 13 elaborate on women’s rights to employment, health and other areas of economic and

87 CEDAW General Comment No. 28 of 2010 on The Core Obligations of the State Parties under Article 2 of CEDAW. See http://www2.ohchr.org/english/bodies/cedaw/comments.htm visited on 07-10-2012 at 5.40 pm.
social life. Applying general principles to a particular phenomenon, Article 14 is the only provision in the treaties to address the particular problems faced by women in rural areas. Articles 15 and 16 expand upon rights to equality before the law and elimination of discrimination in the area of marriage and family relations respectively.

Article 17 in Part V, establishes Committee on the Elimination of Discrimination against Women for monitoring the implementation of the Convention. Article 18 requires all States Parties to report regularly of the steps taken to implement the Convention to the Committee on the Elimination of Discrimination against Women.

One of the most important General Recommendation\(^{88}\) of the Committee on the interpretation and application of Articles 2, 5, 11, 12 and 16 is that the States Parties are required to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life and recommends to the States parties that they should include in their periodic reports to the Committee information about:

1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work place etc.);
2. Other measures adopted to eradicate this violence;
3. The existence of support services for women who are the victims of aggression or abuses;
4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

\textbf{2.6.4(ii) Optional Protocol:}

Optional Protocol to CEDAW (OP-CEDAW) providing for individual complaint mechanism was adopted in 1999 and entered into force in 2000.\(^{89}\)

\textbf{2.6.5 CAT:}

The CAT follows the structure of the ICCPR, and ICESCR with a preamble and 33 Articles, divided into 3 Parts:

\(^{88}\) CEDAW General Comment No. 12 of 1989 on Violence against Women.

\(^{89}\) As of 09-09-2012 there are 104 States Parties to OP-CEDAW.
Part I (Articles 1–16) defines torture (Article 1), and commits parties to taking effective measures to prevent any act of torture in any territory under their jurisdiction (Article 2). These include ensuring that torture is a criminal offense (Article 4), establishing jurisdiction over acts of torture committed by or against a party's citizens (Article 5), ensuring that torture is an extraditable offense (Article 8), and establishing universal jurisdiction to try cases of torture where an alleged torturer cannot be extradited (Article 5). Parties must promptly investigate any allegation of torture (Articles 12 and 13), and victims of torture must have an enforceable right to compensation (Article 14). Parties must also ban the use of evidence produced by torture in their courts (Article 15), and are barred from deporting, extraditing or refouling people where there are substantial grounds for believing they will be tortured (Article 3).

Parties are also obliged to prevent other acts of cruel, inhuman or degrading treatment or punishment, and to investigate any allegation of such treatment within their jurisdiction (Article 16).

Part II (Articles 17 – 24) governs reporting and monitoring of the Convention and the steps taken by the parties to implement it. It establishes the Committee against Torture (Article 17), and empowers it to investigate allegations of systematic torture (Article 20). It also establishes an optional dispute-resolution mechanism between parties (Articles 21) and allows parties to recognize the competence of the Committee to hear complaints from individuals about violations of the Convention by a party (Article 22).

Part III (Articles 25 – 33) governs ratification, entry into force, and amendment of the Convention. It also includes an optional arbitration mechanism for disputes between parties (Article 30).

2.6.5(i) Core Provisions:

Definition of Torture:

Article 1 of the Convention defines torture as: “torture” means;

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having
committed, or intimidating or coercing him or a third person, or for any
reason based on discrimination of any kind, when such pain or
suffering is inflicted by or at the instigation of or with the consent or
acquiescence of a public official or other person acting in an official
capacity. It does not include pain or suffering arising only from,
inherent in or incidental to lawful sanctions”.

Further, the Convention requires that “each State Party shall take effective
legislative, administrative, judicial or other measures to prevent acts of torture in any
territory under its jurisdiction”.\textsuperscript{90} It further specifies that “no exceptional
circumstances whatsoever, whether a state of war or a threat of war, internal political
instability or any other public emergency, may be invoked as a justification of
torture”.\textsuperscript{91} This is simply a restatement of already existing international human rights
law, given that the right to freedom from torture is made non-derogable in the major
relevant treaties, including the ICCPR. Actions which fall short of torture may still
constitute cruel, inhuman or degrading treatment under Article 16.

**Ban on Torture and Cruel and Degrading Treatment:**

Article 2 of the Convention prohibits torture, and requires parties to take
effective measures to prevent it in any territory under its jurisdiction. This prohibition
is absolute and non-derogable. “No exceptional circumstances whatsoever” may be
invoked to justify torture, including war, threat of war, internal political instability,
public emergency, terrorist acts, violent crime, or any form of armed conflict. Torture
cannot be justified as a means to protect public safety or prevent emergencies. Neither
can it be justified by orders from superior officers or public officials. The prohibition
on torture applies to all territories under a party's effective jurisdiction, and protects
all people under its effective control, regardless of citizenship or how that control is
exercised. Since the Convention’s entry into force, this absolute prohibition has
become accepted as a principle of customary international law. Because it is often
difficult to distinguish between cruel, inhuman or degrading treatment and torture, the

\textsuperscript{90} Article 2(1). Emphasis supplied.
\textsuperscript{91} Article 2(2). Emphasis supplied.
Committee regards Article 16’s prohibition of such treatment as similarly absolute and non-derogable.92

Ban on Refoulment:

Article 3 prohibits parties from returning, extraditing or refouling any person to a State “where there are substantial grounds for believing that he would be in danger of being subjected to torture”. The Committee against Torture has held that this danger must be assessed not just for the initial receiving state, but also to states to which the person may be subsequently expelled, returned or extradited.93

2.6.5(ii) Optional Protocol:

Optional Protocol to CAT (OP-CAT) providing for establishment of a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment was adopted on 2002 and is in force since 22-06-2006. Further, Article 5 of OP-CAT provides for the creation of a Sub-Committee on Prevention of Torture (SPT) to achieve the object of the Protocol.94

2.6.6 CRC:

The Convention follows the structure of the UDHR, ICCPR, and ICESCR with a preamble and 54 Articles, divided into 3 Parts:

Part 1 (Articles 1 to 41) deals with meaning of “Child” and long list of rights of the child. Part 2 (Articles 42 to 45) deals with the creation of the Committee on the Rights of the Child, submission of periodic reports to the Committee by the States Parties of measures adopted and progress made in the implementation of the Convention and Part 3 (Articles 46 to 54) deals with miscellaneous matters like, signature, ratification and amendment etc.

94 As of 09-09-2012 there are 63 States Parties to OP-CAT.
2.6.6(i) Core Provisions:

Meaning of “Child” and Principle of Non-Discrimination:

The Convention recognizes a long and detailed list of rights that must be respected and ensured to the child at all times, that is to say, to “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (Article 1). The Convention applies to all children, whatever their race, religion or abilities (Article 2 -Non-discrimination). Further, the best interests of children must be the primary concern of decision makers of State Parties in making decisions that may affect children (Article 3-Best interests of the child). Article 4 (Protection of rights): Governments have a responsibility to take all available measures to make sure children’s rights are respected, protected and fulfilled. Article 5 (Parental guidance): Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle. Article 5 encourages parents to deal with rights issues “in a manner consistent with the evolving capacities of the child". The Convention does not take responsibility for children away from their parents and give more authority to governments. It does place on governments the responsibility to protect and assist families in fulfilling their essential role as nurturers of children.

Specific Rights:

Article 6 (right to life): Children have the right to life and States are under the obligation to ensure the survival and overall development of the Children. Article 7 (Registration, name, nationality, care): All children have the right to a legally registered name, officially recognized by the government. Children have the right to a nationality. Children also have the right to know and, as far as possible, to be cared for by their parents. Article 8 (Preservation of identity): Children have the right to an identity – an official record of who they are. Governments should respect children’s right to a name, a nationality and family ties. Article 9 (No separation from parents): Children have the right to live with their parent(s), unless there is abuse, neglect by the parents. Children whose parents do not live together have the right to stay in contact with both parents, unless this might hurt the child. Article 10 (Family
reunification): Families whose members live in different countries be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family. Article 11 (Kidnapping): Governments should take steps to stop children being taken out of their own country illegally. Article 12 (Respect for the views of the child): When adults are making decisions that affect children, children have the right to say and have their opinions. This does not mean that children can dictate their parents rather encourage parents to listen to the opinions of children and involve them in decision-making process. Article 12 does not interfere with parents’ right and responsibility to express their views on matters affecting their children. Moreover, the Convention recognizes that the level of a child’s participation in decisions must be appropriate to the child's level of maturity.

