A Guidebook for Human Rights Defenders

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People’s Watch
6, Vallabhai Road, Chokkikulam,
Madurai-625002
Phone: + 91-452-2539520, 2531874
Fax: + 91-452-2531874
Email: info@pwttn.org
Website: www.pwttn.org
INTRODUCTION

‘Human Rights Defenders’ (HRD) is a term unknown to many in our country – both within the government (Central and State) as well as in civil society at large. Parliamentarians and Legislators from the different states as well as members of the Subordinate and higher judiciary in this country, as well as the Chairpersons and Members of the over 150 different National and State level Human Rights Institutions that are functioning in this country will most probably be equally unaware of this term. Within civil society at large – both women and men – engaged in the different social concerns be it relating to women, dalits, adivasis, children, the urban poor, fisher people, labour, the disabled, the sexual minorities, police excesses of all forms, the displaced, persons suffering from HIV AIDS – all of them will equally be ignorant that they are also engaged in ‘human rights’ work. The Protection of Human Rights Act of 1993, (PHRA) defines ‘human rights’ to include rights relating to right to life, right to equality, right to liberty and right to personal dignity as defined under the Indian Constitution. Hence, all of the civil society actors enumerated above mentioned above are in fact persons engaged in ‘human rights work’ whether they wish to call themselves so or not. It is the United Nations Declaration on the Right and Responsibility of individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly known as UN Declaration of Human Rights Defenders of 1998 that has provided this identity of an HRD to the persons referred to above.

The present situation is also one where the situation of HRDs is precarious in our country. It is not limited to the cases of Dr. Binayak Sen or Ms. Medha Patkar, Mr. Himanshu Kumar of the Vanvasi Chetna Ashram in Dantewada region of Chhattisgarh or Mr. K.G. Kannabiran, or (Late) Dr. Balagopal. The term ‘HRD’ includes their younger brothers and sisters from the smallest and interior villages and slums of this large country who are pursuing their work in the areas mentioned supra for the protection and promotion of ‘human rights’.

At the global level after successfully bringing in the UN Declaration on HRDs in 1998, several international human rights organizations have gone out of their way to ensure a system of protection to HRDs globally. Foremost among the international organizations undertaking such measures are the OMCT / FIDH Observatory on HRDs (Geneva), Frontline Defenders (Dublin), the Asian Human Rights Commission (Hongkong), Forum Asia (Bangkok) Human Rights First (USA), the Urgent Action Fund for Womens Human Rights (USA) Women Living under Muslim Laws (London), Freedom House (Washington) etc. However, we still lack an Indian response mechanism to the situation of HRDs in our country that could respond within minutes of their being targeted for various forms of attack by the police or other authorities or even non state actors.

It was on the occasion of the first decade of the UN Declaration on HRDs that People’s Watch looked out for assistance to help in spreading awareness on who are HRDs. People’s Watch is grateful to the Embassy of the Netherlands in New Delhi that has made this possible through a grant that they had generously made available to People’s Watch.

This grant was to assist in training around 75 trainers all over the country who in turn will then collectively undertake the conduct of at least 30 training programs in the different states covering over a thousand five hundred HRDs. These HRDs will also be expected then to function as the focal points in different districts of the states who will ensure that the cases of the smallest HRDs in difficulty is brought to the attention of the larger community and s/he is provided safety and protection within a short while.

This grant was also ensure that these HRDs from the different states would also be introduced to another urgent need within the human rights movement in the country today – that of monitoring human rights institutions.
The ears and eyes of HRDs will henceforth be turned on to these institutions to ensure that the UN guiding Principles for NHRIs, popularly known as the ‘Paris Principles’ are made a reality in this country.

This handbook therefore was meant to be used in these trainings. It is being brought out in English, Hindi and Tamil. Other versions will then gradually follow. For all this to be made possible, it is important that we work together. I wish to thank the Directors / Presidents of the following international / national level organizations and networks for their willingness to support us in these training programs all over the country. They were the Commonwealth Human Rights Initiative (CHRI), the National Alliance of Womens Organizations (NAWO), Action Aid India, Ekta Parishad and MARG. It the coming together of organizations in this country for common causes such as the protection of HRDs that will signal a change in the direction the human rights movement is progressing in this country. I also wish to thank the longer list of other organizations who have and are to collaborate in the states.

I wish to thank the Embassy of the Netherlands in India for their grant for making all this possible. I wish to also specially thank a few of my colleagues at People's Watch. First and foremost, Ms. Sabitha our National Program Coordinator for our programs on National Human Rights Initiatives who worked hard through extensive research to assist me in getting this training module ready, Mr. Anand Kumar our Systems Manager who worked to get it out on time for the trainings. I express my sincere gratitude also to Ms. Emerlynne A. Gil, Manager, HRD Program from FORUM-ASIA who willingly looked through the module and made generous suggestions.

Just as this second edition of the handbook is going for printing I wish to add that in the past few months between February and May 2010 we have completed the training of over 130 trainers and they in turn have also so far completed over 15 of the 30 envisaged training programs in over 10 states. It is also a pleasure to announce that these initial TOTs have given birth to the formation of two important national platforms - the Human Rights Defenders Alert [HRDA] and the ‘All India Network of Individuals and Organizations engaged with National Human Rights Institutions [AiNNI].

Hence while we go ahead with printing once again a second edition we thought that this is important also to include some materials on NHRI and the new developments therein particularly since our NHRC in India will be applying for its re-accreditation to the ICC Sub Committee on Accreditation early next year and appear before the Committee in May 2011. This is to ensure that whether the NHRC get ready or not civil society in India gets ready for its critical collaboration with the NHRC in this regard through voices from all over the country. We are therefore also planning to ensure that a copy of this publication reaches some of the important and vocal Members of the Indian Parliament so that they are also able to play their role effectively to ensure the Paris Principle of ‘Transparency and Accountability’ of the NHRC in India is made a reality.

We dedicate this manual to the HRDs of this country who still remain unknown to us and do hope that after these series of programs and establishment of the focal points in many of the states, we will be able to offer quality protection services to all of them. We in addition also dedicate this second edition in particular to those Chairpersons, Members and Chief Functionaries of NHRIs in India who have played a pioneering role in establishing these institutions and who also dreamt that they will serve the real needs of protecting and promoting human rights and fundamental freedoms. We appeal to their support as well to these civil society initiatives which are being established only to ensure that their own dreams come true.

Henri Tiphagne  
Executive Director,  
People’s Watch  
Madurai 25th May 2010
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What are human rights?

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

According to the Protection of Human Rights Act 1993 enacted by the parliament in the forty-fourth year of the Republic of India, “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

Universal and inalienable Interdependent and indivisible

The principle of universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

Equal and non-discriminatory

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.
The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”

Both Rights and Obligations

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.
Chapter 2:
HUMAN RIGHTS DEFENDERS

Supporting the rights of human rights defenders is one of the most important ways to ensure human rights for all

Who is a human rights defender?

The term has been used increasingly since the adoption of the UN Declaration on Human Rights Defenders alongside other terms such as human rights activist, human rights advocate or human rights worker.

Human rights defenders are legal and legitimated by international and national communities. The definition of who is a ‘human rights defender’ provided by the UN Declaration on Human Rights Defenders and reiterated by the EU Guidelines on Human Rights Defenders is:

“Human rights defender’ is a term used to describe people who, individually or with others, act to promote or protect human rights. Human rights defenders are identified above all by what they do and it is through a description of their actions and of some of the contexts in which they work at the term can best be explained”

Anyone, regardless of their occupation, can be a human rights defender: they are identified primarily by what they do rather than by their profession. Some human rights defenders are professional human rights workers, lawyers working on human rights cases, journalists, trade unionists or development workers. But a local government official, a policeman or a celebrity who actively promotes respect for human rights can also be a human rights defender. Defenders may act on their own or in association with others, in a professional or personal capacity. Many defend human rights in their ongoing work, while others become human rights defenders because of one individual action or stance they have taken in favour of human rights.

Human rights defenders include:

- Journalists exposing human rights violations
- Community workers teaching human rights education
- Trade unionists defending workers’ rights
- Women working for the promotion of reproductive rights
- Environmentalists highlighting the impact of development projects on Indigenous Peoples land rights

Human rights defenders are individuals, groups of people or organizations who promote and protect human rights through peaceful and non-violent means. They:

- uncover violations
- subject violations to public scrutiny
- press for those responsible to be accountable
- empower individuals and communities to claim their basic entitlements as human beings.

Throughout history, courageous and visionary people have sought to extend the boundaries of human rights protection to those outside its boundaries, whether it be those living in slavery, workers unprotected against exploitation or women denied the vote.
Today, despite international laws that protect them, human rights defenders are needed all over the world to monitor and challenge abuses and violations.

**Obstacles**

Because of this work, human rights defenders face a range of challenges. In many countries they are:

- subjected to death threats and torture
- persecuted through the use of the judicial system
- silenced by restrictive laws
- murdered or disappear

This is why human rights defenders need support.

**Human rights defenders have several characteristics in common. They all:**

- uphold the fundamental principle of universality - that is, that all human beings are equal in dignity and rights, regardless of gender, race, ethnicity, or any other status
- are committed to the realization of international human rights standards
- respect the rights and freedoms of others in their own actions

The actions taken by human rights defenders must be peaceful in order to comply with the Declaration on Human Rights Defenders and to fall within the scope of the term as used by Amnesty International.

**What rights do they defend?**

Human rights defenders work for the realization of any or all of the rights set out in the [Universal Declaration of Human Rights](https://www.un.org/en/overview人权宣言) or in the number of human rights standards which the Declaration has given rise to in the form of conventions, declarations, bodies of principles and authoritative interpretations.

The rights defended by human rights defenders may be:

- civil and political rights (such as the right to be free from torture or the right to a fair trial)
- economic and social rights (such as the right to the highest attainable standard of health or the right to education)
- cultural rights (such as the right of indigenous people to have control over their land and resources).

Some defenders work against particular abuses, such as torture or forced eviction. Others work for the rights of specific groups or sectors of the population facing discrimination and disadvantage, such as indigenous people, rural women, street children, or lesbian, gay, bisexual and transgender people.

**Responsibility to protect**

Everyone has a responsibility to protect human rights. As the Declaration on Human Rights Defenders affirms: "Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others, should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics"
Professional human rights defenders have many skills and years of experience, but there is no mystery to defending human rights. We all hold the potential to become human rights defenders.

How do human rights defenders work?

Human rights defenders promote and protect human rights in many different ways. This can include:

- representation of victims and survivors of human rights violations in their fight for justice and redress;
- dissemination of information on human rights abuses;
- teaching human rights principles and values as part of the school curriculum;
- organizing communities to take a stand against a threat to their livelihood;
- grassroots campaigning;
- advocacy;
- lobbying of governmental or international institutions;
- building the capacity of local communities to understand and claim their rights;
- providing humanitarian relief services to people displaced by conflict or natural disaster;
- working through legal and quasi-legal processes.

Working through legal processes

Many human rights defenders work through legal process to claim justice and redress for people whose rights have been violated. There are countless examples of victories secured by defenders invoking the protective principles of international human rights standards in domestic courts. An increasingly effective international legal system has also provided avenues for redress where justice is denied at home. The continents of Africa, the Americas and Europe have elaborate regional mechanisms where survivors of human rights violations and those working with them can hold their governments to account.

Thanks to the long-standing efforts of human rights lawyers from countries around the world working together in coalition, a global judicial infrastructure has begun to emerge in recent times, most notably with the adoption in 1998 of the Rome Statute of the International Criminal Court. The Court has jurisdiction over the most serious crimes under international law, including genocide, crimes against humanity and war crimes.

Universal jurisdiction

Another significant development brought about by defenders working together across borders is the evolution of universal jurisdiction, enabling the courts of one country to try such crimes even if committed elsewhere. Despite their advantages, court cases are, however, expensive, time consuming and can seem inaccessible, which often make other means of asserting rights more feasible.

Truth commissions

Defenders have also sought to find creative alternatives to criminal prosecution in situations where this was rendered politically or practically impossible. In many situations of transition from conflict or authoritarian rule, defenders have helped establish "truth commissions" aimed at bringing to light the experiences of victims and
survivors, establishing who was responsible, and providing reparation. Despite their shortcomings, such commissions can represent important steps towards justice and reconciliation, and a powerful validation of the experiences endured by survivors.

**Defending new and contested rights**

In recent decades, defenders have fought to make the promise of the UDHR relevant to new and emerging threats to human dignity. They have:

- brought human rights into the sphere of the home and the community through the struggle to halt gender-based violence against women
- pushed for multinational corporations to be held morally and legally accountable when their actions or omissions deprive people of their basic human rights
- framed the demand for universal access to primary education and to life-saving anti-retroviral treatment as fundamental entitlements rather than services conditional on economic growth or charitable benevolence.

Defenders forging new frontiers for human rights are often the most exposed to risk, ridicule and resistance. Those working to redress the historical neglect of economic, social and cultural rights risk making powerful enemies when they question the distribution of economic resources and call for greater accountability of those whose actions fuel poverty and inequality.

Similarly, women and men fighting for the right to have control over one's sexuality and reproductive capacity free from discrimination, coercion or violence may face formidable resistance from politically-motivated religious fundamentalists who deny that such a right exists in all cultures.

The fact that a huge variety of social movements increasingly use the language of rights to articulate their demands, and the vehemence with which such demands are challenged and suppressed, reflects not only the degree of moral authority attached to human rights claims; it highlights the extent to which the meaning and scope of human rights is still a battleground.

**The boundaries of human rights change**

Human rights is not a static project, its boundaries cannot be fixed for all time. Rights claims arise from the denial of human dignity in whatever form. The contours of human rights shift as patterns of oppression change. Their scope and content will therefore always be a matter for contestation.

The human rights agenda has always been built by its own critique. Those excluded from the way human rights are traditionally understood or interpreted in any given social or historical context - for example, women, Indigenous Peoples, lesbian, gay, bisexual and transgender people, or the disabled - have fought for inclusion and have enriched and transformed understandings of human rights as a result.

This evolution will continue and new generations of rights-defenders will continue to challenge orthodox interpretations of human rights and articulate new claims. Those alerting us to the impact of climate change on the sustainability of life on the planet, or to the implications of biotechnological and genetic advances on what it means to be human, are already pointing to some of the issues that may feature increasingly on the human rights agenda of the future.
Chapter 3
Women Human Rights Defenders

Who are women human rights defenders?

To address violations of women’s human rights, women activists have worked courageously for the defence of their own rights, and for the defence of the rights of others. We call them women human rights defenders.

‘Women human rights defenders’ include women active in human rights defence who are targeted for who they are as well as all those active in the defence of women’s rights who are targeted for what they do.

Lesbian, gay, bisexual and transgender activists participate in many human rights struggles, including the advocacy for sexual rights. They become vulnerable to violence because of who they are and the work they do, especially when that work is directly related to sexuality. We refer to them as women human rights defenders, too.

Why focus on women human rights defenders?

Women human rights defenders put themselves on the front line in the promotion and protection of human rights. In doing so, they face risks that are specific to their gender and additional to those faced by men. Frequently, the violence or threat against them is sexual in nature, or they face restrictions in their work on account of their gender. Furthermore, prejudice, exclusion and public repudiation by both state forces and social actors weigh heavily in their lives.

Harassment and attacks against them may themselves take gender-specific forms ranging from verbal abuse directed exclusively at women because of their gender, sexuality or gender identity to sexual harassment and rape. These human rights abuses can, in turn, have repercussions that are, in and of themselves, gender-specific.

For example, the rape of a woman human rights defender in custody can result in pregnancy and sexually transmitted diseases, including HIV/AIDS. Other gender-specific consequences could also include forced abortion or forced childbirth.

Since the abuses against women human rights defenders are generally not classified as human rights violations, one serious consequence is that the atrocities against them are given lower priority.

Sometimes they are not considered ‘serious enough’ to merit response or redress, or they are simply ignored in favour of those committed against ‘recognised’ human rights defenders who are usually male. As a consequence, women defenders are deprived of protection afforded to their male colleagues in the movements.

Moreover, interlocking networks of silence and shame that blame victims (especially of sexual violence), and male language or male-defined processes in legal institutions have often resulted in the suppression of stories of abuse. For example, women activists have had to struggle – even within the human rights circle – to assert that ‘rape’ is not just an act of violence, but also an affirmation of unequal power relations.

In cases where the perpetrators are trusted members of the family or community, self-censorship and the internalization of fear can also become so ingrained that breaking the silence is difficult. This has serious repercussions on the well-being of women human rights defenders.
Thus, it has been difficult to argue for adequate protection for women human rights defenders within male-dominated social formations or spaces that exist all over the world. Most mainstream human rights frameworks and institutions fail to recognize the private or hidden nature of the violations, and focus on the public arena and state accountability. This leads to a disregard of non-state actors’ abuses. The lack of mechanisms to hold individual perpetrators accountable under international human rights law contributes to a culture of impunity for these violations against women human rights defenders.

Women human rights defenders also have to do their work within a context where democratic principles are being undermined. In authoritarian regimes, human rights defenders are arrested, detained, harassed or killed for criticizing the state. Making state and non-state actors accountable for human rights violations has become more frustrating than ever, and the work of women human rights defenders more dangerous than before.

**Patriarchy – how does it affect women human rights defenders?**

Patriarchy is a term used to describe the oppressive and exploitative relations experienced by women as a result of privileging male power in society. This is enforced by restricting women’s autonomy – especially their sexual autonomy – and justifying violence against women as natural. Moreover, women’s realm for making decisions about their own lives is severely limited. Women who step outside social norms of femininity can face severe retribution. Such patriarchal power relations result in the systematic abuse of women’s human rights.

Patriarchy divides the public and private spheres. Such separation has serious implications in the lives of women. For example, it gives rise to the sexual division of labour, which is an allocation of tasks on the basis of sex. This division of labour between sexes is based on what a society expects a man or a woman should do, and it values the products of male labour more than those of women, compounding gender discrimination.

The same structural gender inequality and disempowerment of women that create a sexual division of labour also account in part for the non-recognition and lack of protection of women human rights defenders. They have to fight continually against gender stereotypes that invalidate their role as leaders of the community. They have been treated as mere extensions of their husbands, brothers, fathers or male colleagues, despite being at the forefront of the defence of civil, political, economic, social, and cultural rights.

As a result, they seldom obtain the kind of protection given to human rights defenders in general.

Hina Jilani, the former UN Special Representative on Human Rights Defenders, said: Women defenders may arouse more hostility than their male colleagues because as women human rights defenders they may defy cultural, religious or social norms about femininity and the role of women in a particular country or society. In this context, not only may they face human rights violations for their work as human rights defenders, but even more so because of their gender and the fact that their work may run counter to societal stereotypes about women’s submissive nature, or challenge notions of the society about the status of women.

An analysis that takes into account gender, as well as other categories of social marginalisation is critical to understanding the sphere or type of violence women human rights defenders experience.

This intersectional approach looks at the various factors of social identity and axes of discrimination - including gender, race, sexual orientation, gender identity/expression, ethnicity, (im)migrant status, health status, age, physical disability, language – which mutually constitute not only the exercise, but also the violation of human rights of an individual or group.
In particular, Special Rapporteurs on Violence Against Women Radhika Coomaraswamy and Yakin Erturk explained, ‘(When) patriarchy intersects with other sites of oppression such as class, race, ethnicity, displacement, etc., discrimination becomes compounded, forcing the majority of the world’s women into situations of double or triple marginalization’.

**Militarization – what are its impacts on women human rights defenders?**

Militarization is the process whereby military values, institutions and patterns of behaviour have an increasingly dominant influence over society. Militarization often precedes conflict, almost always accompanies it and can remain part of its legacy. This process is accompanied by an increasing justification of the use of violence to resolve disputes, and has contributed to the proliferation of internal armed conflicts, separatist struggles, and so-called low intensity conflict as a global phenomenon.

The ideology of militarism is inextricably linked to processes of normalization of military presence in civilian life and in decision making structures. States rely more and more on their security forces to ensure stability on all fronts. Armed groups and opposition networks also enforce discipline and control such as highly gendered codes of conduct and dress on civilian populations. Many types of militarism may also be promoted by international networks, charities and other bodies who may be overtly or covertly associated with armed groups.

All too often, emergency situations lead to, or justify authorities to suspend civil or political rights in law or in practice. The global ‘war against terror’ that has followed the attacks on the World Trade Centre and Pentagon in the United States on 11 September 2001 has strengthened the hand of those who pursue militaristic resolutions of tensions and conflicts. This further restricts women’s ability to challenge or influence the course of events around them, and can deeply circumscribe the work of human rights defenders.

Defenders concluded, are ‘exceptions to the rule of law and derogation of human rights’. She observed that special security legislation has been used to legitimize violations of human rights and seriously impair the work of human rights defenders. Restrictions, placed on the freedoms of association and assembly, have led to limitations on, and even criminalization of, civil society activism. For women activists who are not even recognized as human rights defenders, the impact of such state violence can be severe.

There are impacts of militarization on women’s security, and on measures to enforce gender norms. Weapons proliferate and violence becomes an everyday means of social interaction. During internal and low-intensity conflicts, women human rights defenders are targeted by para-military forces – as well as by state agents – for their activism during conflict situations. Frequently, they find themselves caught between opposing forces. In addition, conflict can reinforce sexist stereotyping and profiling of lesbians, gay or transgender people who do not conform to expected gender norms. This can easily slide into a rigid differentiation of gender roles.

**Fundamentalisms and other forms of religious and nationalist extremisms – how do they affect women human rights defenders?**

Fundamentalisms are modern political projects that use religion to obtain and retain power. They may seek to control a state or a community through a selective reading of religious texts to create a single collective identity that is deemed to be ‘pure’ or ‘authentic’. These movements are hostile to a diversity of interpretations within their own religious traditions, or to attempts to exit from these traditions. Dissent is frequently viewed as
blasphemy. In a related manner, extreme national movements may also be constructed around a single ‘pure’ ethnicity and myth of origin. Such movements frequently seek control through threat, intimidation and the strategic use of violence to attain their political ends.

Religion plays a direct and indirect role in politics, in matters of state, as well as the derivation of legal frameworks from discriminatory interpretations of religious texts – whether Christian, Muslim, Judaic, Hindu or Buddhist or of any other sect or belief. This has the effect of strengthening the subordination of women and restricting women’s choices. In such contexts, there is a demonizing of everything that is seen to come from universal ideas not derived from religious sources, including the concepts of human rights and women’s rights. These are seen as ‘Western’ ideas in some countries.

In situations of extremisms, communities often turn inwards, emphasizing women’s symbolic value as the guardian of ‘honour’ of the community. Many fundamentalist groups ‘reinvent tradition’ to create new norms that are even more restrictive than traditional practices have been. For instance, in an atmosphere of insecurity, families may marry their daughters much younger than they would have done a generation ago. Under these circumstances, women’s rights such as their security, safety, freedom of movement and right to education are being increasingly threatened.

The control of women’s lives – their minds and bodies – is central to the aims of religious fundamentalists and extreme nationalist movements and therefore poses serious threats to women human rights advocates. The intensified social control of women and the enforcement of strict gender norms make women activists a target for defending human rights. They find themselves protecting others from violence and intimidation in an atmosphere where they too, may be the subject of attacks from fundamentalists and conservative forces in the community.

Globalization – is it relevant to women human rights defenders?

The range of economic processes which are referred to by the term ‘globalization’ is a set of neo-liberal policies focused on economic growth, liberalization of national economies, privatization of public services, and deregulation of trade and finance. The implementation of these policies has had complex results and has exacerbated social tensions and competition for scarce resources within the poorest and most marginalized communities in the world. In this context, the struggle for economic, social and cultural rights has become more critical than ever.

Women human rights defenders work on a broad range of economic, social, and cultural rights - such as labour rights, indigenous peoples’ rights, environmental rights, minority rights, health rights and reproductive rights. Many of these rights are extremely fragile under globalisation, and women activists have joined other social movements to criticize these neo-liberal policies. Initially imposed on developing countries by international financial institutions, these policies have resulted in charges for basic services such as health and education, reducing their affordability and availability.

Women advocates have also demanded accountability from state agents as well as multi-national and other corporations that violate human rights in pursuit of greater profit under liberalized economies.

Women activists have protested with indigenous communities against environmentally destructive large-scale mining project sanctioned by governments that robbed them of their livelihoods.
Often there is collusion between local and national authorities and the private sector in the attacks and threats against defenders addressing environmental issues, labour rights, and land rights, and women activists are among the victims, the then UN Special Representative Hina Jilani said.

For women human rights defenders, advocating for these rights is a matter of survival and entitlement. However, as the former UN Special Representative on Human Rights Defenders pointed out, it has been difficult for human rights defenders working in the field of economic, social and cultural rights to have their work accepted as human rights work. Further, she said, ‘often there is a lack of redress mechanisms available to defenders and communities to ensure the effective protection and justiciability of their economic, social, and cultural rights’.

Patriarchal power, globalization, militarization and the many forms of religious and nationalist extremisms are over-arching contexts or environments in which human rights activists have to defend human rights. Women human rights defenders must deal with these ideologies as structural obstacles to their own freedom, as well as to their advocacy for the realization of the fundamental rights of others.

What do women human rights defenders face in situations of conflict?

Conflict situations almost inevitably reaffirm patriarchal attitudes and values at every level. The availability of small arms; the collapse of law enforcement mechanisms; the general breakdown of law and order; and the lack of attention to violations of human rights committed by agencies and institutions mandated to protect the rights of civilians heighten the risks and vulnerabilities of women human rights defenders living and working in situations of conflict. Conflict also creates conditions of severe economic deprivation where the civilian population, particularly women, becomes almost totally dependent on certain authorities (whether occupation forces, peacekeepers, or humanitarian workers) for survival, leaving them acutely vulnerable to sexual and other forms of exploitation.

Women human rights defenders’ homes and villages may also be attacked and destroyed, and their communities displaced due to the conflict. Their homes and families may be particular targets because of their activities in defence of human rights. When family members are killed, women human rights defenders may also have to assume the responsibility for the care of dependents such as children, the elderly and the disabled under conditions of deprivation and insecurity. They themselves may be widowed, orphaned or abandoned.

Moreover, activities undertaken by women human rights defenders during conflict situations carry greater risk than those carried out during peace time. Many of them are caught in crossfires in attempts to save lives. Those
that demand liability for human rights violations committed by combatants, either from the government or opposition armed groups, are exposed to greater risks. For instance, women human rights defenders who oppose recruitment of child soldiers by any party to the conflict can be accused of being traitors or supporters of the other side. Those who advocate for gun control or campaign against the use of small arms are criticized and attacked as ‘anti-national’ or ‘pro-terrorist’. The presence of international actors such as peacekeeping troops may also create environments in which women human rights defenders, especially those in communities directly affected by the conflict, become more vulnerable to abuse and exploitation. For example, peacekeepers in Sierra Leone and Sri Lanka were implicated in incidents of violence, harassment, killings documented and reported by women’s organisations. The sexual abuse of women by UN peacekeepers has also been a controversial concern in the past years. Peacekeeping forces can also add to the climate of fear, and subsequent restrictions on the mobility of women human rights defenders. These violations are an increasing concern given the current phenomenon of some armed forces self-appointing themselves as ‘peacekeepers’, such as the ‘coalition forces’ presently in Iraq. By laying claim to a status as peacekeepers, these forces are much harder to hold accountable for human rights violations under international law.

Women human rights defenders who work with rural and indigenous communities in areas where the conflict is related to the ownership and control of natural resources find themselves targeted by private armies of multinational or global corporations. With vested interests in the exploitation of natural resources, these companies hire private military forces to threaten or kill the defenders. Sometimes these armed men act with the support or tolerance of governments. Hence, it has been difficult to pin direct responsibility for human rights violations committed by these groups.

Extremists and fundamentalist formations can also gain power during conflict situations and take advantage of the vacuum in power to secure control in post-conflict situations. Such situations have led to increased violations for women human rights defenders as traditional, religious and customary norms are rigidly imposed to define and gain stronger hold of community loyalties. Women’s freedoms, such as their mobility and choice, are restricted in the name of ‘protecting’ them and protecting the ‘honour’ of the family and of the community. Women human rights defenders may also find that armed groups involved in the conflict may impose their own restrictions and codes of conduct on women, especially if the conflict is linked to identity-based struggles.

**Recommendations for Gender-Specific Implementation of the EU Guidelines on Human Rights Defenders**

This draft document outlines concrete suggestions for EU Missions (including embassies and consulates of EU member states and European Commission delegations) in implementing “Ensuring protection – the European Union Guidelines on Human Rights Defenders” (EU Guidelines). It is specifically aimed to ensure due support and protection of women human rights defenders.

Women Human Rights Defenders (WHRDs) is a term referring to women who individually or with others act to promote and protect human rights; it also refers to any individual working specifically to promote women’s rights. This sub-category of defenders has been singled out because women activists face risks particular to their gender committed by both state and non-state actors (including their families and communities), in particular when they confront and challenge cultural, religious or social norms about the role and status of women in their societies. Whether or not they work to ensure reproductive and sexual rights, the rights of lesbian gay bisexual
and transgender (LGBT) individuals or people living with HIV/AIDS, their protection falls squarely within international legal obligations of all states to ensure the realization of the fundamental human rights of all, including WHRDs.

Because of prescribed gender roles, their often marginalized social status, and at times the “controversial” nature of their work, WHRDs encounter additional risks and obstacles to those faced by their male counterparts. These risks include sexual assault and harassment, various forms of violence and the use of pejorative ideas about sexuality to discredit their individual reputations, their work, and their political agendas. Consequently, WHRDs are often the ones who require the utmost support and protection.

Organizations specifically call for:

1. Monitoring, reporting, assessment (Section IV, Article 8)

Pursuant to Section IV, Article 8 of the EU Guidelines, EU Heads of Mission (HoM) are requested to cover the situation of human rights defenders (HRDs) in periodic human rights reports. In monitoring the occurrence of any “threats or attacks against HRDs,” HoM are requested to assess measures (legislative, judicial, administrative, etc.) taken by the State to protect against “violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action” that curtail the exercise of the rights enshrined in the UN Declaration on Human Rights Defenders.

1.1 Violence, threats, retaliation

Document gender-specific or gender-motivated threats, retaliation and violence

Specific violations most commonly endured by WHRDs tend to be ignored. In fulfilling the monitoring and periodic reporting requirements to the Council Working Party on Human Rights (COHOM), HoM should also use the guidelines for documenting human rights violations against WHRDs. EU Missions should also devise documentation systems or sustained and systemic ways to record incidents of violence, retaliation and threats against WHRDs, particularly by non-state actors including armed groups, community and religious leaders, family and community members and other activists.

Accurately assess the severity of gender-driven harassment and threats

When assessing the situation of HRDs, EU Missions must accord due and equal weight to all forms of violence and threats whether they occur in the public or private sphere. EU HoMs should endeavour to document overt
public violence, threats and repression of women defenders, as well as the lesser documented, more subtle and insidious violations that take place in the private sphere. Intimidation and hostility against WHRDs aimed to discredit their work by, for example, vilifying them based on their actual or perceived sexual practices or their rejection of prescribed gender roles (also known as “sexuality baiting”) must be recognized seriously and redress instituted properly.

**Incorporate the situation of WHRDs in periodic human rights reports**

In fulfilling the monitoring and periodic reporting requirements to the COHOM, HoM should include an assessment of the situation of WHRDs in a particular country drawing from the reports and recommendations of the Special Representative of the UN Secretary General on Human Rights Defenders (both annual reports and country reports). It is also important to take into consideration communications on specific cases on WHRDs at risk addressed by the Special Representative to Governments. In many cases, annual and country reports of the UN Special Rapporteur on Violence against Women, its causes and consequences can also be a valuable resource on the violations and abuses against WHRDs.

**Consult with WHRDs and women’s organizations when producing human rights reports**

The HoM should consult WHRDs and women’s non-governmental organizations (NGOs) in their respective countries for additional or alternative information on the situation of WHRDs in a particular country.

1.2 **De facto or de jure adverse discrimination**

**Analyze state response to gender-based discriminatory laws and practices**

Assessing the generalized patterns of gender-based discrimination will enable a more accurate and nuanced evaluation of the legal and social obstacles that hamper women from pursuing human rights work. EU Missions should highlight the failures of states to enact measures to protect, promote and fulfill women’s rights, including the rights of women to defend human rights, and in particular, to ensure that WHRDs can conduct their activities without threats to their organizations and networks, whether they are legally or informally established.

**Monitor equal participation of women in public and civil life**

EU Missions should report on discriminatory practices and laws which exclusively or disproportionately adversely impact on women and curtail their access to participation in public and civil life, especially as defenders of human rights. EU Missions should take particular note of the impact of prevailing attitudes that discredit and dismiss women as experts on certain issues - such as religion and security, thus exclude them from debates related to women’s rights.

**Document the absence of public platforms for pro-women’s human rights views**

The gender-neutral interpretations of the freedom of expression fail to account for state and social pressure that silence women who wish to promote women’s rights by challenging national, local, social, or religious customs or conventions. Moreover, state regulations that disallow the formation or deny or revoke registration of NGOs impact in particular on WHRDs who are already more likely to be excluded from formal public spaces. To counter the effective marginalization of women’s views from the public sphere, EU Missions could facilitate their access to public platforms and the full realization of their rights to freedom of expression, association and assembly.
Document lack of access to form associations and organisations

Women’s lower socio-economic position and discriminatory legal or social practices deny women access to resources that can impinge on the exercise of their right to form human rights associations. Other laws or practices that require the approval of a male relative or a guardian for legal action or social sanction of a woman’s activism likewise prevent women from informally organizing or formally establishing groups. EU Missions could highlight cases where women activists are barred to organize themselves or are unable to access resources to form associations and organisations.

Monitor impunity for attack against WHRDs

In monitoring whether cases of violations against defenders are investigated, perpetrators brought to justice and victims compensated, EU Missions should account for unequal treatment of WHRDs who are subject to abuse. Perpetrators of violations against female – as opposed to male – human rights defenders enjoy greater impunity in countries with biased legal justice systems or discriminatory laws and practices or social attitudes that do not consider women as equal under the law or fail to take seriously violations against women.

This situation is particularly prevalent when perpetrators are members of the WHRD’s family or community and the state lacks or fails to enforce protective or remedial measures for such violence against women.

Account for intersectional obstacles and risks faced by WHRDs

WHRDs are attacked for who they are in addition to what they do. When monitoring incidents against WHRDs and in assessing the level of risk and challenge to their work and person, the compound impact of various social factors should be considered. This is of particular concern when women’s various identity factors are compounded by hostility towards the political work they do. For example, women who work to promote the land rights of their indigenous communities struggle against hostility based on their gender and ethnicity. Women active in trade unions or organisations for fair labour practices are particularly marginalized in countries where the female workforce is least protected and most exploited.

Pressure and Other Arbitrary Action

In undertaking monitoring efforts pursuant to Section IV, Article 8, EU Missions should consider conducting field missions to highlight and verify little known or publicized violations against women defenders, in particular those operating in remote areas or who work on issues that challenge or are deemed to “transgress” social and religious conventions subjecting them to grave risk of violations by non-state actors. Such documentation can form the basis for EU Missions to call on states to investigate incidents of pressure, threats and abuse against WHRDs and to act to ensure redress for these violations and abuses, particularly by non-state actors.

Document donor funding policies that selectively mute women defenders working on certain rights

EU Missions should assess and evaluate EU and other donor funding policies that undermine support for comprehensive programmes that promote sexuality and reproductive rights, including work on HIV/AIDS and work with sex workers and IV drug users. Reduced funding to these presumably controversial areas endangers not only the provision of services and advocacy around these issues, but also contributes to a social climate of impunity for abuse against WHRDs who engage in such work.
Document curtailment of the freedoms of expression and association that inhibit the advocacy for women’s rights

EU Missions should also reflect in their documentation the rise in incidents of governments that are closing down borders, restricting movement, freedom of association and freedom of speech to stop human rights defenders from gathering together to advocate for human rights issues, such as civil society meetings and actions around WTO, IFIs, etc. Curtailing these freedoms also inhibit the work of WHRDs and the advocacy for women’s rights.

2. Support and protection of HRDs (Section IV, Article 10)

Section IV, Article 10 of the EU Guidelines outlines possible measures that may be undertaken by EU Missions on behalf of and in consultation with human rights defenders. Notably, EU statements should regularly cite and address violations against WHRDs and the political, legal, economic and social contexts enabling the persistence of such abuse.

2.1 Coordinating closely and sharing information on human rights defenders, including WHRDs

Form in-country working group of EU Missions staff working on human rights, gender, democracy, security and development policy

These country working groups, addressing different thematic concerns, should meet and strategize regularly about the situation of human rights defenders, including that of WHRDs.

WHRD Focal Points in EU missions and delegations

Designate contact persons or focal points within the EU Missions and delegations that are gender-sensitive and aware of the specificities of WHRDs to facilitate contact with WHRDs.

Involve WHRDs and members of international, regional and national NGOs

WHRDs and those who work for and with WHRDs should be involved in regular information and strategy meetings about protection and support for women defenders. It should also be ensured that contacts and dialogue with women and human rights defenders are not restricted to organizations funded by the EC or EU member states, and that discussions transcend a donor-beneficiary relationship. Dialogue on a regular basis with local WHRDs is also necessary to better identify their concerns and tailor interventions and support to their specific needs.

Maintain “Watch List” of violations against WHRDs

Create a database of violations against defenders and collect case studies to highlight systematic violations and abuses against WHRDs. An alert system for monitoring and responding to threats or abuses against WHRDs can be developed based on this database.