Article 13 (Freedom of expression): Children have the right to information, as long as the information is not damaging them or others. The exercise of this right is subject to restrictions that may be imposed by law, like, national security, public health, moral and public order, etc. The freedom of expression includes the right to seek, receive and impart information in any way they choose, including by talking, drawing, printing or writing. Article 14 (Freedom of thought, conscience and religion): Children have the right to think and believe what they want and to practice their religion, as long as they are not stopping other people from enjoying their rights. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. The exercise of this right is subject to restrictions that may be imposed by law, like, public health, moral and public order, and fundamental rights of others, etc.

Article 15 (Freedom of association): Children have the right to meet together and to join groups and organizations, as long as it does not stop other people from enjoying their rights. In exercising their rights, children have the responsibility to respect the rights, freedoms and reputations of others. Article 16 (Right to privacy): Children have a right of protection against unlawful or arbitrary interference or attacks on privacy, family, correspondence and the law should protect them in this regard. Article 17 (Access to information; mass media): Children have the right to get information that is important to their health and well-being. Governments should
encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand.

Article 18 (Parental responsibilities; State assistance) recognizes parents responsibility for bringing up their children. The Convention places responsibility on Governments to provide support services to parents, especially if both parents work outside the home.

Article 19 (Protection from all forms of violence): Children have the right to be protected from all forms of violence including physical, mental and sexual abuse and negligent treatment. Governments should ensure that children are properly cared for and protected from violence, abuse and neglect by their parents, or anyone else who looks after them.96

Article 20 (Children deprived of family environment): Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language. Article 21 (Adoption): Children have the right to care and protection if they are adopted or in foster care. The first concern must be what is best for them. The same rules should apply whether they are adopted in the country where they were born, or if they are taken to live in another country.

Article 22 (Refugee children): Children have the right to special protection and help if they are refugees (if they have been forced to leave their home and live in another country), as well as all the rights provided in this Convention.

Article 23 (Children with disabilities): Children who have any kind of disability have the right to special care and support, as well as all the rights in the Convention, so that they can live full and independent lives.

Article 24 (Health and health services): Children have the right to quality health care meaning safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Article 25 (Review of

96 In terms of disciplining the child at home or at school, the Convention does not specify what forms of punishment parents or teachers should use. Any form of discipline involving violence is unacceptable.
treatment in care): Children who are looked after by their local authorities, rather than their parents, have the right to have these living arrangements looked at regularly to see if they are the most appropriate. Their care and treatment should always be based on “the best interests of the child”.

Article 26 deals with right to Social Security including Social Insurance and obliges the States Parties to realize this right by law. Article 27 (Adequate standard of living): Children have the right to a standard of living that is required to meet their physical and mental needs. Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing.

Article 28: (Right to education): States Parties are obliged to make primary education compulsory and provide it free of cost. Article 29 deals with goals of education that States Parties shall aim at which should be overall development of personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect the rights their parents, and education should aim to develop respect for the values and culture of their parents. Article 30 (Children of minorities/indigenous groups): Minority or indigenous children have the right to learn and practice their own culture, language and religion. The right to practice one’s own culture, language and religion applies to everyone; the Convention here highlights this right in instances where the practices are not shared by the majority of people in the country.

Article 31 (Leisure, play and culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Article 32 (Child labour): The government should protect children from work that is dangerous or might harm their health or their education. Article 33 (Drug abuse): Governments should use all means possible to protect children from the use of harmful drugs and from being used in the drug trade. Article 34 (Sexual exploitation):

97 The Convention does not address such issues as school uniforms, dress codes, the singing of the national anthem or prayer in schools. It is up to governments and school officials in each country to determine whether, in the context of their society and existing laws, such matters infringe upon other rights protected by the Convention.

98 While the Convention protects children from harmful and exploitative work, there is nothing in it that prohibits parents from expecting their children to help out at home in ways that are safe and appropriate to their age.
Governments should protect children from all forms of sexual exploitation and abuse. Article 35 (Abduction, sale and trafficking): The government should take all measures possible to make sure that children are not abducted, sold or trafficked.\(^9^9\) Article 36 (Other forms of exploitation): Children should be protected from any activity that takes advantage of them or could harm their welfare and development.

Article 37 (Detention and punishment): Children who are accused of an offence should not be subjected to torture, cruel, inhuman or degrading treatment and shall not be put in prison with adults and should be able to keep in contact with their families. They shall not be sentenced to death or life imprisonment without possibility of release. Article 40 (Juvenile justice): Children who are accused of an offence have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.\(^1^0^0\)

Article 38 (War and armed conflicts) prohibits States Parties from recruiting Children under the age of 15 years in the armed forces. It further directs that while recruiting children who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest. However, the Convention’s Optional Protocol on the Involvement of Children in Armed Conflict, 2000, further develops this right, raising the age for direct participation in armed conflict to 18 and establishing a ban on compulsory recruitment for children under the age of 18.

\(^9^9\) This provision in the Convention is augmented by the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

\(^1^0^0\) CEDAW General Comment No. 10 of on Juvenile Justice recommended that, States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. Further, on the minimum age of criminal responsibility the Committee recommended that States Parties to set a minimum age of criminal responsibility (MACR). This minimum age means the following: Children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even (very) young children do have the capacity to infringe the penal law but if they commit an offence when below MACR the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children special protective measures can be taken if necessary in their best interests. Children at or above the MACR at the time of the commission of an offence (or: infringement of the penal law) but younger than 18 years (see also paragraphs 35-38 below) can be formally charged and subject to penal law procedures. But these procedures, including the final outcome, must be in full compliance with the principles and provisions of CRC as elaborated in the present general comment. See official website of OHCHR at [http://www2.ohchr.org/english/bodies/crc/comments.htm](http://www2.ohchr.org/english/bodies/crc/comments.htm) Visited on 08-10-2012 at 11.30 pm.
Article 39 (Rehabilitation of child victims): Children who have been neglected, abused or exploited should receive special help to recover physically and psychologically and reintegrate into the society. Special care should be adopted for restoring the health, self-respect and dignity of the child in this regard.

Article 41 (Respect for superior national standards): If the laws of a country provide better protection of children’s rights than the Articles in this Convention, those laws should apply. Article 42 (Knowledge of rights): Governments should make the Convention known to adults and children. Adults should help children learn about their rights, too.

As can be seen, these rights not only cover the more traditional human rights standards found, for instance, in the ICCPR and ICESCR, but they have also been expanded and refined and are drafted so as to respond specifically to the varying needs of children who continue to suffer various forms of hardship in the society.

The Four “General Principles” for implementing children’s rights:

The committee on the Rights of the Child has identified four general principles contained in the Convention which should guide the way States implement child rights:

1. Non-discrimination: The obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind (Article 2);

2. The best interests of the child: that the best interest of the child should be a primary consideration in all actions concerning the child (Article 3);

3. The right to life, survival and development: the child’s inherent right to life and States parties obligation to ensure to the maximum extent possible the survival and development of the child (Article 6);

4. The views of the child about his or her own situations: the child’s right to express his or her views freely in “all matters affecting the child”, those views being given due weight “in accordance with age and maturity of the child” (Article 12).

2.6.6(ii) Optional Protocols:

Two Optional Protocols (OPs) were adopted by the UN General Assembly on 25 May 2000 and both came into force in 2002. As of 09-09-2012 there are 147 States Parties to OP-CRC-AC and 158 States Parties to OP-CRC-SC and came into force on 12-02-2002 and 18-01-2002 respectively.

The First OP on the Rights of Child on the Involvement of Children in the Armed Conflict requires States Parties to ensure that children under the age of eighteen are not recruited compulsorily into their armed forces (OP-CRC-AC), and calls on governments to do everything feasible to ensure that members of their armed forces who are under eighteen years of age do not take part in hostilities and the Second OP on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography requires States Parties to prohibit the sale of children, child prostitution and child pornography (OP-CRC-SC).

A third OP to the CRC providing for individual communication/complaint mechanism allowing the children or their representatives to file individual complaints for violation of the rights of children was adopted on 19th December 2011 and opened for signature on 28th February 2012 (OP-CRC-IC). It will enter into force on the tenth ratification and currently has 2 Parties and 35 signatories.