Note that such a list may only be initiated and maintained with the consent of the WHRDs and any information contained therein must be kept strictly confidential and under restricted access to ensure that it does not put WHRDs at greater risk.

Provide in country temporary shelter for WHRDs at grave risk

Since threats against WHRDs are often by family and community members and WHRDs may have less access to financial and other resources, EU Missions could offer temporary shelter in-country, in-region or elsewhere; refer WHRDs to other international organizations that assist human rights defenders at risk; or contribute to local
initiatives, including shelters for women survivors of violence, to accommodate protection needs of WHRDs. EU Missions can also share information about expedited visa schemes or other temporary status option in EU member states for WHRDs at grave risk.

**Fund or provide for in-country protective accompaniment to WHRDs at risk**

Accompaniment and protection procedures should be negotiated with the WHRDs at risk. EU Missions should be sensitive to the specific security perceptions and needs of WHRDs. For example, in many cases WHRDs would seek protection not only for themselves, but together with their children.

**2.2. Maintaining, suitable contacts with human rights defenders, including by receiving them in Missions and visiting their areas of work, consideration could be given to appointing specific liaison officers....**

**Maintain contacts with WHRDs, particularly those working on marginalized on ‘unpopular’ issues**

Identify and outreach to WHRDs who work in remote areas or with populations or issues that are marginalized by the broad human rights agenda or the state. In particular, outreach to isolated WHRDs who work on controversial issues, such as those who work on violence against women, sexual and reproductive rights, and rights of LGBT individuals, people with HIV/AIDS, sex workers, and others. In the context of women activists who work at the community level and have not achieved public recognition for their work, this is crucial as they are most likely to suffer human rights violations without the public being aware of it.

**Create urgent action responses for WHRDs at risk**

Urgent action responses may include emergency visits to the WHRD’s home or place of work; extension of an open invitation to enter EU Missions compounds when faced with a threatening situation; visit the police station or detention centre where the WHRD is kept; or prompt diplomatic action on her behalf.

**Ensure that WHRDs participate in political dialogues and reconstruction initiatives**

EU Missions should ensure WHRDs are active participants in bilateral or multilateral political human rights dialogues; general meetings on human rights in the country of the missions; processes addressing conflict/post-conflict reconstruction, pursuant to UN Security Council Resolution 1325 on Women, Peace and Security and relevant EU documents on the inclusion of women in conflict resolution and peace initiatives. EU Missions should ensure women’s human rights form part of the agenda of these peace processes.

**2.3 Providing, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations**

**Raise the profile of WHRDs, especially those working on marginalized issues**

Providing visible recognition to WHRDs is particularly critical given the traditional separation in many countries between the mainstream human rights community and women’s rights movement. Visits from EU Missions and dissemination of materials that highlight the importance and legitimacy of the work of WHRDs are necessary, especially when they challenge traditional norms and practices. EU officials visiting men and women defenders should be of equivalent rank to ensure a consistent message about the equal importance and legitimacy of the work of all defenders.
Conduct visits to arrested, detained and imprisoned WHRDs

Due process violations against WHRDs must be documented from the time of arrest. EU Missions should request access to visit WHRDs held in police stations, pre-trial holding cells, any other detention centres, prisons and military bases. Note that EU delegations visiting WHRDs should include women representatives, preferably with experience in dealing with women's human rights violations, to ensure that WHRDs have the option to meet with and confide in women delegates.

When visiting WHRDs, EU Missions should also consider whether WHRDs have access to medical and counsel and if they can afford legal representation, especially in cases where they allege sexual assault and rape and that such assistance is prompt, sensitive, and timely to gather evidence of abuse and provide support for the survivor. Visit reports should ensure that confidentiality is protected and other risks associated with breaches of privacy or disclosure of information related to WHRD work does not place defenders at further risk.

Contribute to initiatives to establish rapid response intervention to aid WHRDs at risk

EU Missions could support networks of legal and other professionals that could immediately visit, provide medical assistance or legal counsel, or at a minimum, monitor the situation of WHRDs who have been arrested or detained. Lawyers, medical practitioners and other related professionals should be trained to identify gender-specific abuses and standards in assessing the case of arrested or detained WHRDs.

2.4 Attending and observing, where appropriate, trials of human rights defenders

Account for gender-specific violations against WHRDs during all stages of the judicial proceedings

Discriminatory legal systems, laws, practices, social attitudes or religious dicta undermine women's equal access to the law. EU Missions should demand that WHRDs enjoy equal access to the law and the judicial investigations and proceedings against them are conducted in accordance with international fair trial standards and evolving legal norms about gender specific violations.

Attend and observe parallel legal system proceedings

WHRDs may be at particular risk of unfair judgments in parallel legal or social system trials, such as community tribunals, religious or customary law courts. Such venues could function as swift channels for condemnation and “sentencing” of WHRDs who transgress accepted norms in their advocacy for women’s rights.

Evaluate investigations of abuses against WHRDs

Being present in-country, EU Missions are in an advantageous position to press for exhaustive and impartial investigations to be conducted regarding violations against WHRDs and demand that those responsible are brought to justice and the victims or their relatives provided with redress and reparation.

Call for action against initiators of smear trials against WHRDs

EU Missions can identify state officials and non-state actors who abuse the criminal justice system, utilise the media or community to harass or threaten the reputations of WHRDs or curtail their legitimate activities for the defence of human rights and fundamental freedoms. Those identified in the trial observation reports could then be put forward for investigation and trial, as appropriate.
3. Promotion of respect for human rights defenders in relations with third countries and in multilateral fora (Article IV, Section 11)

The EU Guidelines is not only applicable to EU member states but also governs relations with third countries. As such, it can be used to influence governments, both within the EU and beyond, to adopt measures for the protection of WHRDs.

Raising individual cases on WHRDs with third countries

Visits and dialogues with third countries can provide a unique opportunity for the EU to promote the rights of WHRDs. EU representatives should establish a practice of raising cases particularly on WHRDs with third countries, including those mentioned in the annual and country reports of the UN Special Representative on Human Rights Defenders and other Special Rapporteurs related to the protection of WHRDs.

Facilitating exchanges between international and regional mechanisms on human rights defenders

The exchanges between international and regional mechanisms on HRDs have been instrumental in the creation of regional mechanisms, such as the mandate of the Special Rapporteur on Human Rights Defenders of the African Commission on Human and People's Rights (ACHPR), the Human Rights Defenders Unit of the Inter-American Commission on Human Rights (IACHR), the Focal Point on Human Rights Defenders of the OSCE, and the development of regional approaches to the implementation of the Declaration on Human Rights Defenders. These initiatives should be continued and the EU should support regular annual meetings between international and regional mechanisms, with a focus on the concerns of WHRDs.

Strengthening regional mechanisms on HRDs

Providing financial support is one way in which the EU and its member states can contribute to the strengthening of regional mechanisms. Lack of resources has been a significant obstacle on the ability of these mechanisms to carry out monitoring, investigation, and protection and follow up functions. For example, the EU and its member states can support professional staff servicing these regional mechanisms that are sensitive to the concerns of WHRDs.

Facilitating cross-sectoral exchanges between mechanisms on women's rights and human rights defenders at regional and international levels

In order to ensure a gender-specific focus in the work of all mechanisms on human rights defenders at regional and international levels, the EU should also support meetings between women's rights and human rights defenders mechanisms. These could include exchanges between the UN Special Representative on Human Rights Defenders, the Special Rapporteur on Human Rights Defenders of the ACHPR, the UN Special Rapporteur on Violence against Women, the African Commission's Rapporteur on Women's Rights, among other specialized mechanisms, whose mandate holders often undertake field missions and document the obstacles WHRDs face in conducting their work and the gender-specific nature of the violations against them.

4. Support for UN Special Procedures of the Commission on Human Rights, including the Special Representative on Human Rights Defenders (Article IV, Section 12)

The role of EU and its member states in the former UN Human Rights Commission and the General
Assembly has proven essential to ensuring the passage of resolutions strengthening the mandate of the Special Representative of the UN Secretary General on Human Rights Defenders. This support has been particularly important in the context of the recent attempts by some countries, both at the Commission and at the General Assembly, to weaken the text of the Human Rights Defenders resolutions and to limit the scope of the UN Special Representative’s mandate.

**Support the renewal of the mandate of the Special Representative of the UN Secretary General on Human Rights Defenders and other relevant UN mechanisms**

The mandate of the UN Special Representative on Human Rights Defenders is coming to an end in 2007. The uncertainty surrounding the UN reform process and the future of the procedures established under the former UN Commission on Human Rights raises questions regarding the certainty of renewing this mandate. In this context, The EU and its member states have an essential role to play by providing support to the renewal and strengthening of the mandate of the UN Special Representative on Human Rights Defenders and also influencing third countries to support this mandate. This proactive approach should also be adopted with regard to the mandate of the UN Special Rapporteur on Violence against Women.

**Strengthen exchanges between UN Special Representative on Human Rights Defenders and civil society**

Support for regional and national consultations between the UN Special Representative on Human Rights Defenders and NGOs is another important mechanism for strengthening the work of the UN Special Representative and furthering the realization of the rights of human rights defenders as codified in the UN Declaration on Human Rights Defenders and the EU Guidelines on Human Rights Defenders.

5. **Practical Support to Human Rights Defenders via Development Policy (Section IV, Article 13)**

In providing practical support to WHRDs, EU delegations should seek collaboration with UN specialized agencies and other international cooperation agencies with representation at the country level, in particular those with gender-specific programmes and which support women’s groups, in order to ensure coordination in the implementation of the EU Guidelines with regard to WHRDs.

5.1 **Supporting human rights defenders through such activities as capacity building and public awareness campaigns**

**Translate and distribute copies of the EU Guidelines to WHRDs**

Disseminating not only the EU Guidelines, but also information about best practices, actions and measures adopted by EU Missions to implement the Guidelines will further its application and contribute to assisting WHRDs and NGOs in understanding the practical support that the EU Guidelines can offer to WHRDs.

**Ensure WHRDs have equal access to resources, capacity building and training opportunities**

WHRDs, in particular those who work on issues of sexual and reproductive rights and economic, social and cultural rights are often marginalized and not recognized as *bona fide* human rights defenders with legitimate claims to exercise their right to defend human rights.

Consequently, they are often excluded from broader opportunities available to human rights defenders in general. So EU Missions are encouraged to fund or provide capacity building trainings, and other academic and professional opportunities specifically for WHRDs and those engaging in defence of the rights noted above.
In particular, capacity building should include: Risk assessment and security training that address the gender-specific dimensions of risk and protection plans based on local context solutions; Skills and techniques on preventing, managing and coping with context-specific violations and risks of working as WHRDs; details in national and local languages on national, regional and international mechanisms and resources available for human rights defenders, and in particular WHRDs; training on monitoring, documenting and reporting violations of human rights, including against WHRDs themselves; developing documentation into advocacy materials and submission to national, regional or international human rights bodies; and campaigning techniques.

**Strengthened coordination on capacity-building activities**

Coordination between staff of EU Missions, other EU bodies, and NGOs (international, regional and national) should be strengthened at the country level to carry out capacity building activities for human rights defenders in general, and more specifically WHRDs.

**Set up support mechanisms for multiple roles in the private and public spheres**

Women still shoulder a disproportionate ratio of household and childrearing responsibilities. Due to the absence of support from family or community, who may oppose the activism of the WHRD, or the state (e.g. via subsided childcare), women activists are unable to carry out their human rights work. EU Missions should ensure that women’s multiple responsibilities are taken into account and they are provided with the support, including child care that will enable them to work as WHRDs.

**Strengthen well-being support services for WHRDs**

Set up or support services for the well-being of WHRDs, including addressing their psychosocial needs on a personal, organisational and community level.

**Support international, regional and national capacity building initiatives on WHRDs**

Support periodic national, regional and international consultations on WHRDs and assist in implementing follow-up actions, such as the development of a training manual on the documentation of violations against WHRDs, and the production of other resource materials on WHRDs.

5.2 **Encouraging and supporting the establishment, and work, of national bodies for the promotion and protection of human rights....**

**Track response of national human rights bodies to concerns of WHRDs**

Encourage national human rights bodies to cover all human rights, and in particular those that disproportionately affect women. Encourage joint projects of national human rights bodies with women’s rights bodies or ministries. Advocate for the concerns of WHRDs to feature in the formation of the institutional mandate and on-going decision-making processes of national bodies. National bodies should have personnel to address violations against women and WHRDs.

**Document access of WHRDs to national human rights bodies and mechanisms**

WHRDs are often unable to access national human rights bodies and mechanisms. EU Missions should report on such access by assessing the following: Are there staff with experience in handling complaints of gender-based violations? Are staff members sensitive to violations by non-state actors and the duty of the state to protect WHRDs? Do complaints by WHRDs receive equal attention to those by male human rights defenders?
Are national institutions reluctant to take up cases deemed “controversial” because they involve defenders of sexuality or reproductive rights, including those of LGBT, sex workers or HIV/AIDS carriers?

5.3 Assisting in the establishment of networks of human rights defenders at an international level, including by facilitating meetings of human rights defenders

Invite or fund WHRDs to attend sessions of UN and regional Human Rights bodies and meetings of inter-governmental bodies

EU Missions can facilitate invitations or funding for WHRDs to attend human rights meetings and events (e.g., African Union, Arab League, Council of Europe, Organization of American States, Organisation for the Security and Cooperation of Europe (OSCE), UN Human Rights Council, UN Treaty Bodies, UN Security Council) where they can testify and advocate on behalf of WHRDs in their country.

Facilitate internships and tours of WHRDs to EU member states

Such trips could double as temporary protection measures for WHRDs facing risk, as well as strengthen ties with international networks of human rights defenders, human rights and women’s rights organizations, and enhance advocacy and future protection for the WHRDs.

Ensure access to international networks

EU Missions should ensure that WHRDs are aware of and have access to existing support networks, regional and international initiatives for the support of WHRDs. For example, EU Missions can assist WHRDs who are unable or are restricted from submitting information to international or regional human rights bodies to safely contact international organizations that may be able to submit such material on their behalf. EU Missions could also fund WHRDs to attend international network meetings, solidarity events, and other women and human rights defenders activities worldwide.

Encourage inclusive alliances across the human rights movement

EU Missions can facilitate through co-funding or co-sponsorship of networking events, conferences and workshops to foster and strengthen alliances across various segments of the human rights movements and incorporate a women’s human rights perspective into general human right agenda.

5.4 Seeking to ensure that human rights defenders in third countries can access resources, including financial, from abroad

Prioritize funding to women’s rights programmes and initiatives

As national and international funding to women’s rights programmes worldwide has suffered severe cut backs in recent years, the ability of women activists to advocate for women’s human rights has been compromised. EU funding priorities should emphasize the need to support the advocacy for the promotion of women’s rights. Note also the persistent lack of funding to defenders who work on the rights of LGBT, sex workers and people with HIV/AIDS. EU Missions can also urge international financial institutions and funding agencies to allocate adequate funding and resources for the full protection of WHRDs and the promotion of their rights.

Create a resource pool earmarked for WHRDs

Specific funding or resource pool for WHRDs and their activities should include funding relief for WHRDs at risk such as emergency support, legal defence fund, psycho-social counseling, and provisions for family care.
Craft human rights and development assistance programmes to address concerns of WHRDs

EU member states should endeavour to develop human rights and development assistance programmes that address the wider economic, political and social contexts that inhibit or restrict women's exercise of the right to defend human rights and allow for violations against WHRDs to take place.

Repeal governmental regulations that restrict access to funds by WHRDs

EU institutions and its member states need to review their regulations and influence third countries to ensure that the funding process is accessible to local and national WHRDs and that registration requirements to receive funding are not being used to limit the operation of NGOs. EU institutions, delegations and missions should raise these issues in visits to third countries, and incorporate them in political dialogues between the EU and third countries.

5.5 “By ensuring that human rights education programmes promote, *inter alia*, the UN Declaration on Human Rights Defenders....”

Support national implementation of Human Rights Defenders standards

Commission or fund national-level implementation of the UN Declaration on Human Rights Defenders and the EU Guidelines on Human Rights Defenders and identify gender-specific ways of implementing the provisions of these instruments in order to further the support and protection for WHRDs at the national level.

Human Rights Education programmes at national and local levels

These programmes should target law enforcement personnel, government agencies and actors in the legal system to sensitize them to the abuses faced by WHRDs and ensure that they deliver appropriate responses. Human rights education programmes at the community level should address gender stereotypes and prejudices that work to silence and restrict WHRDs in the community.

1. The recommendations contained in this document are drawn from the comments of the endorsing organizations and the outcome documents produced in national, regional and international fora, including the first international consultation on women human rights defenders (Sri Lanka, 29 Nov- Dec 2, 2005), and preceding regional consultations (e.g., in Africa (Dakar, Senegal, 18-19 November 2004) and Asia (Bangkok, Thailand, April 4-6, 2003), and national and regional workshops facilitated by AI, APWLD, Forum Asia, Front Line and other organisations.


4. The Manual on Documentation of Human Rights Violations against Women Human Rights Defenders contains guidelines for the documentation of violations and abuses against WHRDs. It is a project of APWLD and Inform and will be finalized in April 2007.
Chapter 4: CHALLENGES

There are a range of repressive tactics that governments of every political hue have been deploying to silence human rights defenders.

Patterns of repression have varied over time and across context: in Latin America, for example, "disappearances" and death squad killings replaced politically motivated imprisonment in the 70s and 80s as favoured tactics for suppressing dissenting voices, tactics which allowed the military governments of the time to cover their tracks and deny all responsibility.

Disappearances, death squad killings and politically motivated imprisonment are used against defenders in many countries around the world, particularly those experiencing armed conflict or severe civil unrest. In such situations, death threats are a common means of intimidation, which the police or judiciary neither investigate nor punish.

Defenders working on human rights issues which have traditionally been neglected or marginalized often face specific obstacles as a result. The rights they uphold may be especially contested or controversial, either because they challenge dominant social norms or because they are seen as threatening to the established political, religious or economic order. This includes human rights defenders working on economic, social and cultural rights, sexual and reproductive rights and those defending the rights of lesbian, gay, bisexual or transgender (LGBT) people.

Detention or abduction

Human rights defenders in many countries are at risk of being detained or abducted. Many have been tortured or otherwise ill-treated during captivity, often in an attempt to force them to confess to criminal activity or to retract accusations of human rights violations. Detention safeguards are often flouted and many may be held without charge. Others may have spurious charges brought against them, a pattern AI has increasingly observed in countries where the authorities seek to tarnish defenders' image and reputation by portraying them as criminals, terrorists or delinquents. In some cases charges are clearly fabricated. In others, legitimate activities such as convening a demonstration or lodging an official complaint have been characterized as public order offences or acts of libel.

Harassment

Daily harassment of human rights defenders is so common that it often goes unreported. This may take the form of:

- surveillance,
- phone tapping,
- restrictions on travel.

More extreme harassment can mean:

- attacks or raids on offices or homes
- confiscation of equipment and files
- blocking access to the internet and other communication facilities
- freezing assets.
Smear campaigns
Smear campaigns and defamatory tactics are also used to delegitimize the work of defenders. The media often collude in spreading slanderous accusations and attacks on their personal integrity and political independence.

Bureaucratic barriers
Bureaucratic barriers are applied in politically motivated ways to hamper the work of organizations working for the defence of human rights. All manner of pretexts have been used to:

- deny organizations legal registration
- restrict their meetings
- obstruct fact-finding visits
- force them to cease operating, either directly or by preventing access to sources of funding.
### Human Rights Defenders: Meeting, communicating and organising

#### PROTECTION PROBLEMS:
- HRNGOs are not allowed legal registration, or the process takes too long or is too difficult.
- Potential members are threatened to prevent them from joining HRNGO.
- HRNGOs are slandered or accused of supporting an armed party to a conflict.
- HRNGOs are prevented from communicating with other HRNGO abroad.

#### STAKEHOLDER ACTION

<table>
<thead>
<tr>
<th>Primary stakeholders: Human rights defenders</th>
<th>Duty-bearer stakeholders: State authorities</th>
<th>Key stakeholders: UN bodies and missions with a human rights mandate; other IGOs and governments</th>
<th>Key stakeholders: International and national NGOs</th>
<th>Key/Duty-bearer stakeholders: Armed opposition groups</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>Form NGOs (lawyers, social workers, etc.), associations of affected people (relatives of disappeared or detained people, etc.), collectives (women, indigenous people, students), or trade unions, etc. Create networks (at the national and international levels). Negotiate with authorities to clarify their rights, including through social protest.</td>
<td>Pass laws and implement policies to promote the creation of and respect for HROs. Allow defenders to travel and communicate freely within the country and abroad. Publicly express support for HROs.</td>
<td>Provide support, funding, training. Publicly express support for HROs.</td>
<td>Provide support, funding, training. Publicly express support for HROs.</td>
<td>Respect defenders' rights.</td>
</tr>
</tbody>
</table>

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**Article 5 of the UN Declaration on Human Rights Defenders:**

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- To meet or assemble peacefully;
- To form, join and participate in non-governmental organizations, associations or groups;
- To communicate with non-governmental or intergovernmental organizations.

Other relevant rights enshrined in international legally binding instruments (or fundamental rights):

- The right to freedom of assembly and association
- The right to freedom of expression, communication and freedom of opinion.

(Supported by the UDHR, ICCPR, ACHPR, AmCHR, EuCHR, CRC.)
# Human Rights Defenders: Information and advocacy about human rights issues

<table>
<thead>
<tr>
<th>PROTECTION PROBLEMS:</th>
<th>The UN Declaration on Human Rights Defenders:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defenders are:</td>
<td>Article 6: Everyone has the right:</td>
</tr>
<tr>
<td>Accused of being “subversives”: their work considered “contrary to the interests” of authorities or armed opposition groups, and punished.</td>
<td>a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms. /.../</td>
</tr>
<tr>
<td>Not allowed to publicise human rights issues.</td>
<td>b) As provided for in applicable international instruments, freely to publish, impart or disseminate to others views and information on all human rights (...).</td>
</tr>
<tr>
<td>Threatened or attacked for spreading human rights information or criticising authorities or armed actors</td>
<td>c) To study, discuss, form and hold opinions on the observance of all human rights and to draw public attention to those matters.</td>
</tr>
<tr>
<td>Prevented from entering certain areas to gather human rights information.</td>
<td>Article 7: Everyone has the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.</td>
</tr>
<tr>
<td></td>
<td>Article 8: Everyone has the right to have effective access to participation in the government of his or her country and in the conduct of public affairs. This includes, inter alia, the right to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the protection and realisation of human rights and fundamental freedoms.</td>
</tr>
<tr>
<td></td>
<td>Other relevant rights enshrined in international legally binding instruments or fundamental rights:</td>
</tr>
<tr>
<td></td>
<td>* The right to freedom of expression, to information and to communicate.</td>
</tr>
<tr>
<td></td>
<td>* The right to freedom from discrimination</td>
</tr>
<tr>
<td></td>
<td>(Supported by the UDHR, ICCPR, ACHR, ACHPR, ECPHR, CRC.)</td>
</tr>
</tbody>
</table>

## STAKEHOLDER ACTION

<table>
<thead>
<tr>
<th>Primary stakeholders:</th>
<th>Duty-bearer stakeholders:</th>
<th>Key stakeholders:</th>
<th>Key/Duty-bearer stakeholders:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Human rights defenders</strong></td>
<td><strong>State authorities</strong></td>
<td><strong>UN bodies and missions with a human rights mandate; other IGOs and government</strong></td>
<td><strong>Armed opposition groups</strong></td>
</tr>
<tr>
<td><strong>Monitor the human rights situation.</strong></td>
<td><strong>Collect information on human rights abuses.</strong></td>
<td><strong>Fact-finding missions.</strong></td>
<td><strong>Publicise human rights reports.</strong></td>
</tr>
<tr>
<td><strong>Promotes social changes in human rights practices.</strong></td>
<td><strong>Launch policy proposals on human rights issues.</strong></td>
<td><strong>Provide support, funding, training.</strong></td>
<td><strong>Receive and process information about and allegations of human rights violations.</strong></td>
</tr>
<tr>
<td><strong>Participate in monitoring commissions alongside other institutions.</strong></td>
<td><strong>Allow access to information and training.</strong></td>
<td><strong>Produce and process information on human rights violations.</strong></td>
<td><strong>Cooperate with primary stakeholders in making proposals on human rights policies and practice.</strong></td>
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</tr>
</tbody>
</table>
Human Rights Defenders: Complaints and adequate response by the state

### PROTECTION PROBLEMS:

- Defenders cannot complain before competent national and international authorities.
- Defenders have difficulties making complaints against state officials.
- Defenders are not allowed to know aspects of a legal process regarding complaints of human rights violations.
- No investigation of complaints is carried out, or is carried out in a way that puts defenders in danger.
- A lack of results from defenders’ complaints provide a climate of impunity for those acting against human rights or defenders.

### Article 9, UN Declaration on Human Rights Defenders

1. In the exercise of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right to complain to before an independent, impartial and competent authority established by law and to obtain from such an authority a decision providing redress, including any compensation due, where there has been a violation of that person’s rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.
3. To the same end, everyone has the right inter alia:
   - (a) To complain about the practices and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms;
   - (b) To attend public hearings, proceedings, and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
   - (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
4. To the same end, everyone has the right to unhindered access to and communication with international bodies with general or special competence to receive communications on matters of human rights.
5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights has occurred under its jurisdiction.

**Other relevant rights enshrined in international legally binding instruments (or fundamental rights):**

- The right to a fair trial
- The right to remedy and reparation
- The right to freedom from discrimination

(Supported by the UDHR, ICCPR, CRC, CAT, CSRe, CAC-GC, ProAdGC)

### STAKEHOLDER ACTION

<table>
<thead>
<tr>
<th>Stakeholder Action</th>
<th>Primary Stakeholders:</th>
<th>Duty-bearer Stakeholders:</th>
<th>Key Stakeholders:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Human rights defenders</td>
<td>State authorities</td>
<td>UN bodies and missions with a human rights mandate; other IGOs and governments</td>
</tr>
<tr>
<td>Make complaints and follow up the process and results.</td>
<td></td>
<td>Establish by law independent, impartial and competent judicial or other authorities to review complaints. Investigate allegations. Respond promptly with effective remedies. Enforce decisions. Offer qualified professional legal assistance.</td>
<td>Receive and process allegations of human rights violations. When appropriate, follow up legal processes and outcomes.</td>
</tr>
<tr>
<td>Report difficulties to national and international bodies and eventually make them public.</td>
<td></td>
<td></td>
<td>Receive and process allegations of human rights violations.</td>
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<tr>
<td></td>
<td></td>
<td>Key stakeholders: International and national NGOs</td>
<td>Respond adequately to complaints of human rights abuses.</td>
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<td></td>
<td></td>
<td>Key stakeholders: Armed opposition groups</td>
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</tbody>
</table>
### Human Rights Defenders: Conscientious objection and professional rights and duties

<table>
<thead>
<tr>
<th>PROTECTION PROBLEMS:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers, police officers, medical personnel, etc., are opposed to carrying out certain professional tasks that could violate other people’s rights.</td>
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</table>

<table>
<thead>
<tr>
<th>UN Declaration on Human Rights Defenders</th>
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</thead>
<tbody>
<tr>
<td><strong>Article 10:</strong> No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.</td>
</tr>
<tr>
<td><strong>Article 11:</strong> Everyone has the right to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human rights of others should respect those rights and comply with relevant national and international standards of occupational and professional conduct or ethics.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>STAKEHOLDER ACTION</th>
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</thead>
<tbody>
<tr>
<td>Primary stakeholders:</td>
</tr>
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<td>Human rights defenders</td>
</tr>
<tr>
<td>Duty-bearer stakeholders:</td>
</tr>
<tr>
<td>State authorities</td>
</tr>
<tr>
<td>Key stakeholders: UN bodies and missions with a human rights mandate, other IGOs and governments</td>
</tr>
<tr>
<td>Key/Duty-bearer stakeholders:</td>
</tr>
<tr>
<td>International and national NGOs</td>
</tr>
<tr>
<td>Armed opposition groups</td>
</tr>
<tr>
<td>Organise around conscientious objection associations.</td>
</tr>
<tr>
<td>Carry out public education activities about the reasons behind conscientious objection.</td>
</tr>
<tr>
<td>Legislation covers conscientious objectors’ rights.</td>
</tr>
<tr>
<td>Ensure respect for these rights.</td>
</tr>
<tr>
<td>Give advice to support this kind of legislation.</td>
</tr>
<tr>
<td>Monitor compliance.</td>
</tr>
<tr>
<td>Give advice to support this kind of legislation.</td>
</tr>
<tr>
<td>Monitor compliance.</td>
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<tr>
<td>Ensure respect for these rights.</td>
</tr>
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</table>
**Human Rights Defenders: Due protection by state authorities**

<table>
<thead>
<tr>
<th>PROTECTION PROBLEMS:</th>
<th>Article, UN Declaration on Human Rights Defenders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defenders are harassed, threatened, killed, tortured or disappeared because of their work.</td>
<td>1. Everyone has the right to participate in peaceful activities against violations of human rights.</td>
</tr>
<tr>
<td>Officers either allow or participate in such attacks.</td>
<td>2. The state shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.</td>
</tr>
<tr>
<td>Armed opposition groups participate in such attacks.</td>
<td>3. In this connection, everyone is entitled (...) to be protected effectively under national law in reacting against or opposing (through peaceful means) activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.</td>
</tr>
<tr>
<td>Demonstrations and public events are attacked, forbidden or used to make accusations against defenders.</td>
<td>Other relevant rights contained in international legally binding instruments (or fundamental rights):</td>
</tr>
<tr>
<td></td>
<td>• The right to life.</td>
</tr>
<tr>
<td></td>
<td>• The right to freedom from torture and inhuman or degrading treatment or punishment.</td>
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<tr>
<td></td>
<td>• The right to freedom and security.</td>
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<tr>
<td></td>
<td>• The right to freedom from discrimination.</td>
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</tbody>
</table>

(Supported by the UDHR, ICCPR, ACHPR, AmCHR, EnCPHR, CRC, CAT, CSRe, CA3-GC, ProAd-GC.)

<table>
<thead>
<tr>
<th>STAKEHOLDER ACTION</th>
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<tr>
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</tr>
<tr>
<td>Human rights defenders</td>
<td>Key stakeholders: UN bodies and missions with a human rights mandate, other IGOs and governments</td>
</tr>
<tr>
<td>Report and complain about state action and omission, before state authorities and international bodies.</td>
<td>Key stakeholders: International and national NGOs</td>
</tr>
<tr>
<td>Negotiate with authorities to claim their rights, including to social protest.</td>
<td>Key/Duty-bearer stakeholders: Armed opposition groups</td>
</tr>
<tr>
<td>Take measures to ensure protection.</td>
<td>Take measures to stop attacks aimed at defenders and their work.</td>
</tr>
<tr>
<td>React immediately when officials attack or fail to respond to attacks against defenders.</td>
<td>Advising the state.</td>
</tr>
<tr>
<td>Early warning/action systems in place with immediate measures.</td>
<td>Monitor compliance.</td>
</tr>
<tr>
<td>Advising the state.</td>
<td>Issue recommendations, declarations and eventual condemnations.</td>
</tr>
<tr>
<td>Monitor compliance.</td>
<td>Provide immediate protection measures.</td>
</tr>
<tr>
<td>Issue recommendations and eventual condemnations.</td>
<td>Advocate rights.</td>
</tr>
<tr>
<td>Advancing the state.</td>
<td></td>
</tr>
</tbody>
</table>
### Human Rights Defenders: The use of funding and other resources

#### PROTECTION PROBLEMS:

Defenders are accused of receiving funds or salaries from "abroad" and accused of obeying orders from "foreign enemies".

Defenders are accused of "inventing" human rights violations in order to receive money from abroad.

#### Article 13, UN Declaration on Human Rights Defenders

*Everyone has the right to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.*

#### STAKEHOLDER ACTION

<table>
<thead>
<tr>
<th>Primary stakeholders: Human rights defenders</th>
<th>Duty-bearer stakeholders: State authorities</th>
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<th>Key stakeholders: International and national NGOs</th>
<th>Key/Duty-bearer stakeholders: Armed opposition groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request and receive funds and other resources to do their work.</td>
<td>Facilitate the management and accountability requirements of human rights NGOs.</td>
<td>Fund HROs.</td>
<td>Train and support defenders in the use of funds.</td>
<td>Ensure that defenders' rights are respected.</td>
</tr>
</tbody>
</table>
### Human Rights Defenders: Human rights training and understanding

#### PROTECTION PROBLEMS:
Due to a lack of understanding of their work, human rights defenders are slandered or accused of lacking loyalty or patriotism.

Public servants refuse to cooperate with them.

#### Article 14, UN Declaration on Human Rights Defenders
The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

Other relevant rights enshrined in international legally binding instruments (or fundamental rights):
- The right to freedom of expression, communication and the right to freedom of opinion.

(Supported by the UDHR, ICCPR, ACHRPR, AmCHR, ECHRPHR, CRC.) [CHECK]

### STAKEHOLDER ACTION

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<th>Key/Duty-bearer stakeholders: Armed opposition groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Undertake public education activities about their work.</td>
<td>Undertake public education activities.</td>
<td>Undertake public education activities.</td>
<td>Undertake public education activities.</td>
<td>Let their armed elements participate in workshops.</td>
</tr>
<tr>
<td>Do workshops with specific sectors, like security forces.</td>
<td>Do workshops with specific sectors.</td>
<td>Do workshops with specific sectors.</td>
<td>Do workshops with specific sectors.</td>
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</tr>
</tbody>
</table>

*Table showing stakeholder action in human rights training and understanding.*
Justice means having mechanisms of accountability to prevent and punish violations and abuses. This chapter explains some of the mechanisms for accountability, justice and protection that exist for human rights defenders at the international, regional and national levels. It does not present an exhaustive list, but rather provides a discussion of some of the key strategies that human rights defenders may adopt in order to respond to the attacks they experience and overcome obstacles put in the path of their activism.

**Creative ways to secure protection:**

Human rights defenders draw support for their work through a range of mechanisms that are not necessarily focused on formal structures of justice, rather work creatively to protect those at risk and pin liability to the attackers. This section presents examples of these mechanisms, which provide the most responsive and immediate assistance to them.

**a. Action alerts or urgent appeals**

These are letters of appeal circulated among a vast network of civil society groups and individuals to pressure on governments and other responsible parties to prevent or stop atrocities against human rights defenders from occurring. In general, the recipient of the urgent appeal is requested to write, copy or sign letters about the case and forward the corresponding demands to specific persons in the government or other entities. These appeals can also be sent to the UN Special Representative on Human Rights Defenders and other Special Rapporteurs for their action.

There are many organisations that run action alerts for human rights defenders. AI, Human Rights First, FIDH and OMCT are international human rights organisations that take on appeals for human rights defenders. APWLD, which runs the women human rights defenders website, posts urgent appeals specifically for women activists at risk. WLUML issues action alerts for women defenders in Muslim countries. IGLHRC covers abuses against lesbian, gay, bi-sexual and transgender advocates.

**b. Campaigns**

Like action alerts, campaigns can be an effective means of responding to human rights defenders under threat. These campaigns are a combination of urgent appeals; solidarity messages; mass protests and demonstrations; press releases and media mobilization; and lobbying with pertinent government officials and bodies to stop the violations against human rights defenders from occurring.