2.6.7 ICRMW:

This Convention constitutes a comprehensive international treaty regarding the protection of migrant workers’ rights. It emphasizes the connection between migration and human rights, which is increasingly becoming a crucial policy issue throughout the world. The Convention aims at protecting migrant workers and

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102 As of 09-09-2012 there are 147 States Parties to OP-CRC-AC and 158 States Parties to OP-CRC-SC and came into force on 12-02-2002 and 18-01-2002 respectively.
103 The OP-CRC-AC raises the age for direct participation in hostilities to 18 years, and imposes on the States Parties an obligation to “ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces” (Articles 1 and 2). According to Article 3 of the Protocol, the States Parties shall also “raise the minimum age for the voluntary recruitment of persons into their national armed forces” from that of 15 years of age which is authorized in Article 38(3) of the Convention itself; those States which allow the voluntary recruitment of persons under 18 years of age, shall inter alia ensure that “such recruitment is genuinely voluntary” and “carried out with the informed consent of the person’s parents or legal guardians” (Article 3(a) and (b)).
104 According to Article 1 of the OP-CRC-SC, the “States Parties shall prohibit the sale of children, child prostitution and child pornography as provided by the ... Protocol”. Article 2 of the Protocol explains the notions of “sale of children”, “child prostitution” and “child pornography”, while Article 3 lists the acts which must, as a minimum, be “fully covered” by the States Parties’ criminal law. Other provisions provide details as to the duty of the States parties to establish jurisdiction over the relevant offences, and to provide assistance in connection with investigations or criminal or extradition proceedings, seizure and confiscation, international cooperation, and in other areas (Articles 4 to11).
105 See http://www2.ohchr.org/english/bodies/crc/. As on 01-10-2012, Gabon and Thailand have acceded/ ratified the OP-CRC-IC.
members of their families; its existence sets a moral standard, and serves as a guide and stimulus for the promotion of migrant rights in each country.

The Convention follows the structure of the ICESCR and ICCPR, with a preamble and 93 Articles, divided into 8 Parts. Part 1 (Articles 1 to 6) deals with Scope and Definition, Part 2 (Article 7) deals with Non Discrimination with respect to Rights, Part 3 (Articles 8 to 35) deals with Rights of All Migrant Workers and Members of their Families, Part 4 (Articles 36 to 56) deals with Other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation, Part 5 (Articles 57 to 63) deals with Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families, Part 6 (Articles 64 to 71) deals with Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families, Part 7 (Articles 72 to 78) deals with Application of the Convention and Part 8 (Articles 79 to 93) deals with General Provisions like, signatures, ratification etc.

At the Preamble the Convention recalls Conventions of ILO on Migrant Workers (Convention No. 97, 143, 86 and 151) and the Convention concerning the abolition of Forced Labour (Convention No. 105) and other International Human Rights Treaties.

The primary objective of the Convention is to foster respect for human rights of migrants. Migrants are not only workers, they are also human beings. The Convention does not create new rights for migrants but aims at guaranteeing equality of treatment, and the same working conditions for migrants and nationals. The Convention relies on the fundamental notion that all migrants should have access to a minimum degree of protection. The Convention recognizes that legal migrants have the legitimacy to claim more rights than undocumented migrants, but it stresses that undocumented migrants must see their fundamental human rights respected, like all human beings.

2.6.7(i) Core Provisions:

Definition of “Migrant Worker”:

Article 2(1) of the Convention defines a “migrant worker” as a person who has been engaged, is engaged, or will be engaged in remunerated activity in a state of which he or she is not a national. The Convention draws a distinction between
migrant workers who are lawfully working within the host state and migrant workers whose situation has not been regularized.\(^{106}\)

Rights of Migrant Workers and Members of their Family:

Articles 8 to 35 provide for various rights which are similar to the rights guaranteed under ICCPR and ICESCR with little variance as this Convention specifically deals with Migrant Workers and Members of their Family. For example, right to life (Article 9), right against slavery, servitude, forced labour (Article 10), torture, cruel treatment (Article 11), right to freedom of thought, conscience and religion (Article 11) and movement ((Article 8), right to freedom of speech and expression (Article 13), right to privacy (Article 14), right against arbitrary deprivation of property (Article 15), right to liberty and right to contact consular or diplomatic authorities of country of origin in case of arrest (Article 16), right to enjoy equal treatment with national in respect of remuneration (Article 25), right to join trade unions (Article 26), right of migrant workers children to name, registration of birth and nationality (Article 29) and education (Article 30), right to cultural identity and maintain cultural links with country of origin (Article 31). Members of the family of the migrant worker shall enjoy equality of treatment with national in accessing

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106 The other terms defined under Article 2(2) are as follows (a) “frontier worker”- refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week; (b) The term “seasonal worker”- refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year; (c) The term “seafarer”, which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national; (d) The term “worker on an offshore installation” - refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national; (e) The term “itinerant worker” refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation; (f) The term “project-tied worker” refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer; (g) The term “specified-employment worker” refers to a migrant worker: (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work; (h) The term “self-employed worker” refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.
educational institutions, vocational training, social and health services; access to and participation in cultural life (Article 45).

In addition, migrant workers and members of their families are assured an array of additional rights, aimed at protecting the human rights of migrant workers and their families throughout the migration process. The process covered includes preparation for migration, departure, transit, stay and work in another country, and return to their state of origin or habitual residence (Articles 49 to 53).

The Convention also recognizes certain subcategories of migrant workers, including frontier workers, seasonal workers, itinerant workers, project-tied workers, specified-employment workers and self-employed workers. It establishes certain additional rights specific to the circumstances of these categories of worker (Articles 57 to 63).

States parties are obliged to establish a variety of policies and procedures to promote sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families. States parties also agree to collaborate to prevent and eliminate the illegal or clandestine movements and employment of migrant workers in an irregular situation (Articles 64 to 71).

Treaty Body:

Article 72 provides for the creation of the Committee on the Protection of Rights of All Migrant Workers and Members of their Families to monitor the implementation of the Convention by the States Parties. Article 73 obliges State Parties to submit periodic reports to the Committee of measures adopted and progress made in the implementation of the Convention at domestic level.

2.6.7(ii) Individual Complaint Mechanism:

Article 77 of the Convention provides an inbuilt provision for an individual complaint system. However, this system is optional for the State Parties and are at liberty to make a declaration recognizing the Committee’s competence to deal with individual cases either at the time of ratification or at any time after the ratification.

2.6.8 CRPD:

The Convention consists of 50 Articles and unlike other Covenants and Conventions; it is not formally divided into parts.
Article 1 defines the purpose of the Convention: “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.

Articles 2 and 3 provide definitions and general principles including communication, reasonable accommodation and universal design. Articles 4 - 32 define the rights of persons with disabilities and the obligations of States Parties towards them. Many of these mirror rights affirmed in other UN Conventions such as the ICCPR, ICESCR and CAT, but with specific obligations ensuring that they can be fully realized by persons with disabilities. Rights specific to this Convention include the rights to accessibility including the information technology, the rights to live independently and be included in the community (Article 19), to personal mobility (Article 20), habilitation and rehabilitation (Article 26), and to participation in political and public life, and cultural life, recreation and sport (Articles 29 and 30).

In addition, States Parties to the Convention must raise awareness of the human rights of persons with disabilities (Article 8), and ensure access to roads, buildings and information (Article 9). Articles 33 - 39 govern reporting and monitoring of the Convention by national human rights institutions (Article 33) and Committee on the Rights of Persons with Disabilities (CPD) (Article 34). Articles 40 - 50 govern ratification, entry into force, and amendment of the Convention. Article 49 also requires that the Convention be available in accessible formats.

2.6.8(i) Core Provisions:

Definition of disability:

The Convention adopts a social model of disability, and defines disability as including those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.107

Principle of “reasonable accommodation”:

Article 2 of the Convention defines “reasonable accommodation” to be “necessary and appropriate modification and adjustments not imposing a

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107 Article 1. The Preamble of the Convention says that “Disability is an evolving concept, and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others”. Emphasis supplied.
disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

**Prevention of discrimination:**

Article 8 of the Convention stresses the awareness-raising to foster respect for the rights and dignity against discrimination:

1. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities.

2. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.

3. To promote awareness of the capacities and contributions of persons with disabilities.

4. Initiating and maintaining effective public awareness campaigns designed: (i) to nurture receptiveness to the rights of persons with disabilities. (ii) to promote positive perceptions and greater social awareness towards persons with disabilities. (iii) to promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to workplace and the labour market.

5. Encouraging all organs of the mass media to portray persons with disabilities in a manner consistent with the purpose of the present Convention.


**Accessibility:**

Article 9 of the Convention stresses that persons with disabilities should be able to live independently and participate fully in all aspects of life. To this end, States Parties should take appropriate measures to ensure that persons with disabilities have access, to the physical environment, to transportation, to information and communication technology, and to other facilities and services open or provided to the public.
Situations of risk and humanitarian emergency:

Article 11 of the Convention affirms that States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of armed conflict, humanitarian emergencies and the occurrence of natural disaster.

Recognition before the law and legal capacity:

Article 12 of the Convention affirms the equal recognition before law and legal capacity of the persons with disabilities. States Parties should:

1. reaffirm that persons with disabilities have the right to recognition everywhere as a person before the law.
2. recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstance, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

Access to justice:

Article 13 of the Convention affirms the effective access to justice for persons with disabilities, stating that:

1. States parties shall ensure effective access to justice for persons with disabilities on a equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their
effective role as a direct and indirect participants, including as witnesses, in all legal proceeding, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, states Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

**Protecting the integrity of the person:**

Article 17 of the Convention states that every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

**Respect for the family:**

Article 23 of the Convention prohibits compulsory sterilization of disabled persons and guarantees their right to adopt children.

**Right to Education:**

Article 24 of the Convention states that persons with disabilities should be guaranteed the right to inclusive education at all levels, regardless of age, without discrimination and on the basis of equal opportunity. States Parties should ensure that:

1. children with disabilities are not excluded from free and compulsory primary education, or from secondary education;

2. adults with disabilities have access to general tertiary education, vocational training, adult education and lifelong learning;

3. persons with disabilities receive the necessary support, within the general education system, to facilitate their effective education; and

4. effective individualized support measures are put in place to maximize academic and social development.

Further, States Parties should take appropriate measures, such as:

1. endorsing the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

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108 Article 24 (3).
2. supporting the learning of sign language and promoting the linguistic identity of the deaf community;

3. advocating that education of persons, particularly children, who are blind and/or deaf, is delivered in the most appropriate languages and means of communication for the individual; and

4. employing teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train education professionals and staff about disability awareness, use of augmentative and alternative modes and formats of communication, and educational techniques and materials to support persons with disabilities.

Right to health:

Article 25 specifies that “persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.”

Habitation and Rehabilitation:

Article 26 of the Convention affirms that “States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

1. Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

2. Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

3. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation service.
4. States Parties shall promote the availability, knowledge and use of assistive
devices and technologies, designed for persons with disabilities, as they relate
to habilitation and rehabilitation.

**Work and Employment:**

Article 27 requires that States Parties recognize the right of persons with
disabilities to work, on an equal basis of others; this includes the right to the
opportunity to gain a living by work freely chosen or accepted in a labour market and
work environment that is open, inclusive and accessible to persons with disabilities.
And that States Parties shall safeguard and promote the realization of the right to
work, including for those who acquire a disability during the course of employment,
by taking appropriate steps, including through legislation, to inter alia:

1. Prohibit discrimination on the basis of disability with regard to all matters
   concerning all forms of employment, continuance of employment, career
   advancement and safe and healthy working conditions;

2. Protect the rights of persons with disabilities, on an equal basis with others, to
   just and favourable conditions of work including equal opportunities and equal
   remuneration of work of value, safe and healthy working conditions, including
   protection from harassment, and the redress of grievances;

3. Ensure that persons with disabilities are able to exercise their labour and trade
   union rights on an equal basis with others;

4. Enable persons with disabilities to have effective access to general technical
   and vocational guidance programmes, placement services and vocational and
   continuing training;

5. Promote employment opportunities and career advancement for persons with
   disabilities in the labour market, as well as assistance in finding, obtaining,
   maintaining and returning to employment;

6. Promote opportunities for self-employment, entrepreneurship, the
   development of cooperative and starting one's own business.

7. Ensure that reasonable accommodation is provided to persons with disabilities
   in the workplace.
8. Promote the acquisition by persons with disabilities of work experience in the open labour market.


10. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forces or compulsory labour.

**Adequate Standard of Living and Social Protection:**

Article 28 requires that States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of these rights without discrimination on the basis of disability.

States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that rights without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of the rights, including measures;

1. To ensure equal access by persons with disabilities to clean water service, and to ensure access to appropriate and affordable service, device and other assistance for disability-related needs.

2. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes.

3. To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care.

4. To ensure access by persons with disabilities to public housing programmes.

5. To ensure equal access by persons with disabilities to retirement benefits and programmes.
Participation Rights:

The Convention makes participation of the disabled one of its principles, stating “The principles of the present Convention shall be:...Full and effective participation and inclusion in society”, subsequently enshrining the right of disabled to participate fully and equally in the community, education, all aspect of life (in the context of habilitation and rehabilitation), political and public life, cultural life, leisure and sports. Articles 29 and 30 of the Convention states that States Parties should take appropriate measure such as:

1. To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate; (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice.\textsuperscript{109}

2. To enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.\textsuperscript{110}

3. To ensure that, in accordance with international law, law protecting intellectual property rights does not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.\textsuperscript{111}

\textsuperscript{109} Article 29.
\textsuperscript{110} Article 30.
\textsuperscript{111} Ibid.
4. Persons with disabilities should be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.\textsuperscript{112}

**Guiding principles of the Convention:**

There are eight guiding principles that underlie the Convention:\textsuperscript{113}

1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women;
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

**2.6.8(ii) Optional Protocol:**

Optional Protocol to CRPD (OP-CRPD) providing for individual complaint mechanism was adopted in 2006 and entered into force on 3\textsuperscript{rd} May 2008.\textsuperscript{114}

**2.6.9 CPED:**

The Convention is intended to prevent forced disappearance defined in international law, crimes against humanity. The text was adopted by the United Nations General Assembly on 20 December 2006 and opened for signature on 6 February 2007. It entered into force on 23 December 2010.

The Convention consists of 45 Articles and is divided in 3 Parts. It is modeled on the CAT. Part I deals (Articles 1-25) deals with the definition of “enforced

\textsuperscript{112} Ibid.


\textsuperscript{114} As of 09-09-2012 there are 72 States Parties to OP-CRPD.
disappearance” and the obligations of States Parties. Part II (Articles 26 to 36) deals with creation of a Committee to supervise the implementation of the Convention and receive individual and inter-State complaints. Part III (Articles 37-45) deals with miscellaneous matters like, signature, ratification and amendments etc.

2.6.9(i) Core Provisions:

What is “Enforced disappearance”?

“Enforced disappearance” is defined in Article 2 of the Convention as

“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.

Article 1 of the Convention further states that in “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.”

The Convention regards the widespread or systematic use of enforced disappearance as a crime against humanity as defined under the applicable international law.115 Further, States Parties to the Convention undertake to:

1. investigate acts of enforced disappearance and bring those responsible to justice (Article 3);
2. ensure that enforced disappearance constitutes an offence under its criminal law (Article 4);
3. establish jurisdiction over the offence of enforced disappearance when the alleged offender is within its territory, even if they are not a citizen or resident (Article 9);

115 Article 5.
4. cooperate with other states in ensuring that offenders are prosecuted or extradited, and to assist the victims of enforced disappearance or locate and return their remains (Article 15);

5. respect minimum legal standards around the deprivation of liberty, including the right for imprisonment to be challenged before the courts (Article 17. 1 and 2);

6. establish a register of those currently imprisoned, and allow it to be inspected by relatives and counsel (Article 17 (3));

7. ensure that victims of enforced disappearance or those directly affected by it have a right to obtain reparation and compensation (Article 24. 4);

8. the right to obtain reparation covers material and dangers and, where appropriate, other forms of reparation such as; a) Restitution, b) Rehabilitation, c) Satisfaction, including restoration of dignity and reparation. d) Guarantee of non-repetition (Article 24. 5).

**Committee on Enforced Disappearance (CED):**

Article 26 provides for the creation of ten members CED to be elected by States Parties. The implementation of the Convention is governed CED. States Parties are obliged to report to this Committee on the steps they have taken to implement it within two years of becoming Party to it (Article 29).

Article 30 provides that, in matters of urgency, the relatives of disappeared person may submit a request to the CED for locating a disappeared person in the territory of States Parties. However, before making such a request to the CED, a request in this regard should have been made to the concerned State Party where the person is disappeared. The CED may seek information from the State Party concerned within a specified period of time of the action taken in this regard and continue to work with the State Party till the matter is resolved.

**Complaint Mechanism:**

Like ICERD, the Convention has an inbuilt individual as well as inter-State complaint mechanism whereby individuals or States Parties may complain to the CED
of violation of the provisions of the Convention by a State Party.\textsuperscript{116} However, these are optional for States Parties. They may accept the competence of the CED either at the time of ratification or at any time after the ratification.\textsuperscript{117}

2.7 Implementation of UN Nine Core Human Rights Treaties:

The implementation of the nine core international human rights treaties is monitored by human rights treaty bodies. One of the treaty bodies’ key tasks is to conduct systematic in-depth reviews of the States Parties’ obligations under respective treaty. The nine human rights treaty bodies are:

1. The Human Rights Committee (CCPR) under ICCPR
2. The Committee on Economic, Social and Cultural Rights (CESCR) under ICESCR
3. The Committee on the Elimination of Racial Discrimination (CERD) under ICERD
4. The Committee on the Elimination of Discrimination Against Women (CEDAW) under CEDAW
5. The Committee against Torture (CAT) & Optional Protocol to the Convention Against Torture (OP-CAT) - Subcommittee on Prevention of Torture under CAT
6. The Committee on the Rights of the Child (CRC) under CRC
7. The Committee on Migrant Workers (CMW) under ICRMW
8. The Committee on the Rights of Persons with Disabilities (CRPD) under CRPD
9. The Committee on Enforced Disappearances (CED) under CPED.