**c. Emergency support**

This mechanism is most crucial for human rights defenders in situations of escalating violence or politically volatile environments that place them and their families at great risk. Front Line, a human rights defenders organization based in Ireland, provides 24-hour support to human rights defenders at immediate risk. Their assistance includes faxed or phoned appeals to relevant authorities, raising the case through the European Union or individual government representatives, practical help with temporary relocation, assistance with medical or legal expenses, and others.
d. Safe houses

Temporary shelters for human rights defenders are important to safeguard their well being. Safe houses provide activists a safe space away from perpetrators of violence who in many instances may be members of the community. Temporary shelters give defenders a chance to rest physically, mentally and emotionally from the atrocities they face in their work, and heal from the violations and abuses they have suffered.

e. Networks

Among the most commonly used mechanism for protection are the local, national, regional and international networks of human rights defenders. These networks facilitate immediate response and access to resources for activists in danger. Some of these networks have formal structures; many are loose coalitions of groups committed to work together on shared concerns.

f. Awards

Nominating deserving human rights defenders for awards brings public recognition and legitimacy to their status as defenders in their own right. Named after the first Secretary General of AI, the Martin Ennals Award for Human Rights Defenders is an initiative created by 12 international organizations. It is an award given annually to human rights defenders at risk who have demonstrated an exceptional record of combating human rights violations by courageous and innovative means. The award is intended to provide immediate protection to the recipients at risk by drawing international media and public attention.

g. Consultations

More than just a mere meeting or gathering, bringing human rights defenders together in consultations provides a space for collective support as defenders are able to discuss their common experiences of violations and abuses.
## Resources for Urgent Appeals and Emergency Support Chart

<table>
<thead>
<tr>
<th>No.</th>
<th>Organisation</th>
<th>Focal Person/Person in Charge for Urgent Appeals</th>
<th>Issuance of action alerts</th>
<th>Immediate financial assistance</th>
<th>Facilitation of visas to leave the country</th>
<th>Facilitation of application for political asylum</th>
<th>Protective Accompaniment</th>
<th>Fact-finding Missions (FFM)</th>
<th>Legal Aid</th>
<th>Safe house or shelter</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Amnesty International (AI)</td>
<td>Alison Hill</td>
<td>Yes</td>
<td>Urgent actions issued on individual and collective cases.</td>
<td>Yes</td>
<td>A relief fund is available for emergency cases or strategic activities, e.g. capacity building of HRD organizations and for security measures for HRDs.</td>
<td>Yes</td>
<td>Visa applications supported for HRDs: 1. Coming from high risk countries; and 2. Visiting to participate in AI events.</td>
<td>Yes</td>
<td>Case by case decision.</td>
<td>Yes</td>
</tr>
<tr>
<td>2.</td>
<td>Asian Forum for Human Rights and Development (FORUM-ASIA)</td>
<td>Emerlynne Gill</td>
<td>Yes</td>
<td>Receives information from partners and members organizations and transmits cases regularly to the UN Special Rapporteur on the situation of HRDs and other relevant UN Special Procedures.</td>
<td>Yes</td>
<td>Relocation support for HRDs and WHRDs at risk</td>
<td>Yes</td>
<td>In relation to relocation support for HRDs and WHRDs at risk</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>3.</td>
<td>Front Line, the International Foundation for the Protection of Human Rights Defenders</td>
<td>Andrea Rocca</td>
<td>Yes</td>
<td>Urgent appeals are sent to: government authorities and NHRIs; the Irish Department of Foreign Affairs; EU institutions, e.g. European Commission (selected appeals only); the UN Special Rapporteur on the situation of HRDs and appropriate regional mechanisms.</td>
<td>Yes</td>
<td>Temporary relocation visas are provided for emergency evacuations through the small grants fund (note: the first option to go to a country where a visa is not required.)</td>
<td>Yes</td>
<td>The small grants program provides legal fees for: 1. Cases against HRDs. 2. Anti-impunity cases taken up by HRDs.</td>
<td>Yes</td>
<td>Safe houses or shelters can be funded for a short time — maximum three (3) months — through the small grants program.</td>
<td>Yes</td>
</tr>
</tbody>
</table>

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*Note: Urgent appeals that can be made public are posted on Front Line’s website in the form of a ‘Take Action’ post.*

**For security measures for HRDs:**

- Visiting to participate in AI events.
- Coming from high risk countries.
- Observing HRDs in need of urgent assistance.

**For HRDs:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For HRD organizations and for security measures for HRDs:**

- Receiving information from partners and members organizations.
- HRD organizations and for security measures for HRDs.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For HRD organizations:**

- Receiving information from partners and members organizations.
- Support for HRDs and WHRDs at risk.
- Legal aid support.
- Advocacy activities on behalf of HRDs.

**For WHRDs:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For WHRMs:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For WHRDs in the United Kingdom:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For WHRDs in Ireland:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For WHRDs in other countries:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For WHRDs in Ireland:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For WHRDs in other countries:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For WHRDs in Ireland:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.

**For WHRDs in other countries:**

- Receiving information from partners and members organizations.
- Advocacy activities on behalf of HRDs.
- Support for HRDs and WHRDs at risk.
- Legal aid support.
<table>
<thead>
<tr>
<th></th>
<th>Human Rights First</th>
<th>Elizabeth Jordan</th>
<th>Yes</th>
<th>Urgent alerts are sent out through Defender Alert Network and received by about 11,000 activists and organisations (e.g. Protection International)</th>
<th>No</th>
<th>No</th>
<th>No</th>
<th>No</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>333 Seventh Ave, 13th Floor, New York, NY, 10001 USA Tel: +1 212 845 5200 Fax: +1 212 845 5299 <a href="http://www.humanrightsfirst.org">www.humanrightsfirst.org</a></td>
<td><a href="mailto:jordane@humanrightsfirst.org">jordane@humanrightsfirst.org</a></td>
<td>Yes</td>
<td>Urgent alerts are sent out through Defender Alert Network and received by about 11,000 activists and organisations (e.g. Protection International)</td>
<td>Not directly</td>
<td>Occasionally provides funding for HRDs at risk with partner organisations.</td>
<td>No</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>+1 212 845 5298</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>5.</td>
<td>Urgent Action Fund for Women’s Human Rights (UAF) 3100 Arapahoe Avenue, Suite 201, Boulder, CO 80304, USA Tel: +1 303 442 2388 Fax: +1 303 442 2370 <a href="http://www.urgentactionfund.org">www.urgentactionfund.org</a></td>
<td>Ariella Futral; Keely Tongate; or Saira Hamidi <a href="mailto:urgent@urgentactionfund.org">urgent@urgentactionfund.org</a></td>
<td>No</td>
<td>Only signs on to action alerts sent out by other organisations.</td>
<td>Yes</td>
<td>Financial support is provided to WHRDs when an unanticipated situation arises that requires immediate response in order to prevent the deterioration of women’s human rights or to promote further</td>
<td>No</td>
<td></td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td>+1 303 442 2388</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td>If the situation meets the categories and criteria of UAF, a grant for the FPM can be provided.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No</td>
<td>Funds can be provided for evacuation of WHRDs and provide up to three (3) months support in</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>
advancement of women’s rights.

- Three Categories of Grants:
  1. Situations of armed conflict, escalating violence or politically volatile environments.
  2. Precedent-setting legal or legislative action.

- Criteria used:
  1. Strategic — the action is related to a pre-determined plan to create structural change that will advance women’s human rights.
  2. Unanticipated & Time Urgent — the situation or opportunity is unanticipated and action must happen quickly to be effective.
  3. Sustainable — the group is able to carry out the proposed action effectively, and can secure funding for future work related to the strategy.
  4. Supported — the group has the support of others involved.

- Additional funds for WHRDs who wish to evacuate their family with them can be provided.
<table>
<thead>
<tr>
<th>6.</th>
<th>Women Living Under Muslim Laws – International solidarity Network (WLUML)</th>
<th>Eleanor Kilroy</th>
<th>+44 207 281 9203 OR Aisha Shahid</th>
<th>+44 207 283 0285</th>
<th>Yes</th>
<th>Issued via email, website, post, fax and telephone.</th>
<th>No</th>
<th>No</th>
<th>No</th>
<th>Yes</th>
<th>Network members are asked to volunteer or offer services to undertake FFM.</th>
<th>No</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>World Organisation Against Torture (OMCT)</td>
<td>Delphine Reculeau</td>
<td>+41 22 809 5242</td>
<td>Yes</td>
<td>Urgent interventions are sent via email to government authorities, IGOs, NGOs, media, etc.</td>
<td>A systematic alert mechanism regarding harassment and repression of HRDs was established by the Observatory for the Protection of Human Rights Defenders (OMCT-FIDH).</td>
<td>Yes</td>
<td>The OMCT-FIDH has a budget for HRDs material assistance which includes medical assistance, evacuation to third country, provide legal assistance, and relocate their families within their own country.</td>
<td>Legal assistance, medical (suffering from health problems caused by torture), and/or social assistance (living expenses in own country or when in temporary refuge in another country) are provided to victims of torture through the Urgent Assistance to Victims of Torture Project.</td>
<td>Yes</td>
<td>Types of legal aid provided: 1. Analyzing cases in close partnership with members of the SOS-Torture network. 2. Legal advice within the context of refoulement procedures. 3. Cover legal costs for the defence of the victim. 4. Observation of judicial proceedings. 5. Legal and/or financial support to families of victims who had died under torture to enable them to take part in proceeding aimed at obtaining</td>
<td>Yes</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>
### Freedom House

- **Address:** 1301 Connecticut Ave, NW, 8th Floor, Washington, DC 20036
- **Tel:** 202.747.7915
- **Fax:** 202.293.2840

Rebecca Vo
vo@freedomhouse.org
+1(202)747-7015
http://www.martus.org/
defending2009@ymail.com

| Yes | Freedom House provides assistance to human rights defenders and human rights organizations that are under threat, attack, detention, prosecution, or otherwise at immediate risk due to government repression. Freedom House defines emergency as an urgent and temporary need for assistance. The source or cause of the emergency should be due to government repression or retaliation for his/her work as a defender. If the source is not clear, there might be circumstances leading to a determination that a government is the source. Provides medical expenses, humanitarian support (including dependent support), temporary relocation, equipment replacement, security and dependent support. Average grant is $3,000-$3,500. |
| --- |
| No | Temporary relocation |

#### Martus and Security
- Martus is a human rights database software. Defenders fund recommends the use of Martus or encrypted email such as PGP or Hushmail.

### UNHCR

<table>
<thead>
<tr>
<th>Yes</th>
<th>Assistance is given to uprooted or stateless</th>
</tr>
</thead>
</table>

people in their countries of asylum or habitual residence and that refugees will not be returned involuntarily to a country where they could face persecution.

- Longer term, UNHCR helps refugees find appropriate durable solutions to their plight, by repatriating voluntarily to their homeland, integrating in countries of asylum or resettling in third countries.

Source: Ms. Emerlynne Gil, Manager, Human Rights Defenders Program, FORUM ASIA
National human rights institutions

National laws and institutions also provide several means of protecting human rights defenders. Many countries have adopted international human rights standards in their national legislations.

Governments or sometimes civil society have also set up autonomous national human rights institutions that have the mandate and resources to investigate cases of human rights violations. Human rights defenders can also use these institutions for their own protection.

The Indian democracy boasts the existence of the following national-level NHRIs:

i. the National Human Rights Commission (NHRC) of India created under the Protection of Human Rights Act 1993;

ii. the National Commission for Women (NCW) created under the National Commission for Women Act 1990;

iii. the National Commission for Minorities (NCM) created under the National Commission for Minorities Act 1992;

iv. the National Commission for Scheduled Castes (NCSC) established under Art 341 and 342 of the Indian Constitution and formally bifurcated from the National Commission for Scheduled Castes and Scheduled Tribes in the year 2004;

v. the National Commission for Scheduled Tribes established under Art 341 and 342 of the Indian Constitution and formally bifurcated from the National Commission for Scheduled Castes and Scheduled Tribes in the year 2004;

vi. the National Commission for Protection of Child Rights (NCPCR) created under the Commission for Protection of Child Rights Act 2005;

vii. the National Commission for Safai Karamcharis (NCSK) created under the National Commission for Safai Karamcharis 1993;

viii. the Central Information Commission (CIC) created under the Right to Information Act of 2005; and

ix. the Chief Commissioner for Persons with Disabilities (CCPWD) created under the Persons with Disabilities Act 1995.

At the state level, there are 18 State Human Rights Commissions, 34 State Women’s Commissions, 15 State Minorities Commissions, 24 State Information Commissions, 12 state headquarter offices of the National Commission for Scheduled Castes, 35 State commissioners for Persons With Disabilities, 6 state headquarter offices of the National Commission for Scheduled Tribes and one state commission for protection of Child Rights. Thus, there are almost 145 statutory human rights institutions at the state level in India.

Since all these institutions at both the national and state levels contribute to the promotion and protection of human rights in India, national, regional and global human rights community have the responsibility to address and monitor these institutions’ performance, capacity-building, and representations at the UN and other international fora, instead of focusing solely on the NHRC. The NHRC and the Office of the High Commissioner for Human Rights in Geneva in turn have the obligation to ensure that its cooperation and collaboration with all...
these statutory institutions is institutionalized in the years to come. Likewise it is imperative that all Treaty Monitoring bodies and Special Procedure Holders who deal with India address these institutions for assistance in their work.

**Courts of Laws**

The UN Declaration on Human Rights Defenders recognizes the right of everyone to complain when a human rights violation is committed. Article 9 of the Declaration states that there is a right to have the complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority. It clearly states the right to redress ‘including any compensation due, where there has been a violation of that person’s rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay’.

Furthermore article 12.3 clearly establishes that states shall take all necessary measures to ensure protection against any violence, threats, retaliation, adverse discrimination, pressure or arbitrary action committed against women human rights defenders as a consequence of their activism. This provision should be interpreted to include all judicial measures aimed at punishing those responsible for attacks against them.

**National legal systems**

Applied at the national level, accountability for violations of human rights under the UN Declaration of Human Rights Defenders is mediated through established principles of law included in the national constitution and domestic laws. Mechanisms for accountability are provided for in formal judicial systems that include courts, legal jurisprudence, law enforcement units and other judicial entities. There is no uniformity among countries in terms of its legal systems, the manner the courts are constituted, or the number and effectiveness of legal venues available for redressing human rights violations.

Regardless of its form, human rights defenders may seek justice though the national legal system established in their respective countries. It may involve requesting for investigation from an independent human rights commission, filing a case in court or seeking legal relief from governmental administrative bodies that exercise judicial functions.

**The UN System**

The international human rights system at the UN can be used by human rights defenders to advocate for protection, justice and accountability, and can compliment other strategies being used.

An intervention of the UN may help prevent a violation or at least alert a government that it is under international scrutiny. It can help raise the visibility of an issue or a case at the international level, and add legitimacy to the demands for justice and redress. A detailed account of the different mechanisms available to human rights defenders at the UN is provided in Chapter 7.

Increasingly, the international human rights system also provides redress for individuals who have exhausted national and regional remedies through the mechanism of an Optional Protocol to a human rights treaty. Treaties with Optional Protocols, such as CEDAW, allow an individual to seek redress against a state party that may have violated any of the rights contained in the convention.

Apart from these treaties, there are other instruments and mechanisms at the international level, which have been created to protect individuals and communities regardless of the state’s ratification of any convention. For example, there are a wide range of experts at the UN called Special Rapporteurs, Independent Experts or
Working Groups, which monitor specific human rights issues. There are also mechanisms such as the UN Human Rights Council, offices created by the Office of the High Commissioner for Human Rights (OHCHR) and by the Secretary General of the UN.

**HUMAN RIGHTS DEFENDERS UNDER THREAT:**
**A FIELD SECURITY APPROACH TO THEIR WORK**

The challenges faced by human right defenders working under threat pose the need for comprehensive and dynamic systems to cope with the security requirements. Knowing their work context or “taking care” cannot answer all the questions: we must take a step further and discuss a system for security management. In this paper we propose an overall framework for a security management process and an incremental approach to security management, as well as some reflections on basic concepts like risk, vulnerability and threat. We also include some proposals to improve and develop the level of security for human rights defenders to work. All these topics should allow NGOs and defenders to better undertake strategies for coping with the increasing security challenges of human rights work.

**Introducing some key ideas**

In the last few years general awareness has increased about the enormous risk human rights defenders face due to their work. That risk can be detected easily when defenders work in a hostile context (this is the case when the laws of a country penalize some aspects of human rights work); defenders are also seen as at risk when the law in their country fully sanctions human rights work but impunity prevails for those who threaten or attack human rights defenders. The context becomes even worse when there is an armed conflict in place.

Beyond a few chaotic situations (in which a defender’s life may be in the hands of the soldiers at a check point), we cannot state that the violence against defenders is indiscriminate; in most scenarios such violence is linked to clear military or political-military objectives for the aggressors. Knowing adequately the conflict scenario and understanding the political-military logic are key elements to correctly manage human rights defenders’ security.

In the last few years, international humanitarian NGOs have developed their own security strategies and procedures with respect to security management. As all too often happens, these developments have not been adapted and transferred to the human rights defender's world, and this is a pending task.

We have to be aware, anyway, that the main source of risk for defenders is the fact that the threats too often become actual attacks, given the aggressor’s will and the means and impunity they enjoy. For this reason the most important tool to protect defenders is political action because, beyond technical advice, the big issue still to be addressed is that the need for governments and civil society to exert the required pressure and take the necessary action against those who day after day threaten, harass and kill human rights defenders.

Nevertheless, defenders could achieve significant improvements in their security if they followed certain strategies and proceedings which have been tested and are effective. Knowing that this is a partial, but useful, effort, we want to have a look now at some proposals to improve defenders’ security.

**Security Management Versus “Security Proceedings”**

Generally speaking, most threatened human rights defenders do not have a security strategy. Even the few ones who do have it (normally in the context of their NGO’s work), their security plan may consist of a series of
protective measures, contingency plans and safety rules, which may be useful as security guidelines but do not grasp the fact that security requires an adequate overall management, and it means much more than a security plan. Security cuts through all aspects of an NGO’s work: it has to do with activities (as any targeting the agency may suffer can be a consequence of its operations), with assessing a changing context (and conflict scenarios can change quickly), with flows of information (recording and assessing security incidents), with personnel (from recruiting to training and team building), with budgeting and funding and so on.

The question still pending is: how can we achieve the necessary integration of security into all aspects of the management of an NGO’s work? We know that limitations prevail, and those limitations on security are the same as those on the human rights work: scarce resources, few personnel, improvisation, a high level of pressure and repression, etc.

**Security Strategies and Work Space: A Consent/Dissuasion Triangle**

All security strategies can be summarized in one sentence: to keep the work space open. For that we need to seek, as a minimum, consent (of government, of armed actors and civil society) and ideally acceptance (a further step).

Speaking strictly in terms of security, the defenders’ work space requires a certain consent by the parties in conflict, especially the armed ones, and ideally a request from some part of the sectors affected by the conflict. This consent can be explicit (a formal permit from the authorities) or implicit, and will be more solid if an armed actor perceives some benefits from the defenders’ work, or lower if he perceives costs. In this case, the consent will be given by the political costs carried by an attack on the defenders. All this is especially relevant when defenders are working in a scenario with more than one armed actor.

The work space can be represented as a triangle which relates the continuum consent-acceptance and the continuum deterrence-persuasion:

![Diagram of the Triangle](image)

The enlargement of work space can be achieved with time (following its acceptance by means of a strategy of persuasion which should take into account planning for the needs of the population, image, procedures, integration etc.), or by an acceptance by part of the armed actors (a difficult balance, represented in space "b"). But normally in areas of conflict the space remains limited to that which follows from consent of the armed actors, a mixture of dissuasion and persuasion (reduced to space "a").
Risk, Threats and Vulnerability - Capacities In Security

Risk is an inherent part of the work in conflict scenarios. There’s no widely accepted definition of risk, but we can say that risk refers to possible events, however uncertain, that result in harm.

In any given scenario, all human rights defenders may face a common level of danger, but not all defenders are equally vulnerable under that general risk merely through being in the same conflict scene. Vulnerability (the possibility that a defender will suffer an attack and harm of whatever kind) varies for each entity, according to several factors, so that a UN agency is not as vulnerable as a small national NGO.

The level of risk of an NGO is in accordance with the received threats and vulnerability to those threats, as can be seen in the following equation:

\[ \text{Risk} = \text{threats} \times \text{vulnerability} \]

Threats are the possibility that someone will harm somebody else (their physical or moral integrity or property), through purposeful, often violent action. Threat assessment is the analysis of the likelihood of a threat becoming action.

An NGO can face many different threats in a conflict scenario. The main threats are the ones which are aimed to hinder or to change the NGO’s work or influence its personnel’s conduct (‘targeting’). Targeting is closely related to the work done by the defenders and by the interests of the armed actors; in other words, whether a defender becomes targeted or not depends on the impact of their work on the armed actors.

Vulnerability (the degree to which defenders are susceptible to loss, damage, suffering and death, in the event of an attack) varies for each defender or NGO, and also varies with time.

Vulnerability is a relative dimension, because all people and groups are vulnerable, but each one, according to their circumstance and conditions has their own level and type of vulnerability. For example, a human rights defender is more vulnerable when s/he is out on the road than when located in their office (if it is well protected).

The vulnerability of an NGO can be seen to be affected by various factors, such as exposure (the degree to which the staff and property of an NGO remains in dangerous or unprotected places), the impact of the work programme (if the NGO’s work has a negative impact on whichever armed actor, it makes the NGO vulnerable) etc.

Capacities are the strengths and resources available for a group or individual to achieve a reasonable degree of security (or respect for their/his/her human rights). Examples of capacities are training (in security, in legal issues, etc), group work as a team, etc.

The risk created by risk and vulnerability can be reduced if defenders have enough capacities (the more the capacities, the lesser the risk):

\[ \text{Risk} = \text{threats} \times \text{vulnerability} \]

Summarizing the former paragraphs in the schema we are working with, in order to reduce the risk to acceptable levels we have to:

- Reduce the threats
- Reduce/improve the vulnerability factors
- Increase the security capacities - training in security, risk assessment etc.
We must keep in mind that risk is a dynamic concept and changes with time, following changes in threats, vulnerabilities and capacities. It poses the need to assess risk periodically, and especially if there are changes in the work context, in threats or in vulnerability. For instance, risk increases dramatically when an armed actor feels surrounded; vulnerability increases when new personnel start working without proper training.

Security measures like video cameras or an armoured vehicle may reduce the risk by improving vulnerability factors, but those measures do not confront the main source of risk, which come from threats and the will to execute them, if the actions against defenders enjoy impunity. For these reasons, all major interventions in protection should aim to reduce such threats, in addition to reducing vulnerability factors.

**Planning the work and security:**

Security management should be integrated in each of the stages analyzed when planning the work.

Security occupies a specific niche when analyzing the scenario and setting the aims and objectives of the work, as well as when planning the work, following it up and evaluating its results. The security guidelines occupy a specific place (in the planning stage) in the overall process, where they become living documents which receive feedback from the follow up and evaluation stages.

**Coping with security challenges: security management as an incremental process**

Security management is never finished and is always partial and selective. There are limits that constrain the system: cognitive limits (not all factors affecting security can be grouped and treated simultaneously) and limits in the process (the timing and sequence imperatives necessary to create awareness, develop consensus, train people, ensure an adequate personnel turnover, implement activities, etc.). Security management can rarely attempt a comprehensive, long-term view: Its contribution relies on its ability to prevent incidents and to point to the need for organizational integration and co-ordination to cope with such incidents.

Maybe this is not very ambitious, but we also have to take into account that few resources are usually allocated for security, so that we never can be comprehensive. Pragmatism is a must in security management.
As we mentioned before, when reviewing the security practice of an NGO you may find some kind of security guidelines or plans or measures or patterns of behaviour in progress.

There are many forces at stake, from stereotypes about security practice to a reluctance to increase the existing workload by incorporating new security activities. Security practice is typically fragmented, evolutionary and largely intuitive. In terms of security management it is necessary to proceed step by step, making incremental changes to improve performance.

Security strategies and procedures tend to emerge from "strategic subsystems", each of which covers a specific area of work (logistics, a field team specially concerned with its security, a headquarters manager under pressure by a donor's concerns for security, etc). Incrementalism in security management opens the door to informal processes and allows space for nucleus of change agents at work. Precipitating events (such as security incidents) prompt urgent, interim decisions that shape the security practice and that, if properly managed, become part of a widely shared consensus for action among members of the field and management teams.

**Some Key Concepts for the Security and Protection of Human Rights Defenders**

No one was born to be a human rights defender. Defenders are ordinary people who assume a risk, either in their work or in their activities aside from their work, and generally they do it in the context of their normal lives, shared with their families and friends. All these factors have a clear influence on defenders´ perception of risk, and therefore on their security strategies.

At any given moment in which a defender starts receiving threats for the first time, and in continuing her/his work s/he continues to receive those threats, it can be the beginning of a highly stressful situation for the defender. Both the stress and the defender’s coping mechanisms should be taken into account when we approach their security needs.

When defenders face risk, they do so as others do: They develop adaptive behaviour and try to simplify the decision making process, within the norms of social and group conditioning.

Psychological studies on how people face risk have shown that risk is better accepted when it is voluntarily assumed, when the individual perceives that s/he has some control on the risk, and when this risk becomes familiar. From a sociological point of view, risks are social constructs which are related to socio-cultural factors linked to social structures. For this reason, each social sector highlights some risks and forgets others. Accordingly, research in cultural anthropology has shown that every person has a certain tendency to assume risks, and this tendency depends on the reward associated to those risks and on the individual perceptions of those risks. It's very important to recognize that the avoidance of risk is human beings does not only respond to the perceived probability that harm produces, but also the willingness of exposure to risk, the compensation received for this exposure, or the equity in the distribution of risk.

The daily exposure to risk may create an apparent “indifferent behaviour”, linked to the denial of risk, and which leads the individual to undertake the normal work without security measures and even rejecting to talk about the subject.

Taking into account these facts, when approaching security issues with defenders it is very important to consider the risk perception by defenders (linked to social and group factors and individual behaviour) and consider also concepts like personal and group commitment, social justice, capacities for analysis, team work, etc.
Impacts of traumatic events

Human rights defenders either witness traumatic events or are victims of them: Their impact affects the mental health and the group and individual behaviour of defenders. A common reaction is to become overloaded of work due to the increase of emotional demands linked to the traumatic events (anger, frustration, depression, etc). Sometimes defenders feel extremely guilty (for not being able to prevent the traumatic event) and then they may develop high risk behaviour which cannot be confronted by security strategies which do not take into account the psychological component associated to such behaviours.

Analysis of the work context

It is very important to know and to analyze the work context in order to define which are the right security strategies and guidelines to be applied. Similarly, it is also important to anticipate possible future scenarios, in order to prevent reactions from the armed actors which put defenders into danger.

This brings us to the second point: it is not enough simply to analyze the scenario, as there is a need to make an anticipated analysis, seeing how each intervention fits into the scenario and studying the reactions that the actors in this scenario can have before this presence (“how the others see us”) and before these interventions.

It is also important to take into account the dimensions of a scenario. We can undertake analysis at macro level (studying a country or a region), but we also have to analyze how those macro dynamics function in the area where we are working, that's to say, to know the micro dynamics. For instance, paramilitaries in a locality may act in a different way to that which we expect following a regional or national analysis and it is necessary to be aware of these local characteristics.

It is also important to avoid having a fixed view of a scenario, because they evolve and change, and we should undertake periodical reviews of them.

Integration in the area of work: authorities, life forces, social fabric

A fundamental factor in security (and in general, in all aspects of humanitarian work) is adequate integration (to a greater or lesser degree) in the area of work, establishing and maintaining communication and adequate relations with authorities, security forces, and defacto authorities, as much as with existing social structures, whether at the community level, NGOs, churches etc.

Security cooperation among NGOs and other institutions

Real security co-operation among NGOs and other institutions is often underdeveloped, due to the lack of information, mutual trust or interests, differences in mandates and missions, etc.

The spaces for co-operation between NGOs and organizations which they can create allow for at least two possible levels of integration of actions in the matter of security:

a) Exchange of information on the changes in the scenes of work and on security incidents.

b) Development of some common strategies for the problems of security that are defines as priorities.

As a minimum, at least level (a) is desirable, although evidently better results follow with (a) and (b). But it is difficult to pursue and maintain this level of co-operation for reasons stated before and for others which are beyond the limited length of this article to explain.
Nevertheless, information sharing and joint strategies are powerful tools to improve security of human rights defenders.

**Coping strategies: risk management by the group.**

Groups under threat apply different coping strategies to alleviate the perceived risk. These strategies will be very different depending on the environment (rural, urban), the type of threat, the social, economic and legal resources available, etc. Most of these strategies can be implemented immediately and respond to short term objectives, therefore being tactics more than elaborated strategies. Most of them respond to subjective perceptions, and at times the coping strategies may cause some level of harm to the group, especially if such strategies are not reversible.

Coping strategies are closely related to the type and severity of threat and to the capacities and vulnerabilities of the group.

When implementing protection we have to take into account coping strategies, reinforcing the effective ones, trying to limit the harmful ones and respecting the rest of them (especially the ones linked to cultural concepts or religious beliefs).

Among the coping strategies we can list:

- Reinforcing protective barriers, hiding valuables.
- Avoidance of behaviours which may be put into question by one or another armed actor (especially if the military hegemony of the territory where the group lives is under dispute).
- Using places to hide in moments of high risk (places of difficult access, like mountains or jungle), changing houses, etc. Sometimes the whole family hides, sometimes only the defenders do it. Hiding may take place in the nights, or for several weeks' periods.
- Negotiation with state or government or with illegal armed actors.
- Making denounces before legal bodies or to public opinion.
- Networking (with other groups in similar situation), joint protests, demonstrations, etc.
- Establishing (or promoting) “safe areas”
- Looking for armed or political protection by one of the armed actors.
- Forced migration (displacement or refuge), family by family or massive migrations.

They can be planned displacements or improvised fleeing.

When analyzing coping strategies, we should take the following things into account:

- Sensitivity: if the coping strategies are able to respond quickly to the security needs of the group.
- Adaptability: if the coping strategies allow for a quick adaptation to the new circumstances, once the risk of attack is over (for instance, a defender may have several options to hide or to live for a while at other people’s houses). These strategies may seem weak or unstable, but often they have a great endurance.
- Sustainability: capacity to endure with time, in spite of threats or non-lethal attacks.
• Effectiveness: capacity to adequately protect.

• Reversibility.

Protecting Others

For the purposes of this paper, we will understand as protection the set of activities which can be undertaken in order to contribute to the security of others. The binomial security protection becomes two sides of the same coin, so that they can share analysis and strategies. From a tactical point of view, they nevertheless have some differences in some approaches and proceedings.

Defenders, in addition to keeping an eye on their own security, undertake protection activities for others: other defenders, victims, social sectors, etc. In the same way, other entities (for example international NGOs) undertake protection activities for defenders.

Protection strategies are complex because they must take into account factors which affect others’ security (following, for example, the threats-vulnerabilities-capacities schema), but also what others do to protect themselves (their coping strategies). In order to deal with this complexity, we have developed an Operational Framework for Field Protection (OFFP), applicable to human rights defenders. This OFFP should be more interpretative than a simple checklist: It must reflect the interaction and synergies and clashes of the full spectrum of entities working in protection, in order to assess the impact of the widest range or protection activities in a more systematic manner that is currently the case.

An operational framework for field protection (OFFP) is a comprehensive and flexible tool to serve, integrate and harness the protection activities undertaken by the involved government, local organizations and NGOs, the affected population and international agencies and NGOs. The OFFP can be used individually by any of these entities, while delivering or considering to deliver protection activities, or by groups of these entities, as well as a sector wide approach.

The Operational Framework for Field Protection has six stages:

1. Context and scenario analysis
2. Risk analysis (threats, vulnerabilities, capacities)
3. Coping strategies of the affected group
4. Actions taken by other institutions
5. Actions to be taken: Strategies and Plans

These 6 steps can be taken together with the defenders whose security-protection is being reviewed, in order to get to a common protection framework, which is the final aim of the whole process.

Further Steps in Security and Protection of Human Rights Defenders

We will list here a non-exhaustive proposal of objectives to be achieved for the security and protection of human rights defenders:

• Training in security management and planning (given the variety of human rights defenders, this training should be adapted to the different contexts and capacities).
• To integrate security in the regular work planning.

• To provide the necessary resources for defenders’ security management: human resources, funds, technical means, etc.

In order to achieve these objectives, we can take at least these next steps:

• The Operational Framework for Field Protection (or another tool with a similar purpose) can be applied to review the security and protection needs of defenders under threat in selected scenarios.

• Training seminars or workshops in security and protection: Training can include the joint analysis (applying the OFFP) quoted in the previous point, so that both steps could be taken at once.

• Seminars or workshops to follow up and support the developments and the security plans developed after the trainings (those workshops should be held 6-12 months after the initial training)

• Producing security and protection manuals and reference documents

• Further research in order to improve defenders’ security and protection
Chapter 7:
THE UN AND HUMAN RIGHTS DEFENDERS

The horrors of the Second World War resulted in the acceptance of human rights as a cornerstone of the post-war international order. The establishment of the United Nations in 1945 introduced a period in which the promotion of respect for human rights and fundamental freedoms everywhere in the world has become a major concern of the international community.

The Charter of the United Nations

It contains a number of references to human rights. The Preamble provides:

We the peoples of the United Nations determined ... 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 ...

The purposes of the United Nations are set out in Article 1 of the Charter. Article 1 paragraph 3 provides:

To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion

Three conclusions can be drawn from the human rights provisions of the Charter:

a) The promotion and encouragement of respect for human rights and fundamental freedoms is to be undertaken for all. The Charter endorses a universal, all-inclusive notion of human rights. Human rights do not apply only to “citizens” or “men” or particular groups, such as national minorities or the inhabitants of colonial territories, but to all persons regardless of nationality, sex, race or other status

b) The universality of human rights is closely related to the notions of equality or non-discrimination, reflected in the words without distinction as to race, sex, language or religion. The elimination and prevention of discrimination has been a major objective of UN activities in the field of human rights.

c) Human rights are to be advanced in a framework of international co-operation. Human rights are matters of concern beyond national borders and their promotion and protection an obligation of the international community.

The Charter does not further specify the content of human rights. At its first session in 1947, the newly established UN Commission on Human Rights authorized a preliminary draft international bill of human rights.

THE INTERNATIONAL BILL OF RIGHTS

It consists of four parts:

- Universal Declaration of Human Rights (1948)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966)
- First Optional Protocol to the International Covenant on Civil and Political Rights (1966)
The Universal Declaration of Human Rights (UDHR), although not a legally binding treaty, is regarded as the most fundamental expression of international human rights standards. It was proclaimed by the UN General Assembly as "a common standard of achievement for all peoples and all nations."

The UDHR is regarded as an authoritative interpretation of the human rights provisions of the UN Charter. It has been the basic source of subsequent international standards elaborated to protect and promote human rights. It has become a yardstick by which the degree of countries’ compliance with international human rights standards is measured.

Civil and political, economic, social and cultural rights

The 1948 UDHR encompasses two major categories of human rights:

- civil and political rights, and
- economic, social and cultural rights.

Civil and political rights are concerned to protect the individual from the arbitrary exercise of power by the State. Catalogues of civil and political rights generally include:

- rights pertaining to the life, integrity, liberty and security of the person
- rights with respect to the administration of justice
- the right to privacy
- freedom of religion and belief
- freedom of opinion and expression
- freedom of movement and residence
- freedom of assembly and association
- the right to political participation

Economic, social and cultural rights are concerned with the economic, social and cultural well-being of persons. They include:

- the right to work and to just and favourable conditions of work
- trade union freedoms
- the right to an adequate standard of living, including food, clothing and housing
- the right to health, rest and leisure
- the right to education
- the right to take part in the cultural life of the community

During the course of drafting the International Bill of Rights, and in the context of the Cold War, it was decided to address these two categories of rights in separate instruments. This resulted in the drafting and adoption by the UN General Assembly of:

- International Covenant on Economic, Social and Cultural Rights, and
- International Covenant on Civil and Political Rights.
The Preamble to both Covenants emphasizes the interdependence of the two categories, recognizing that:

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

Various reasons have been advanced for this division, amongst others, the different nature of the rights and the different measures required to secure their implementation.

A common claim made about civil and political rights is that they are “negative” rights; that the State is simply required to refrain from action interfering with the freedom of individuals to pursue happiness and prosperity.

Economic, social and cultural rights, it is claimed, are “positive” or “distributive” rights; an active response is required by the State to devise and implement strategies and programmes and to commit resources to promote the progressive realization of economic, social and cultural rights.

It is no longer accepted wisdom that any clear distinctions can be made between the two categories of human rights. Both categories entail legal obligations on the part of States. Issues of measurability arise in relation to both.

The protection of civil and political rights requires not only State abstention from interference, but also the commitment of significant resources and the ongoing maintenance of developed infrastructure. Necessary for the protection of civil and political rights are, for example, properly trained lawyers, judges and law enforcement officers, a functioning court system, appropriate detention facilities and conditions, the provision of legal aid, a developed press, efficient and accountable public administration, an effective trade union movement and targeted policy-making to ensure the elimination of discrimination.

Numerous economic, social and cultural rights, on the other hand, are capable of immediate application by the judicial and other organs of the State; for example, equal remuneration for work of equal value, rights to form and join trade unions and to strike, protection of children from economic and social exploitation, the provision of compulsory primary education, the liberty of parents to chose schools for their children, the right to establish educational institutions and freedom for scientific research and creative activity.

Individual and collective rights

Another distinction often made is that between individual and collective rights. Many human rights are by their very nature the rights of individuals.

Some human rights combine individual and collective aspects. For example, the freedom to manifest religion or belief can be exercised individually or in community with others. With respect to other human rights, collective aspects prevail. This is the case with the rights of the family and trade union freedoms.

There are also rights which give attention to the special needs of groups as such. By virtue of their nature and subject matter these are collective rights. Collective rights include the rights of ethnic minorities, the rights of indigenous peoples and peoples’ rights.

Peoples’ rights include the right to self-determination, to development, to peace and security and to a safe and healthy environment.
The African Charter on Human and Peoples’ Rights (1981) was the first human rights instrument to recognize the relationship between individual and collective rights and to enumerate a catalogue of peoples’ rights.

Critics of collective rights have argued that individual and collective rights are inherently irreconcilable. Increasingly it is accepted that individual and collective rights are concerned with conceptually distinct claims and can exist concurrently. Collective rights can be interpreted and applied in a manner consistent with individual human rights.

The 1968 Teheran International Conference on Human Rights affirmed that:

The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community. (Para 2)

The Declaration on the Right to Development, adopted by the UN General Assembly in 1986, provides:

All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. (Article 6(2))

The Vienna Declaration and Programme of Action, adopted on 25 June 1993 at the World Conference on Human Rights, by consensus, by representatives of 171 States, provides:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. (Para 5)

Arguments about Asian values

Despite such affirmations of the universality and indivisibility of human rights, there continue to be profound North/South differences over human rights issues.