Each treaty body (or Committee) comprises international independent experts (ranging from 10 to 23 individuals) who are nominated on the basis of their human rights expertise and moral authority, and elected for fixed, renewable terms of four years by States Parties.

\textsuperscript{116} Articles 32 and 33 provide for individual and inter-State complaint system respectively.\textsuperscript{117} As on 05-10-2012 Albania, Argentina, Austria, Belgium, Chile, Ecuador, France, Germany Japan, Mali, Montenegro, Netherlands, Serbia, Spain and Uruguay have recognized the competence of the CED under Articles 31 and 32 to receive individual as well as State Complaints respectively.
2.8. Functions of Treaty Bodies:

The functions of these Committees are 1) consideration of State’s Reports, 2) conduct Inquiries 3) consideration of Inter-State Communication and constitution of Ad hoc Conciliation Commission (if need be) and 4) consideration of Individual Communications or complaints.  

2.8.1 Consideration of State’s Reports:

The principal function of the treaty bodies is to examine periodic reports submitted by States Parties. Under the Nine Core Conventions, the States parties “undertake to submit Report on the measures they have adopted which give effect to the rights” recognized therein and “on the progress made in the enjoyment of those rights”, first within one year of the entry into force of the Covenant for the States parties concerned, and thereafter, whenever the Committee so requests, that is to say, every five years. The report “shall indicate the factors and difficulties, if any, affecting the implementation of the Covenant”.  

In addition to State Reports, treaty bodies may receive information on the implementation of treaty provisions from: UN agencies, funds and programmes; other

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118 Under CAT and CEDAW the respective Treaty Body has got powers to initiate inquiries on the basis of information/complaint made by individuals/NGOs etc against State Parties. However, this power to initiate inquiry is subject to the approval of the State Party concerned.  
119 Article 40 (1) of ICCPR states that “The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned; (b) Thereafter whenever the Committee so requests”. The 13th Session decision of HRC states that States Parties required to submit Reports every five year. The report shall indicate the factors and difficulties, if any, affecting the implementation of the ICCPR. The HRC shall study the report and make general comments.  
120 General Principles and Guidelines concerning Forms and Contents of Report were adopted by the CCPR at its 2nd Session August 11 to 31, 1977. The object was to maintain uniformity in State Reports. According to these Guidelines, the State Report must contain Two Parts. In the First Part the Report should indicate the following: 1) General Legal Framework of the Country in which Civil & Political Rights are protected(either in the Constitution or any Statute). 2) Derogation if any. 3) Whether ICCPR is part of corpus juris of the Country and are enforceable directly. 4) What remedies are available in case of violation of ICCPR. In the Second Part- 1) Legislative, administrative and other measures in force in regard to each right and restrictions, limitation on the enjoyment of rights. 2)Factors and difficulties affecting the enjoyment of each right. 3) Action taken in response to HRC’s Comments 4) Factors affecting the equal enjoyment by women of the rights under ICCPR. However, the CCPR has now issued new Guidelines in 2001 replacing the above Guidelines. A look at the new Guidelines in this regard includes the above Guidelines and it seeks additional information on Protocols, Reservations, and more particularly on whether Covenant’s rights are domestically incorporated or not, and whether they are directly enforceable or not, etc. See CCPR/C/5/Rev.2 and CCPR/C/66/GUI/Rev.2 (2001) available at http://www1.umn.edu/humanrts/hrcommittee/reportguidelines-2001.html. Visited on 12-10-2012 at 1.50 pm. See Appendix - Table 4 for a list of Reservations India made to ICCPR and other Treaties.
intergovernmental organizations; national human rights institutions; and civil society actors, particularly NGOs, professional associations and academic institutions.

After holding a dialogue with the State Party delegation, in which the States’ implementation of the relevant treaty is examined, treaty bodies produce what are generally called “Concluding Observations,” which set out the principal concerns and recommendations of the treaty body concerned. They also adopt General Comments, through which they convey their interpretation of the content and application of the provisions of the respective Covenant/Convention.121

2.8.2 Conduct Inquiries:

The CAT and the CEDAW may, on their own initiative, initiate inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.

Which States may be subject to inquiries?

Inquiries may only be undertaken with respect to States parties who have recognized the competence of the relevant Committee in this regard. States parties to CAT may opt out, at the time of ratification or accession, by making a declaration under Article 28; States Parties to the CEDAW Optional Protocol may similarly exclude the competence of the Committee by making a declaration under Article 10.

Inquiry Procedure

Article 20 of the CAT and Articles 8 to 10 of the OP-CEDAW set out the following basic procedure for the relevant Committee to undertake urgent inquiries:

1. The procedure may be initiated if the Committee receives reliable information indicating that the rights contained in the Convention are being systematically violated by the State party. In the case of CAT, the information should contain well-founded indications that torture is being systematically practiced in the territory of the State party; in the case of CEDAW, the information should indicate grave or systematic violations of the rights set forth in the Convention by a State party.

2. The first step requires the Committee to invite the State Party to co-operate in the examination of the information by submitting observations.

3. The Committee may, on the basis of the State party's observations and other relevant information available to it, decide to designate one or more of its members to make a confidential inquiry and report to the Committee urgently. The CEDAW procedure specifically authorizes a visit to the territory of the State concerned, where warranted and with the State's consent.

4. The findings of the member(s) are then examined by the Committee and transmitted to the State party together with any appropriate comments or suggestions/recommendations.

5. The CEDAW procedure sets a six-month deadline for the State party to respond with its own observations on the Committee's findings, comments and recommendations and, where invited by the Committee, to inform it of the measures taken in response to the inquiry.

6. The Committee may decide, in consultation with the State party, to include a summary account of the results of the proceedings in its annual report.

This procedure is confidential and the cooperation of the State party must be sought throughout.

2.8.3 Consideration of Inter-State Communications:

ICERD, ICCPR, CAT, ICRMW and CPED: Articles 11-13 of ICERD, Articles 41-43 of ICCPR, Article 21 of CAT Article 74 of CMW and Article 32 of CED set out a procedure for the respective Committee to consider complaints from one State party which considers that another State party is not giving effect to the provisions of the Convention. Except ICERD, this procedure applies only to States parties who have made a declaration accepting the competence of the Committee in this regard. In other words, the possibility of bringing inter-State communications is only valid as between States Parties having made this kind of declaration. During the initial stage of the proceedings, the communication is only brought to the notice by one State Party to another, and it is only if the matter is not settled to the satisfaction of both States Parties within a period of six months that either State party has the right to bring the matter before the concerned treaty body. The Committee (treaty body) has
to follow a procedure prescribed in the respective Covenant in this regard including
constitution of *ad hoc* conciliation commission.122

**2.8.4 Consideration of Individual Complaints:**

Currently seven Committees123 have competence to receive communication (complaint) from individuals. The Committee shall consider a communication (complaint) inadmissible where: (a) The communication is anonymous; (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention; (c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where (d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged or sham.

Once the complaint is admissible under the Covenant, the Committee submits it to the State Party concerned, which in turn required to submit its written explanations to the Committee within a period of six months. The procedure before the Committee is therefore exclusively written and the discussions in the Committee on the communications take place behind closed doors. At the end of its consideration of a communication, the Committee adopts its “Views” thereon, which are sent both to the State Party and to the individual concerned.

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122 For example, under Articles 41 and 42 of the ICCPR the following procedure is prescribed: First step in this process is Bilateral Negotiation between the States. The Communication must be in writing - stating not giving effect to the treaty. Then within 3 months the receiving state shall offer explanation (domestic procedure, remedies taken, pending or available in the matter) to the complaining State. If the matter is adjusted, the issue is closed. If the matter is not closed, then, within 6 months after the receipt of the explanation, either State may refer the matter to treaty body. In turn the treaty body may call upon the Parties to submit information. Parties have right of representation when matter is being considered by the treaty body. After considering the information submitted by both parties, the treaty body shall make report within 12 months & be communicated to States Parties concerned. The treaty body offers its GOOD OFFICE in finding a solution to the dispute between the Parties. Further, if the Parties are not satisfied with the report of the of the treaty body, it may with the consent of the Parties concerned appoint *ad hoc* Conciliation Commission. It consists of 5 members- if no consensus on the formation, members will be elected through secret ballot by 2/3 majority vote of the treaty body. Commission may ask for further information apart from already submitted to the treaty body and offers good office to resolve the matter. It shall make a report within 12 months after having been seized of the matter. It makes report based upon the information supplied by both the parties. Parties shall have to report the Commission as to whether or not they accept the Report.

123 CERD, CCPR, CEDAW, CAT, CMW, CED, and CRPD. The CESC and CRC will be able to entertain communications from individuals once 10 States ratify the OP-ICESCR that was adopted on 10th December 2008 (so far 8 States have ratified it) and 3rd OP-CRC that was adopted on 19th December 2011 and is opened for signature on 28-02-2012 (so far 28 States have signed but none ratified it) respectively.
The decisions of the Committees under the individual communication mechanism, over the years, have evolved new jurisprudence in the field of international human rights law. States are obliged to respect the decision of the Committee and are duty bound to report the compliance to the Committee.\textsuperscript{124}

2.9 **Resolution of Inter-State Disputes concerning Interpretation or Application of a Convention:**

CEDAW, CAT, CMW and CED: Article 29 CEDAW, Article 30 CAT, Article 92 CRMW and Article 42 CED provides that disputes between States Parties concerning interpretation or application of the Convention to be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the ICJ if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other States Parties.

2.10 **Additional Functions:**

Additional functions of the Committees may include: (1) the initiation of confidential inquiries based on well-founded reports of serious, grave or systematic human rights violations of treaty provisions in a State Party; (2) early warning procedures (which aim to prevent the escalation of existing problems in States Parties);

Eight out of Nine Core Treaty bodies report to the General Assembly. CESCR (ICESCR treaty body) is an exceptional case, as it does not explicitly provide for the creation of a treaty body, but gives ECOSOC a general mandate to monitor its implementation. ECOSOC established CESCR as an advisory body under the Covenant, but it has come to be regarded as a treaty body.

2.11 **Other International Human Rights Treaties:**

Both before and after the adoption of ICCPR and ICESCR, the UN and its Specialized Agencies have helped to formulate a number of other multilateral treaties which sought to implement specific rights or groups of related rights. These

\textsuperscript{124} India has not accepted the competence of any of the Committee under nine core UN human rights treaties to receive communications from individuals.
supplement the protection afforded by the nine core Conventions/Covenants. The other human rights treaties concluded under the auspices of UN are:


Further, of the Specialised Agencies, the International Labour Organisation (ILO) is concerned with economic and social rights, such as the right to work, the right to just and favorable conditions of work, the right to form and join trade unions, the right to social security, and the right to an adequate standard of living. It is also concerned with civil and political rights such as the freedom of expression, the freedom of association, and the freedom of peaceful assembly. The ILO seeks to lay down standards in respect of these rights. Among the human rights Conventions adopted by the General Conference of the ILO are the following:


\[125\] See Appendix - Table 1 and 2 for a list of major International Convention/Protocols/Declarations/Principles on Human Rights.
2. Convention Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949.

2.12 Protection of Human Rights- UN Charter based Mechanisms:

2.12.1 General Assembly and Economic and Social Council (ECOSOC):

Article 13 (1) (b) of the Charter of the UN specifically entrusts the General Assembly to promote international co-operation in the economic, social, cultural, educational, and health fields, and assist in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. The further responsibilities, functions and powers of the General Assembly in this regard are set forth in Chapters IX and X of the UN Charter. Chapter IX deals with International Economic and Social Co-operation wherein under Article 56 Member States of the UN pledge to take action in co-operation with the UN for the achievement of the purposes set forth in Article 55. One of the purposes mentioned under Article 55 (c) is universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Chapter X deals with ECOSOC and its functions and powers. Article 62 (2) read with Article 62 (1) provides that ECOSOC may make recommendations to the General Assembly and other Specialized Agencies for the purpose of promoting respect for,
and observance of, *human rights and fundamental freedoms* for all. Article 68 mandates ECOSOC to set up commissions in economic and social fields and for the *promotion of human rights*, and such other commissions as may be required for the performance of its functions.\(^{126}\)

To achieve the mandate under the Charter to promote and protect human rights, the ECOSOC, with the approval of the General Assembly, established the Commission on Human Rights, 1946 (CHR). The CHR was responsible for the drafting of International Bill of Human Rights.

However, in recent times, the CHR had become controversial, because its membership included several States with a poor human rights record, and the resulting internal divisions had undermined the body’s effectiveness. On 15 March 2006, the UN General Assembly overwhelmingly voted in favour of replacing the CHR by the Human Rights Council (HRC). The old CHR comprised of 53 State representatives and met annually for six weeks in March-April to discuss a wide variety of human rights problems and issues. Over the course of these annual sessions, the CHR would adopt several thematic resolutions on human rights issues, which identified current trends and made recommendations of a general nature. The CHR also adopted resolutions on specific country situations, whose purpose was to condemn publicly human rights abuses and to exert political pressure on the violating State. Although the CHR was a political body, with States often pursuing political as opposed to purely human rights objectives, it was nevertheless a significant forum for addressing human rights concerns and setting standards.\(^{127}\)

Human rights cut across each of the fields of the UN’s work: peace and security, development, economic and social affairs, and humanitarian affairs. The

\(^{126}\) To this end the ECOSOC, with the approval of General Assembly, established the Commission on Human Rights (1946), the Commission on the Status of Women (1946) and Sub-Commission on the Prevention of Discrimination and Protection of Minorities (1946), etc.

\(^{127}\) DIFFERENCES BETWEEN CHR AND HRC: There are a number of notable structural differences between the two bodies. First, the HRC was established by the General Assembly, and is an organ of that body, while the CHR was a subsidiary organ of ECOSOC. NGOs which were formerly authorized by ECOSOC to observe the CHR’s sessions are nevertheless permitted to continue their involvement with the HRC. The HRC consists of 47 members, a slight reduction from the CHR’s 53. While membership is still allocated proportionally amongst regions, countries seeking appointment to the HRC must secure a majority vote of the full General Assembly in a secret ballot. The HRC meets three times a year, instead of the single annual meeting held by the CHR. Additionally, the HRC is supposed to conduct reviews of the human rights records of all States; this replaces the controversial system of the CHR, which in the opinion of many resulted in selective finger-pointing.
Office of the High Commissioner for Human Rights (OHCHR) plays the leading role in the UN human rights system. Outlined below are the bodies that are primarily concerned with the promotion and protection of human rights.

2.12.2 The Human Rights Council (HRC):

The HRC is the principal UN intergovernmental body responsible for promotion and protection of human rights. It was established by General Assembly Resolution 60/251 on 15 March 2006 to replace the former Commission on Human Rights. Its mandate is, among other things, to:

1. Promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;
2. Address situations of violations of human rights, including gross and systematic violations; and to make recommendations thereon; and
3. Promote the effective coordination and the mainstreaming of human rights within the UN system.

The HRC is a subsidiary organ of the General Assembly. The HRC’s 47 Member States are elected for three-year terms by an absolute majority of the General Assembly in a secret ballot. The members are regionally allocated with a third of them being elected each year. HRC Member States are ineligible for re-election after two consecutive terms, therefore preventing de facto permanent membership. States presenting their candidacy for election may make voluntary pledges and commitments, which the members of the General Assembly take into account when voting. Furthermore, the General Assembly, by a two-thirds majority of the members present and voting, may suspend the HRC membership of a State that commits gross and systematic violations of human rights. The HRC holds a minimum of three sessions each year, for a total of no less than 10 weeks. It can also convene Special Sessions at the request of a member of the HRC with the support of a third of its members.

An innovative and important part of the HRC’s machinery is the Universal Periodic Review (UPR) mechanism, through which the HRC periodically reviews the fulfillment by each of the UN’s 192 Member States of their human rights obligations and commitments. In addition to the UPR, the HRC also has various mechanisms,
including the Special Procedures, the Complaint Procedure and the Advisory Committee (which are discussed below), as well as the Open-ended Working Group on the Right to Development, the Expert Mechanism on the Rights of Indigenous Peoples, the Forum on Minority Issues, the Social Forum, and a number of mechanisms related to the Durban Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

2.12.3 The Universal Periodic Review (UPR):

The UPR is a new feature of the Council that is designed to review the fulfillment by each UN Member State of its human rights obligations over a four-year cycle. The review of States is conducted in a Working Group of the Council, which is made up of the Council’s 47 Member States. The Working Group meets in three two-week sessions each year. A total of 48 States are reviewed annually. Three documents serve as the basis for the review of each State:

1. Information prepared by the State under review, which may take the form of a national report.

2. A compilation of UN information on the State under review (including the reports of the human rights treaty bodies, Special Procedures and other relevant official UN documentation) prepared by OHCHR.