Some Asian governments have challenged the legitimacy of international action to protect human rights. They have employed a combination of the following arguments:

- the notion of individual human rights is alien to Asian cultures in which Confucian philosophical traditions assert the primacy of communitarian principles, the importance of consensus and respect for authority;
- robust economic growth demonstrates that a different development strategy works for Asia. Economic development will create the necessary environment for the realisation of civil and political liberties. In the meantime, concerns over individual human rights must not stand in the way of a “collective” right to development;
- countries from the “North” have been selective in their criticism of the human rights records of countries from the North. The legitimacy of such criticism is undermined by those countries’ own records on human rights.
Non-governmental organisations (NGOs) and community groups in Asia do not necessarily share the views and concerns of Asian governments. In connection with preparations for the 1993 World Conference on Human Rights in Vienna, a regional preparatory meeting was held in Bangkok. At the same time, 240 representatives of more than 110 human rights and development NGOs from some 26 countries across the Asia-Pacific region met to review the human rights situation in the region and formulate strategies for the future promotion and protection of human rights. On 29 March 1993 they adopted the Bangkok NGO Declaration on Human Rights. The Bangkok NGO Declaration stated:

There is emerging a new understanding of universalism encompassing the richness and wisdom of Asia-Pacific cultures. As human rights are of universal concern and are universal in value, the advocacy of human rights can not be considered to be an encroachment upon national sovereignty. We affirm our commitment to the indivisibility and interdependence of human rights, be they economic, social and cultural, or civil and political rights. There must be a holistic and integrated approach to human rights. One set of rights cannot be used to bargain for another...

We emphasize the need for balanced and sustainable development, bearing in mind maximisation of people’s development, integrated approaches on civil, political, economic, social and cultural rights; equity and social justice; income distribution and fair resource allocation.

**Special Rapporteur on the situation of Human Rights Defenders**

**Mandate**

In its year 2000 session, the Commission on Human Rights asked the Secretary-General to establish a mandate on human rights defenders. The Commission’s intention was to give support to implementation of the Declaration on human rights defenders and also to gather information on the actual situation of human rights defenders around the world (resolution 2000/61).

In August 2000, Ms. Hina Jilani was named by the Secretary General as Special Representative of the Secretary-General on the situation of human rights defenders. Her mandate was renewed by the Commission in 2003 (resolution 2003/64) and by the Human Rights Council in 2007 (resolution 5/1). In March 2008, the Human Rights Council, with resolution 7/8, decided to renew the mandate on human rights defenders for a period of three years. The Human Rights Council appointed Ms. Margaret Sekaggya as Special Rapporteur on the situation of human rights defenders.

The mandate on human rights defenders is broad and stipulates that the Special Rapporteur’s main roles are:

- seek, receive, examine and respond to information on the situation of human rights defenders;
- establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the Declaration;
- recommend effective strategies better to protect human rights defenders and follow up on these recommendations;
- integrate a gender perspective throughout her work.
In its resolution, the Human Rights Council urges all governments to cooperate with the Special Rapporteur and to provide all information requested. The governments are also urged to implement and follow-up on her recommendations.

In the fulfillment of the mandate, the mandate holder:

- Presents annual reports to the Human Rights Council and the General Assembly on particular topics or situations of special importance regarding the promotion and protection of the rights of human rights defenders (See Annual reports);
- Undertakes country visits (see Country visits);
- Take up individual cases of concern with Governments (see Submitting complaints)

**Mandate holders**

Ms. Margaret Sekaggya, Uganda (2008 - )

Ms. Hina Jilani, Pakistan (2000-2008)

**Who is the Current Special Rapporteur?**

Ms. Margaret Sekaggya is a magistrate from Uganda and has been the Chairperson of the Uganda Human Rights Commission since 1996. She is also a member of the United Nations High Level Task Force on the Implementation of the Right to Development. She has participated in the drawing up of a Bill of Rights for the East African Community. Sekaggya has particular expertise regarding the human rights of marginalized people such as people living with HIV/AIDS, the disabled, children, women and the elderly.

**Previous Mandate Holder: Hina Jilani**

Ms. Hina Jilani, a highly respected human rights lawyer from Pakistan, was appointed the first human rights defenders mandate holder and served from 2000 - 2008.

During her tenure, Hina Jilani presented 36 reports, (21 to the Commission on Human Rights, 7 to the General Assembly and 8 to the Human Rights Council). She carried out visits to 12 countries: Angola, Brazil, Colombia, Guatemala, Indonesia, Israel and the OPT, Kyrgyzstan, the Former Yugoslav Republic of Macedonia, Nigeria, Serbia including Kosovo, Thailand, and Turkey.

Through her detailed and effective reports, country missions and recommendations, Ms. Jilani improved the lives of human rights defenders in many countries. By analyzing the communications she received she distilled common trends and patterns of attacks against human rights defenders in countries and regions. She also identified categories of human rights defenders at particular risk and developed indicators to assess the situation of human rights defenders. She also analyzed in great detail different themes as they apply to human rights defenders, such as a culture of impunity, intimidation and lack of security, restrictions on freedom of assembly, expression, and association, and death threats against defenders who seek justice for past crimes.
Indicators on human rights defenders

(From the Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders Ms. Hina Jilani at the seventh session of the Human Rights Council on 31 January 2008)

Over the years, the Special Representative has been assessing the situation of human rights defenders worldwide on the basis of the rights and duties established in the Declaration. Through thematic studies, country visits, communications and their analysis, the Special Representative has given content to what compliance with the Declaration means.

The analytical framework and the parameters developed by the Special Representative to gauge the situation of human rights defenders can be distilled into a set of indicators that facilitate assessing compliance with the Declaration.

While the identification of indicators on human rights defenders deserves a thorough analysis and a larger discussion that go well beyond these few paragraphs, the Special Representative wishes to outline schematically a set of indicators that can be used to assess the situation of human rights defenders. She does this with the double purpose of providing a schematic framework for analysis distilled from the monitoring and protection work realized by the mandate, and encouraging her successor as well as other actors working on the assessment of the situation of defenders to further develop and use indicators to measure progress or setbacks in the implementation of the Declaration. Indicators are tools to follow up on the work of the mandate.

78. The Special Representative identifies the following indicators:

Legislation

- Compliance of legislation relevant to the activities of defenders with the Declaration. Several laws can be relevant for the activities of human rights defenders, from laws on NGOs, to those on access to information, freedom of peaceful assembly, witness protection, right to strike, etc.

An enabling environment for human rights defenders

- Enjoyment of rights and freedoms instrumental to the activities of defenders and recognized by the Declaration, e.g. freedom of expression, association, peaceful assembly, access to information, including access to detention places and police stations, access to remedies. Each of these rights has a full set of indicators to measure their level of implementation, which are not developed in this report;

- Existence and effectiveness of independent national human rights institutions;

- Systematic collaboration with public authorities;

- Systematic participation and consultation in decision-making processes, including in law and policymaking;

- Policies on human rights defenders (e.g. strategy on the implementation of the Declaration, national plan on human rights including human rights defenders, policies on the collaboration with civil society);

- Human rights education policies and programmes;

- Open support to defenders from public authorities and the political establishment.
To assess the community of human rights defenders

- Number and types of organizations;

- Type of activities undertaken by defenders:
  (a) Capacity-building and human rights education;
  (b) Awareness-raising and outreach;
  (c) Monitoring and reporting;
  (d) Legal aid;
  (e) Research and development of new human rights ideas;
  (f) Civil, cultural, economic, political and social rights;

- Level of activities and outreach:
  (a) Grass-root;
  (b) National;
  (c) Regional and international;

- Gender:
  (a) Level of participation, organization and representation of women defenders;
  (b) Prominence of women’s rights on the agenda of defenders;
  (c) Patterns of gender-based human rights violations against defenders;

- Non-discrimination:
  (a) Level of participation, organization and representation of defenders belonging to or working on the rights of groups discriminated against (minorities, LGBT persons, disabled persons, indigenous peoples, migrants, etc.);
  (b) Prominence of equality on the agenda of defenders;
  (c) Patterns of human rights violations against defenders belonging to or working on the rights of groups discriminated against;

- Networks and coordination:
  (a) Level of solidarity and coordination among defenders;
  (b) Existence and effectiveness of common goals and strategies agreed upon by defenders;
  (c) Networks on thematic areas, at different levels (grass-root towards international and vice versa), across sectors of civil society (academia, social movements, NGOs, trade unions, bar associations, etc.);

- Capacity to access and use national, regional and international human rights mechanisms;

- Transparency, objectivity and accuracy in the work of human rights defenders;
• Funding:
  (a) Availability of funding opportunities, within and outside the country;
  (b) Capacity to obtain funding;
  (c) Possibility of determining their own priorities versus being donor-driven;
  (d) Tax exemption for non-profit organizations.

To assess levels of security of defenders
• Number and type of attacks and threats against defenders;
• Availability and effectiveness of protection programmes and measures.

To assess levels of impunity of human rights violations against defenders
• Number and type of human rights violations against defenders;
• Accessibility of remedies available to defenders;
• Number, quality (prompt and impartial) and outcome of investigations and prosecutions sanctioning violations against human rights defenders and providing compensation to victims;
• Existence, accessibility and effectiveness of independent oversight mechanisms for violations committed by public authorities, including the police.

Governments' collaboration with regional and international human rights mechanisms
• Collaboration with the Special Representative:
  o Responsiveness to questionnaires sent by the Special Representative for the preparation of reports;
  o Responsiveness to communications (timelines, comprehensiveness in replying to all the questions, scope of measures taken to address and redress both the individual cases as well as the general situation related to the individual cases);
  o Responding positively to requests of invitations to carry out country visits;
  o Reporting on measures taken to implement recommendations.

SUBMITTING ALLEGATIONS TO THE UN SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

The Special Rapporteur takes up, with the States concerned, individual cases of human rights violations committed against defenders.

Where does the information come from?
Information on such cases is received through a variety of sources including State authorities, NGOs, United Nations agencies, the media and individual defenders.
What happens when the information reaches the Special Rapporteur?

As information arrives the Special Rapporteur first seeks to determine if it falls within the mandate. Secondly, every effort is made to determine the probable validity of the allegations of human rights violation and the reliability of the source of the information. Often, important details may be missing from the information initially received and the OHCHR staff supporting the Special Rapporteur’s mandate contact sources to collect additional information.

Thirdly, the Special Rapporteur then makes contact with the Government of the State where the alleged violation is thought to have occurred. Contact is usually conducted through an ‘Urgent appeal’ or ‘Allegation’ letter addressed to the State’s diplomatic mission with the United Nations in Geneva for transmission to capitals. The letters provide details of the victim, the human rights concerns and the alleged events.

‘Urgent appeal’ letters are used to communicate information on a violation that is allegedly ongoing or about to occur. The intention of these letters is to ensure that the appropriate State authorities are informed as quickly as possible of the relevant circumstances so that they can intervene to end or prevent violations. For example, a death threat that is reportedly made against a human rights lawyer in response to the lawyer’s human rights work would be addressed through an Urgent appeal letter.

‘Allegation’ letters are used to communicate information on violations that are thought to have already occurred and for which the impact on the defender affected can no longer be changed. These kinds of letters are used, for example, in instances where information only reaches the Special Rapporteur long after the events have occurred or where the human rights abuse has already been committed and reached a conclusion. For example, where a defender has been killed this would be raised with States through an allegation letter.

Allegations that cover several human rights issues

The Special Rapporteur constantly consults with Special Rapporteurs whose own mandates are implicated in a particular case and frequently sends joint letters of concern with these mandate holders.

What is the objective of the Special Rapporteur’s intervention?

The primary objective of these letters is to protect human rights defenders by ensuring that State authorities are informed of allegations as early as possible and that they have an opportunity to investigate them and to end or prevent any human rights violation. With both Urgent appeal and Allegation letters, the Special Rapporteur asks the Government to take all appropriate action to investigate and address the alleged events and to communicate the results of its investigation and actions to the Special Rapporteur. Allegation letters focus primarily on asking the State authorities to proceed with an investigation of the events and to conduct criminal prosecutions of those responsible.

How much time does the process take?

The Special Rapporteur and assisting OHCHR staff try to react as quickly as possible to allegations, with special attention given to the most serious and urgent cases. In many instances a case is taken up by the Special Rapporteur with the concerned Government within a few hours of the information being received from the source. In instances, where insufficient information is available in the initial contact it can take several days to gather and clarify sufficient information for contact to be made with a government.
What happens next?

Ideally, the Government will react immediately to the Special Rapporteur’s letter and investigate the alleged facts, taking action to prevent or end any violation. Governments are urged, under the Human Rights Council resolution renewing the Special Rapporteur’s mandate, to respond to the letters sent. In many instances, responses are not received or are received several months later.

If the Special Rapporteur does not receive a rapid response from a Government, particularly with regard to an urgent and very serious case, then additional efforts are made to follow-up with the Government concerned, via contact with its representation at the United Nations in Geneva. Resource limitations make it impossible for the Special Rapporteur to follow-up on every case.

Confidentiality

The persons and organizations that send information to the Special Rapporteur are always kept confidential and are never referred to in the letters to Governments or in public reports.

The letters by the Special Rapporteur to Governments are not published until they are compiled together with the Governments’ responses received in the communications report. This report is issued every year and presented at the Human Rights Council together with the other reports.

How to submit an allegation

The form (included in this format so that it can be easily printed) below provides guidelines on the types of information that the Special Rapporteur requires to take action on a case and how the information can be submitted.

Guidelines for submission to the Special Rapporteur of allegations of violations of the Declaration on human rights defenders

Selecting the right information - Presenting it clearly

- Before sending a complaint, ensure that all the details listed in points 1 to 7 of column A (Essential information) are included in your submission. In cases of extreme urgency, it may be possible to submit a case without some of these details, but their absence makes examining the matter more difficult.

- If you have additional information, it could be helpful. Examples of useful additional information are provided in column B (Useful information). These details are not essential but can be important in some cases.

- Information may be sent in list form (as in column A), or it may be provided in a letter. Column C provides an example of case information and how it can be included in a letter. Providing the correct kind of details and expressing them clearly make a quick response easier.

Confidentiality

- The identity of a victim will always be included in any contact between the Special Rapporteur and State authorities. The Special Rapporteur cannot intervene without revealing the victim’s identity. If the victim is a minor (below 18 years of age) the Special Rapporteur will include his or her name in contact with the State but will not include the name in any subsequent public report. The source of the
information provided or the victim may also request that the victim’s name not be included in public reports.

- The identity of the source of information on the alleged violation is always kept confidential, unless the source agrees that it may be revealed. When submitting information you may indicate whether there are any other details which you would like to remain confidential.

Contact details for sending submissions and for further correspondence

- The Special Rapporteur’s staff will acknowledge the receipt of a submission if this is requested. They can be contacted at any time for further discussion.

E-mail contact details: urgent-action@ohchr.org

The text of the e-mail should refer to the human rights defenders mandate. The emails can be copied to GPfeiffle@ohchr.org / SPD-CPRFellow@ohchr.org

- Fax: +41 22 917 9006 (Geneva, Switzerland)

- Telephone: +41 22 917 1234. This is the number for the United Nations telephone operator in Geneva, Switzerland. Callers should ask to speak with staff at the Office of the United Nations High Commissioner for Human Rights dealing with the special procedures of the Human Rights, and specifically with staff supporting the mandate of the Special Rapporteur on human rights defenders.

<table>
<thead>
<tr>
<th>A. Essential information</th>
<th>B. Useful information</th>
<th>C. Sample letter to the SRSG</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Name of alleged victim/s Take care to give first and family names and to spell names correctly. Victims can be individuals, groups or organizations.</td>
<td>If the victim is an individual, please provide information on gender, age, nationality and profession. If the victim is an individual or an organization, please provide contact details. Contact details are treated as confidential.</td>
<td>Ms. Priya Nathan, a lawyer, lives in [name of city/town and country].</td>
</tr>
<tr>
<td>2. Status of the victim as a human rights defender In what human rights activity is the victim (person/s, organization) engaged?</td>
<td>Where relevant, please also indicate the city and country in which the victim (person/s, organization) conducts this human rights work.</td>
<td>Priya Nathan takes up legal cases supporting the right to adequate housing on behalf of ethnic minorities. She is also a member of the National Commission for Human Rights.</td>
</tr>
<tr>
<td>3. Alleged violation/s committed against the victim What happened? Where? When? What is the current concern?</td>
<td>If an initial violation leads to other events, please describe them chronologically. E.g. if the initial concern is that a human rights defender has been arrested, details should be provided. But if he or she is later detained, other useful</td>
<td>Priya Nathan received an anonymous threat to her safety. On [day/month/year] Ms. Nathan received a letter at her office in [name of town]. The</td>
</tr>
<tr>
<td>4. Perpetrators</td>
<td>Give available information on who allegedly committed the violation: e.g. two men (in uniform?); rank, unit or other identification or title.</td>
<td>Witnesses</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>5. Action by authorities</td>
<td>Has the matter been reported to the relevant authorities? What action has been taken?</td>
<td>Action taken by the victim or by human rights organizations</td>
</tr>
<tr>
<td>6. Link between the violation and human rights work</td>
<td>Why do you think the alleged violation is a response to the human rights work of the victim?</td>
<td>Previous incidents</td>
</tr>
<tr>
<td>7. Who is submitting this information? (Confidential)</td>
<td>Give name, contact details and professional role (if relevant).</td>
<td>Submissions may be made by organizations or individuals.</td>
</tr>
</tbody>
</table>
Updates

Please send any updated information you have as soon as possible. It is especially important to know if there has been any change in the situation of the victim. Updates might be given where: 1) additional information becomes known (e.g. the identity of the perpetrator of the violation); or 2) new events occur (e.g. the victim’s release from detention).

[two months later] We learned today [date] that the police investigation was closed yesterday. Two men have been arrested and detained on charges of sending a threatening letter to Priya Nathan on [date] and of following her in their car when she left work the next day. The men are due to appear in court in two weeks. While pleased with the arrests, Ms. Nathan believes that the person who ordered these acts to be committed remains at liberty. She has asked that the police investigation be continued.

EUROPEAN UNION GUIDELINES ON HUMAN RIGHTS DEFENDERS

I. PURPOSE

1. Support for human rights defenders is already a long established element of the European Union’s human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights. The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means to support and assist human rights defenders. An important element of the Guidelines is support for the Special Procedures of the UN Commission on Human Rights, including the UN Special Representative on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While addressing specific concerns regarding human rights defenders is their primary purpose, the Guidelines also contribute to reinforcing the EU’s human rights policy in general.

II. DEFINITION

2. For the purpose of defining human rights defenders for these Guidelines operative paragraph 1 of the “UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms” (see Annexe I), which states that “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels” is drawn upon.

3. Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.
III. INTRODUCTION

4. The EU supports the principles contained in the Declaration on the Right and responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Although the primary responsibility for the promotion and protection of human rights lies with states, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights. The activities of human rights defenders include:

- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support; and
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms.

5. The work of human rights defenders often involves criticism of government’s policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government’s policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported.