3. A summary of stakeholders’ submissions, prepared by the OHCHR. These stakeholders include national human rights institutions, regional organizations and civil society representatives (including NGOs, human rights defenders, academic institutions and research institutes). The Working Group conducts a three-hour interactive dialogue with each State under review, during which the State under review is given an opportunity to present the information that it has prepared toward its review. It also responds to questions and recommendations presented by the HRC’s Member and Observer States on its human rights practices, as well as on the human rights situation in the country. The review of each Member State is facilitated by three Rapporteurs known as the “troika,” selected from the different UN regional groups. Although other stakeholders (including NGOs in consultative status with ECOSOC) may attend Working Group sessions, they do not play a role in the interactive dialogue.
2.12.4 Special Procedures:

“Special Procedures” are the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council (HRC) to address either specific country situations (country mandates) or thematic issues in all parts of the world (thematic mandates). Special Procedure mandates (indicating the function, purpose, duration, etc.) are established and defined by the relevant HRC Resolution creating them. As of September 2012, there are 48 Special Procedures in operation: 36 thematic mandates and 12 country mandates. Special procedures' mandates usually call on mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. Various activities are undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities. Special procedures are either an individual (called “Special Rapporteur” or “Independent Expert”) or a working group usually composed of five members (one from each region). The mandates of the special procedures are established and defined by the resolution creating them. Mandate holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. The independent status of the mandate-holders is crucial in order to be able to fulfill their functions in all impartiality.128

International, regional and national NGOs and other civil society actors play a vital role in relation to the Special Procedures system. Special Procedures do not require domestic remedies to have been exhausted, and can be activated even where a State has not ratified the relevant instrument or treaty. Special Procedures mandate holders have developed varied working methods. Some may receive information on specific allegations of human rights violations and send urgent appeals or letters to governments asking for clarification.

128 See http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx visited on 09-09-2012 at 09.56 pm.
2.12.5 Complaint Procedure of the Human Rights Council:

On 18 June 2007, the UNHRC adopted Resolution 5/1 to establish a Complaint Procedure. The Complaint Procedure's purpose is to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. Any individual or group can bring gross violations of human rights to the HRC’s attention. Complaints can be submitted by the individual whose human rights have been allegedly violated or by a third party, such as an NGO, on behalf of that person. NGOs are not required to be in consultative status with ECOSOC in order to submit a complaint through the Complaint Procedure of the HRC.129

Two working groups make up the Complaint Procedure: the Working Group on Communications (WGC) and the Working Group on Situations (WGS). The WGC consists of five independent and highly qualified experts, and is geographically representative of the five regions represented by the Human Rights Council (Africa, Asia, Latin America and the Caribbean, Eastern Europe, and Western Europe and Others). The Advisory Committee designates the WGC’s experts from among its members. The experts serve for three years with the possibility of one renewal. The

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129 Ibid. Previously, under the United Nations Commission on Human Rights, a complaint mechanism was in place under the 1503 procedure. It was a universal mechanism. It applied in respect of all countries in the world. The 1503 Procedure was named after the Resolution No. XLVIII of 27th May 1970 of the Economic and Social Council as revised by the Resolution No.2000/03 of 19th June 2000. It enabled 2 bodies of the UN - the Sub-Commission on the Promotion and Protection on Human Rights and the Commission on Human Rights - to examine complaints which appear to show consistent patterns of gross and reliably attested human rights violations received from individuals or NGOs. In order to show a consistent pattern, the communication should refer to a substantial number of violations against different individuals. In the past, the Commission on Human Rights has decided that as few as 6 or 7 cases of prolonged administrative detention were sufficient to show a consistent pattern. Gross violations are very serious violations of human rights. They include torture, enforced disappearances, extrajudicial executions (killings), arbitrary or summary executions (for example carrying out of the death penalty after an unfair trial), widespread arbitrary imprisonment or lengthy detention without charge or trial and widespread denial of the right to leave a country. Reliably attested violations- The allegations of violations must be reliably attested, which means backed up by credible evidence. Violations of any of the human rights guaranteed by the Universal Declaration on Human Rights can be examined under this procedure. Now, after coming into existence, the HNHRC established the new Complaint Procedure in compliance with the mandate entrusted to it by the General Assembly Resolution No. 60/251 of 15 March 2006, in which the UNHRC was requested to review and, where necessary, improve and rationalize, within one year after the holding of its first session, all mandates, mechanisms, functions and responsibilities of the former Commission on Human Rights, including the 1503 procedure, in order to maintain a system of special procedures, expert advice and a complaint procedure.
experts determine whether a complaint deserves investigation. If a complaint deserves investigation, the WGC passes the complaint to the WGS. 130

The WGS comprises five members appointed by the regional groups from among the States member of the Council for the period of one year (mandate renewable once). It meets twice a year for a period of five working days in order to examine the communications transferred to it by the Working Group on Communications, including the replies of States thereon, as well as the situations which the Council is already seized of under the complaint procedure. The Working Group on Situations, on the basis of the information and recommendations provided by the Working Group on Communications, presents the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and makes recommendations to the Council on the course of action to take. 131

2.12.6 Human Rights Council Advisory Committee:

The Advisory Committee of the Human Rights Council (AHRC) replaces the former Sub-Commission on the Promotion and Protection of Human Rights of the Commission on Human Rights. The Advisory Committee is made up of 18 individual experts drawn proportionally from the five UN regions. It operates as a think-tank for the Council, by providing expertise and advice and undertaking research at the HRC’s request. The Committee members serve for a period of up to three years and are eligible for re-election once. The Committee meets in two sessions for a maximum of 10 working days each year, with the possibility of additional ad hoc sessions with the HRC’s approval. The Advisory Committee works with governments, national human rights institutions, NGOs and other civil society entities. NGOs are entitled to participate in the work of the Advisory Committee based on arrangements and practices observed by the HRC, (and formerly the Commission on Human Rights) including ECOSOC Resolution 1996/31. 132

130 See http://www2.ohchr.org/english/issues/situations/index.htm visited on 09-09-2012 at 10.00 pm.
131 Ibid.
132 See http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx visited on 09-09-2012 at 10.05 pm.
2.12.7 The Third Committee of the General Assembly:

The General Assembly is the main deliberative organ of the United Nations. It is composed of representatives of all Member States, each having one vote. The UN Charter gives the General Assembly a broad mandate to “discuss any questions or matters within the scope of the present Charter and to make recommendations to Member States on these subjects.” The large number of items on the General Assembly agenda has required that most be delegated for discussion to six specialized committees. Each committee is made up of all the UN Member States. Most items relating to human rights are discussed in the “Third Committee” (the Social, Humanitarian and Cultural Committee) of the General Assembly. The Third Committee concentrates on agenda items relating to a range of social, humanitarian affairs and human rights issues, such as the advancement of women, the protection of children’s rights, indigenous issues, questions relating to refugees, the elimination of racism and racial discrimination, and the right to self-determination. In October - November every year the Committee holds general discussions on a wide range of human rights issues at which representatives of Member States and UN entities deliver statements. The Committee also holds interactive dialogues with the High Commissioner for Human Rights and a number of the Special Procedures mandate holders of the Human Rights Council. All the reports submitted by the Secretary-General, the High Commissioner and the Special Procedures mandate holders are available on the website of the Committee. The presence of the mandate holders provides civil society representatives with opportunities to discuss human rights issues outside the framework of the Committee’s programme and organize events inviting them as speakers. The Committee adopts (non-binding) resolutions on human rights issues and recommends that the General Assembly adopt them. Since the establishment of the Human Rights Council in 2006, the Committee has also considered the report of the Human Rights Council presented by the Chairperson of the Council in person, and acted upon the proposals contained in the report.133

2.12.8 Office of the High Commissioner for Human Rights (OHCHR):

The High Commissioner for Human Rights leads the OHCHR and the United Nations Human Rights Programme. It is the global authority on human rights and is a part of the UN Secretariat. Its primary responsibility is to promote and protect all human rights established under the Charter of the United Nations and under all international human rights laws and treaties. It undertakes a broad range of activities and supports the broader UN human rights agenda. It serves as the secretariat to all human rights treaty bodies, as well as the Human Rights Council and its mechanisms. It conducts research and organizes consultations on key human rights issues and assists countries in achieving the realization of human rights. It has offices around the world and its work in the field is a key component of human rights promotion and protection. Its presence includes country offices, regional offices and human rights advisors. It also supports human rights components in UN peace missions.

2.13 Other International Human Rights Mechanisms:134

2.13.1 International Criminal Tribunals:

Faced with widespread violations of international human rights and humanitarian law in the former Yugoslavia and Rwanda in the early 1990s, the UN Security Council decided to establish two international criminal tribunals. The International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda were set up in 1993 and 1994, respectively. Their mission is to prosecute individuals responsible for genocide, crimes against humanity and other breaches of international humanitarian law committed in the territories of the former Yugoslavia since 1991 and in Rwanda between 1 January and 31 December 1994.135

2.13.2 The International Criminal Court:

The International Criminal Court (ICC) is another important human rights mechanism. It was established by a UN Conference in 1998 which adopted the Rome Statute. The Statute entered into force in 2002. It is the first permanent international court with the authority to try individuals accused of genocide, war crimes and crimes


against humanity. The ICC was established not as an organ of the United Nations but as an independent international judicial institution with a Relationship Agreement with the UN. The ICC cooperates with the UN in many different areas, including the exchange of information and logistical support. Each year, the ICC reports to the UN Security Council and General Assembly on its activities.\textsuperscript{136}

\subsection*{2.13.3 UN Specialized Agencies’ Mechanisms:}

Since it was founded in 1919, the International Labour Organization (ILO) has developed Conventions and Recommendations that cover a broad range of subjects concerning work, employment, social security, social policy and related human rights. The ILO’s supervisory bodies – the Committee of Experts on the Application of Conventions and Recommendations and the International Labour Conference Committee on the Application of Standards – regularly examine the application of international labour standards in ILO Member States. Representation and complaint procedures can also be initiated against States that fail to comply with conventions they have ratified. A special procedure – the Committee on Freedom of Association – reviews complaints concerning violations of freedom of association, whether or not a Member State has ratified the relevant conventions.\textsuperscript{137}

\subsection*{2.14 Development at the Regional Level:}

At the regional level, organizations such as the Council of Europe, the Organization of American States, the Organization of African Unity/African Union,\textsuperscript{138} and the League of Arab States have also adopted different regional human rights treaties in recognition of the noble ideals of international human rights. The basic regional human rights treaties are the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950,\textsuperscript{139} the European Social

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\textsuperscript{136} See http://www.icc-cpi.int/Menus/ICC/. Visited on 15-10-2012 at 12.35 am.
\textsuperscript{138} The Organization of African Unity was replaced by the African Union (AU) in 2001. See Article 28 of the Constitutive Act of the African Union, which came into force on 26 May 2001.
\textsuperscript{139} Adopted on 4 November 1950 and entered into force on 03-09-1953. The Convention established the European Court of Human Rights (ECHR). Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the Court. Judgments finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgments, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained. The establishment of a Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena. The European Convention is still the only international human rights agreement providing such a high degree of individual protection.
\end{footnotesize}
Charter, 1961,\textsuperscript{140} the American Convention on Human Rights, 1969,\textsuperscript{141} the African Charter on Human and Peoples’ Rights, 1981,\textsuperscript{142} and the Arab Charter on Human Rights, 2004.\textsuperscript{143} The Asian States together have not yet created a regional human rights system because of several factors including vast differences in culture, political ideology and economic development.\textsuperscript{144} Over the last six decades since the adoption of the UDHR, human rights have progressively developed into a universal value system, and it is now generally accepted that “the promotion and protection of all human rights is a legitimate concern of the international community,”\textsuperscript{145} and it is against this that States are evaluated today. Evidently, the scope and limits of human rights have enormously transcended the initial rights guaranteed under the UDHR in 1948.

2.15 Conclusion:

A formal regime of human rights law is now in existence regulating the conduct of States towards individuals subject to their jurisdiction. But neither the emergence of this law nor the evolution of this regime has put an end to human rights violations. Human rights treaties, unlike commercial contracts, rarely enable the beneficiaries to effectively enforce their performance. As Paul Sieghart explains, in the case of human rights treaties there are no “incentives” or “sanctions” such as the payment of the agreed price or the non-delivery of the goods.\textsuperscript{146}

\textsuperscript{140} Adopted on 18 October 1961 and was revised in 1996 and 1999. It provides for positive rights supplementing the ECHR and is monitored by 15 Member European Committee on Social Rights (ECSR). Under the 1995 Additional Protocol providing for a system of Collective Complaints which came into force in 1998, complaints of violations of the Charter may be lodged with the ECSR.
\textsuperscript{141} Adopted on 22 November 1969 entered into force on 18-07-1978. The Inter-American Court on Human Rights was established in 1979 to decide disputes on violation of the provisions of the Convention. However, unlike EUHR, only States Parties can approach the Court and not individuals.
\textsuperscript{142} Adopted on 27 June 1981 and entered into force on 21-10-1986. The African Charter on Human and People's Rights followed the footsteps of the European and Inter-American systems by creating a regional human rights system for Africa. The Charter shares many features with other regional instruments. The Charter recognizes most of what are regarded universally accepted civil and political rights. Supervision and interpretation of the Charter is the task of the African Commission on Human Rights and Peoples’ Rights, which was set up in 1987. A protocol to the Charter was subsequently adopted in 1998 whereby an African Court on Human Rights and Peoples’ Rights was to be created. The protocol came into effect on 25 January 2005.
\textsuperscript{143} Adopted on 22 May 2004 and entered into force on 15-03-2008.
\textsuperscript{145} Vienna Declaration, 1993, para 4.
\textsuperscript{146} It is as if two sets of parents whose children are about to marry each other were to agree to buy them a house to live in, and decided to change their minds and to spend the money on something else. None of the parents has anything to lose by breaking the bargain, and children may have no remedy.
However, whether for purely cosmetic reasons or because of a genuine desire to improve conditions within their territories, an overwhelming majority of States have ratified or acceded to numerous human rights instruments. In this regard Thomas Burgenthal observes, there is now an international climate that is increasingly sensitive to the illegality of human rights violations, less willing to tolerate them, and more responsive to public and private efforts to prevent them. When law, whether domestic or international, mirrors the aspirations of society and captures its imagination, it acquires a moral and political force whose impact can rarely be predicted and often far exceeds the wildest expectations of its particular lawmaker. Many of the countries which have voted in the UN for human rights instruments without any intention of complying with them gradually find these instruments impose restraints on them and limit their freedom of action.

The efficacy of human rights treaties depends on the incorporation of their provisions in national law. International law determines the validity of treaties in the international legal system, i.e., when and how a treaty becomes binding upon a State as regards other States Parties. It also determines the remedies available on the international plane for its breach. But it is the national legal system which determines the status or force of law which will be given to a treaty within that legal system, i.e., whether national judges and administrators will apply the norms of a treaty in a specific case. When the treaty norms become domestic law, national judges and administrators apply them, and individuals in the ratifying States may receive rights as a result of the treaty provisions.

While the international legal system does not reach directly into the national systems to enforce its norms it attempts to do so indirectly. States are required under international law to bring their domestic laws into conformity with their validly contracted international commitments. Failure to do so, however, results in an international delinquency but does not change the situation within the national legal system because they were not parties to the agreement. - Paul Sieghart, “The lawful Rights of Mankind”, Oxford University Press, Oxford, 1985, p. 92-93.

147 See Table
systems where the judges and administrators may continue to apply national law rather than international law in such cases.

The status of treaties in national law is determined by two different constitutional techniques namely “legislative incorporation” and “automatic incorporation”. In some States the provisions of ratified treaties do not become national law unless they have been enacted as legislation by the normal method. The legislative act creating the norms as domestic law is an act entirely distinct from the act of ratification of the treaty. The legislative bodies may refuse to enact legislation implementing the treaty. In this case the provisions of the treaty do not become national law. This method, referred to as “legislative incorporation”, is used, inter alia, in the United Kingdom, Commonwealth countries and Scandinavian countries. In other States, which have different system, ratified treaties become domestic law by virtue of ratification. This method is referred to as “automatic incorporation” and is the method adopted, inter alia, by France, Switzerland, the Netherlands, the United States and many Latin American countries. Even in such States, however, some treaty provisions require implementing legislation before they will be applied by the courts. Such provisions are categorized as no-self executing.

International law does dictate that one or the other of the methods of legislative or automatic incorporation must be used. Either is satisfactory assuming that the norms of treaties effectively become part of national law. The method by which treaties become national law is a matter in principle to be determined by the constitutional law of the ratifying State and not a matter ordained by international law. The international community, lacking more effective means of enforcement, is often dependent on the constitutional system of particular States for the effective application of treaties intended for internal application.