6. The EU acknowledges that the activities of Human Rights Defenders have over the years become more recognised. They have increasingly come to ensure greater protection for the victims of violations. However, this progress has been achieved at a high price: the defenders themselves have increasingly become targets of attacks and their rights are violated in many countries. The EU believes it is important to ensure the safety and protect the rights of human rights defenders. In this regard it is important to apply a gender perspective when approaching the issue of human rights defenders.

IV. OPERATIONAL GUIDELINES

7. The operational part of the Guideline is meant to identify ways and means to effectively work towards the promotion and protection of human rights defenders in third countries, within the context of the Common Foreign and Security Policy.

Monitoring, reporting and assessment

8. EU Heads of Mission are already requested to provide periodic reports on the human rights situation in their countries of accreditation. The Council Working Party on Human Rights (COHOM) has recently approved the outline of fact sheets to facilitate this task. In line with these fact sheets Missions should address the situation of human rights defenders in their reporting, noting in particular the occurrence of any threats or attacks against human rights defenders. In this contexts HoMs should be aware that the institutional framework can have a major impact on the ability of human rights defenders to undertake their work in safety. Issues such as legislative, judicial, administrative or other appropriate measures, undertaken by States to protect persons against any violence, threats retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of any of the rights referred to the UN Declaration on Human Rights.
Rights Defenders are all relevant in this regard. Where it is called for, HoMs should make recommendations to COHOM for possible EU actions, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risk. HoMs should also report on the effectiveness of EU actions in their reports.

9. The HoMs reports and other relevant information, such as reports and recommendations from the Special Representative of the Secretary General for Human Rights Defenders, UN Special Rapporteurs and Treaty Bodies as well as non-governmental organisations, will enable COHOM and other relevant working parties, to identify situations where EU actions are called upon and decide actions to be taken or, where appropriate, make recommendations for such action to PSC / Council.

Role of EU Missions in supporting and protecting human rights defenders

10. In many third countries EU Missions (Embassies of EU Member States and European Commission Delegations) are the primary interface between the Union and its Member States and human rights defenders on the ground. They therefore have an important role to play in putting into practice the EU’s policy towards human rights defenders. EU Missions should therefore seek to adopt a proactive policy towards human rights defenders. They should at the same time be aware that in certain cases EU action could lead to threats or attacks against human rights defenders. They should therefore where appropriate consult with human rights defenders in relation to actions which might be contemplated. Measures that EU Missions could take include:

- co-ordinating closely and sharing information on human rights defenders, including those at risk;
- maintaining, suitable contacts with human rights defenders, including by receiving them in Missions and visiting their areas of work, consideration could be given to appointing specific liaison officers, where necessary on a burden sharing basis, for this purpose;
- providing, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations;
- attending and observing, where appropriate, trials of human rights defenders.

Promotion of respect for human rights defenders in relations with third countries and in multilateral fora

11. The EU’s objective is to influence third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-state actors. In its contacts with third countries, the EU will, when deemed necessary, express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration. The overall objective should be to bring about an environment where human rights defenders can operate freely. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the protection of human rights defenders. Actions in support of these objectives will include:

- where the Presidency, or the High Representative for the CFSP or EU Special Representatives and Envoys, or European Commission are making country visits they will, where appropriate, include meetings with, and raising individual cases of, human rights defenders as an integral and part of their visits to third countries;
- the human rights component of political dialogues between the EU and third countries and regional organisations, will, where relevant, include the situation of human rights defenders. The EU will
underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary;

- working closely with other like minded countries with similar views notably in the UN Commission on Human Rights and the UN General Assembly;

- promoting the strengthening of existing regional mechanisms for the protection of human rights defenders, such as the focal point on human rights defenders of the African Commission on Human and Peoples’ Rights and the special Human Rights Defenders Unit within the Inter-American Commission on Human Rights, and the creation of appropriate mechanisms in regions where they do not exist.

Support for Special Procedures of the UN Commission on Human Rights, including the Special Representative on Human Rights Defenders

12. The EU recognises that the Special Procedures of the UN Commission on Human Rights (Special Rapporteurs, Special Representatives, Independent Experts and Working Groups) are vital to international efforts to protect human rights defenders because of their independence and impartiality; their ability to act and speak out on violations against human rights defenders worldwide and undertake country visits. While the Special Representative for Human Rights Defenders has a particular role in this regard the mandates of other Special Procedures are also of relevance to human rights defenders. The EU’s actions in support of the Special Procedures will include:

- encouraging states to accept as a matter of principle requests for country visits by UN Special Procedures;

- promoting via EU Missions, the use of UN thematic mechanisms by local human rights communities and human rights defenders including, but not limited to facilitating the establishment of contacts with, and exchange information between, thematic mechanisms and human rights defenders;

- since the Special Procedures are unable to carry out their mandate in the absence of adequate resources, EU Member States will support the allocation of sufficient funds from the general budget to the Office of the High Commissioner for Human Rights

Practical supports for Human Rights Defenders including through Development Policy

13. Programmes of the European Community and Member States aimed at assisting in the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries are among a wide range of practical supports for assisting human rights defenders. These can include but are not necessarily limited to the development co-operation programmes of Member States. Practical supports can include the following:

- bi-lateral human rights and democratisation programmes of the European Community and Member States should take further account of the need to assist the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries by, inter alia, supporting human rights defenders through such activities as capacity building and public awareness campaigns;
- by encouraging and supporting the establishment, and work, of national bodies for the promotion and protection of human rights, established in accordance with the Paris Principles, including, National Human Rights Institutions, Ombudsman’s Offices and Human Rights Commissions.

- assisting in the establishment of networks of human rights defenders at an international level, including by facilitating meetings of human rights defenders;

- seeking to ensure that human rights defenders in third countries can access resources, including financial, from abroad;

- by ensuring that human rights educations programmes promote, inter alia, the UN Declaration on Human Rights Defenders.

Role of Council Working Parties

14. In accordance with its mandate COHOM will keep under review the implementation and follow-up to the Guidelines on Human Rights Defenders in close co-ordination and co-operation with other relevant Council Working Parties. This will include:

- promoting the integration of the issue of human rights defenders into relevant EU policies and actions;

- undertaking reviews of the implementation of the Guidelines at appropriate intervals;

- continuing to examine, as appropriate, further ways of co-operating with UN and other international and regional mechanisms in support of human rights defenders.

- Reporting to Council, via PSC and COREPER, as appropriate on an annual basis on progress made towards implementing the Guidelines.

DECLARATION ON HUMAN RIGHTS DEFENDERS ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON DECEMBER 9, 1998

General Assembly resolution 53/144

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,


Taking note also of Economic and Social Council resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption,
Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights, Resolution 217 A (III).

1. Adopts the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to the present resolution;

2. Invites Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of Human Rights: A Compilation of International Instruments.

85th plenary meeting - 9th December 1998

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights Resolution 2200 A (XXI), annex. as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfill, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfill this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,
Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1 - Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3 - Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4 - Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5 - For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 6 - Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7 - Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person’s rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:

   (a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

   (b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

   (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.
5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10 - No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11 - Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13 - Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

   (a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

   (b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.
3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15 - The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16 - Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17 - In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19 - Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20 - Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or nongovernmental organizations contrary to the provisions of the Charter of the United Nations.

Eight major human rights treaties within the UN System:

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
• International Covenant on Civil and Political Rights (ICCPR)
• Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
and
• Convention on the Rights of the Child (CROC)
• Convention on the Rights of All Migrant Workers and Members of their Families (CMW)
• Convention on Rights of Persons with Disabilities (CRPD)

1. **International Convention on the Elimination of All Forms of Racial Discrimination Elimination of All Forms of Racial Discrimination (CERD) 1965**

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was adopted by the General Assembly on 21 December 1965. It entered into force on 4 January 1969.

In Article 1(1) the term “racial discrimination” is defined broadly 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".

According to this definition, a positive intention to discriminate is not a necessary precondition to racial discrimination.

Parties to CERD undertake “to pursue...a policy of eliminating racial discrimination ... and promoting understanding among all races” (Article 2(1)). In particular, parties undertake to eradicate all practices of racial segregation and apartheid, to adopt immediate measures to eradicate incitement to, and acts of racial hatred and discrimination and to declare an offence punishable by law dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and acts of racist violence (Articles 3, 4).

In Article 5 States parties undertake “to prohibit and to eliminate racial discrimination ... and to guarantee the right of everyone, without distinction ... to equality before the law”. Article 5 contains a lengthy list of rights and freedoms in the enjoyment of which racial discrimination is to be eliminated and equality before the law guaranteed. These include civil and political, as well as economic, social and cultural rights.

The enumerated civil and political rights include:

• right to equal treatment before the organs administering justice;
• right to security of the person and to protection against violence;
• right to participate in elections and to take part in government and in the conduct of public affairs;
• freedom of movement;
• right to leave any country and to return to one's own country;
• right to nationality;
• right to marriage and choice of spouse;
• right to own property alone, as well as in association with others;
• right to inherit;
• freedom of thought, conscience and religion, and of opinion and expression, and
• freedom of peaceful assembly and association.

Prohibition of racial discrimination is guaranteed in the enjoyment of, amongst others, the following **economic, social and cultural rights**:

• right to work, to just and favourable conditions of work and to protection against unemployment;
• right to form and join trade unions;
• right to housing;
• right to public health, medical care and social security;
• right to education and training, and
• right to equal participation in cultural activities.

The Convention aims to achieve **not only de jure but also de facto racial equality**. Thus, **special measures** taken in relation to certain racial or ethnic groups are not considered racial discrimination, provided that:

• they do not lead to the maintenance of unequal or separate rights for different groups; and
• they are not continued after the objectives for which they were taken have been achieved: **Articles 1(4), 2(2)**.

The **Committee on the Elimination of Racial Discrimination** monitors compliance with the Convention. The Committee consists of 18 experts “of high moral standing and acknowledged impartiality”. The Committee is involved in monitoring compliance with the Convention in three ways:

a) States parties are required to submit **periodic reports** to the Committee on the legislative, judicial, administrative and other measures they have taken to give effect to the Convention.

b) The Committee may consider **communications by a State party** concerned that another State party is not giving effect to the provisions of the Convention. There is no requirement of specific recognition of the Committee’s competence to receive inter-State complaints.

c) The Committee may also receive **communications from individuals and groups of individuals** claiming violations of their rights under the Convention. This procedure requires a declaration by the relevant State party recognizing the competence of the Committee to receive individual petitions and is available only upon the exhaustion of local remedies.

In order to promote a better understanding of the provisions of CERD, the Committee also adopts **“general recommendations”**, comparable to the “general comments” of the Human Rights Committee in relation to the International Covenant on Civil and Political Rights. These do not address the situation in any specific State but draw on experience gained through examination of a large number of reports.
2. International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the General Assembly on 16 December 1966. It entered into force on 3 January 1976.

Part I (Article 1) contains a provision on self-determination, identical to that in the ICCPR.

Part II (Articles 2-5) contains general provisions relevant to the enjoyment of all the rights set out in ICESCR. Under Article 2(1) each State party undertakes to adopt legislative and other measures, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant. Under Article 2(2) States parties undertake to guarantee the exercise of the enunciated rights without discrimination. Article 3 contains an undertaking to ensure the equal right of men and women to the enjoyment of the economic, social and cultural rights enumerated in the Covenant.

Part III (Articles 6-15) contains a catalogue of economic, social and cultural rights. These include:

- right to work (Article 6)
- right to the enjoyment of just and favourable conditions of work (Article 7)
- right to join and form trade unions and to strike (Article 8)
- right to social security (Article 9)
- protection of the family, marriage, maternity protection and special measures of protection and assistance for children (Article 10)
- right to an adequate standard of living, including adequate food, clothing, and housing and the continuous improvement of living conditions (Article 11)
- right to the enjoyment of the highest attainable standard of mental and physical health (Article 12)
- right to education (Article 13)
- cultural rights, including rights to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to the protection of moral and material interests resulting from scientific or artistic productions (Article 15)

The Committee on Economic, Social and Cultural Rights consists of 18 independent experts. At present, the reporting procedure is the only international measure for monitoring implementation of ICESCR. States parties undertake to submit reports on measures adopted and progress made in achieving the observance of the rights recognized in the Covenant (Article 16(1)). Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations (Article 17(2)).

In order to promote a better understanding of the provisions of the ICESCR, the Committee also adopts “general comments”, comparable to those of the Human Rights Committee. These do not address the situation in any specific State but draw on experience gained through examination of a large number of reports.

The Committee on Economic, Cultural and Social Rights has in recent years also worked towards the adoption of an optional protocol to ICESCR.
3. International Covenant on Civil and Political Rights (ICCPR) 1966

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly on 16 December 1966 and entered into force on 23 March 1976.

Article 1(1) of the ICCPR provides:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Part II contains a number of general provisions. Article 2 requires States parties undertake to adopt legislative and other measures to give effect to the rights recognized in the Covenant and to ensure effective remedies for persons whose rights have been violated.

Article 3 contains an undertaking to ensure the equal right of men and women to the enjoyment of the civil and political rights enumerated in the Covenant.

Part III (Articles 6-27) contains a catalogue of civil and political rights. These include:

- right to life (Article 6)
- prohibition of torture and cruel, inhuman or degrading treatment or punishment (Article 7)
- prohibition of slavery, servitude and forced or compulsory labour (Article 8)
- right to liberty and security of the person; freedom from arbitrary arrest or detention (Article 9)
- right of persons deprived of their liberty to humane treatment (Article 10)
- prohibition of imprisonment for inability to fulfill a contractual obligation (Article 11)
- right to liberty of movement and freedom to choose residence (Article 12)
- guarantee of a fair trial (Article 14)
- prohibition of the retroactive application of criminal law (Article 15)
- right to recognition as a person before the law (Article 16)
- prohibition of interference with privacy, family and home (Article 17)
- freedom of thought, conscience and religion (Article 18)
- freedom of opinion and expression (Article 19)
- prohibition of propaganda for war and advocacy of national, racial or religious hatred (Article 20)
- right of peaceful assembly (Article 21)
- freedom of association, including the right to form and join trade unions (Article 22)
- rights relating to the family and marriage (Article 23)
- right of every child to measures of protection (Article 24)
- right of the citizen to take part in the conduct of public affairs, to vote and be elected, and to have access to public service (Article 25)
- equality of all persons before the law and equal protection of the law (Article 26)
Article 27 provides that members of ethnic, religious or linguistic minorities shall not be denied the right, in community with the members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. In a General Comment on Article 27, the Human Rights Committee has stated that:

... positive measures by States may ... be necessary to protect the identity of a minority and the rights of its members. In their reports, States Parties should indicate the measures they have adopted to ensure the full protection of these rights. ... Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of the minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with other members of the group.

The General Comment recognizes the significance of Article 27 in addressing the particular rights and interests of indigenous peoples:

[T]he Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, specially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

In accordance with Article 28 a Human Rights Committee was established to supervise implementation of the ICCPR. The Committee consists of 18 members of high moral character and recognized competence in the field of human rights. The ICCPR establishes two supervisory procedures:

a) States parties are required to submit periodic reports to the Human Rights Committee on measures adopted to give effect to the rights recognized in the Covenant and on progress made in the enjoyment of those rights. At the end of the consideration of a report, the Committee formulates “concluding observations” addressed to the reporting State; and

b) States parties can recognize the competence of the Human Rights Committee to receive communications from States parties claiming that other States parties are is not fulfilling their obligations under the ICCPR. Unlike the equivalent procedure under CERD, the competence of the Committee to receive inter-State complaints does not result automatically upon ratification or accession.

The Human Rights Committee has also developed a practice of adopting “general comments”. These address specific articles of the ICCPR or particular issues arising under it. They reflect the experience gained by the Committee in considering a significant number of reports, representing various regions of the world and different political, legal and social systems.

The competence of the Human Rights Committee to receive individual communications is recognized by States becoming a party to the First Optional Protocol (1OP) to the ICCPR. The 1OP was adopted by the General Assembly on 16 December 1966. It entered into force on 23 March 1976.

By becoming a party to the 1OP, a State party to the ICCPR recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set
forth in the Covenant. The Committee cannot receive communications concerning States parties to the ICCPR not parties to the 1OP (Article 1(2)).

Individuals claiming that their rights in the Covenant have been violated may submit a written communication to the Committee once "all available domestic remedies" have been exhausted (Article 2).


In Article 1 the term “discrimination against women” is defined 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 definition of discrimination against women is broad. It prohibits unintentional as well as intentional discrimination ("purpose" or "effect"). The spheres in which discrimination is prohibited are public, as well as private ("political, economic, social, cultural, civil or any other field").

Parties to CEDAW condemn discrimination against women in all its forms and agree “to pursue...a policy of eliminating discrimination against women" (Article 2). They undertake to ensure the existence of appropriate constitutional and legal structures to guarantee equality, to provide remedies for public and private acts of discrimination against women and to abolish laws and practices which constitute discrimination against women (Article 2(a)-(g)).

In its General Recommendation No. 12 on Violence Against Women, the Committee on the Elimination of Discrimination against Women noted that States parties are required under Articles 2, 5, 11, 12 and 16 to take appropriate steps to protect women against any kind of violence within the family, at the work place, or in any other area of social life.

Pursuant to Article 4(1), special measures aimed at accelerating de facto equality between men and women do not constitute discrimination as defined in the Convention. When the objectives of equality of opportunity or treatment are achieved, such measures are to be discontinued.

Other provisions of CEDAW impose obligations on States Parties to undertake measures:

- with a view to eliminating prejudices and practices based on the inferiority or superiority of either of the sexes or on stereotyped roles (Article 5)
- to suppress traffic in women and exploitation of prostitution of women (Article 6) and
- to eliminate discrimination against women in political and public life (Article 7); in education (Article 10); in employment (Article 11); in health care (Article 12); in other areas of economic and social life (Article 13); and in matters relating to marriage and family relations (Article 16).

Pursuant to Article 15, States Parties undertaking to accord to women equality with men before the law. Particular areas of the law in which women, especially married women, have traditionally experienced most discrimination are specified, including the recognition of legal capacity, conclusion of contracts,
administration of property, freedom of movement and choice of residence and domicile. States parties must also grant women equal rights to acquire, change or retain their nationality (Article 9).

CEDAW pays particular attention to the special rights and needs of women in rural areas. By virtue of Article 14, State parties are required to take into account the problems of rural women and the special role they play in the economic survival of their families. States parties are obliged to take measures to eliminate discrimination against women in rural areas to ensure that they participate in, and benefit from, rural development. These measures shall ensure their rights to, amongst other things:

- participate in the elaboration and implementation of development planning at all levels
- have access to health care services and social security, education and training, credit, marketing facilities and appropriate technology,
- equal treatment in land reform and land resettlement schemes and
- adequate living conditions.

Pursuant to Article 18, States parties are obliged to submit periodic reports on measures adopted to give effect to the provisions of CEDAW and on progress made. These should indicate factors and difficulties affecting the degree of fulfillment of obligations (Article 18 (2)).

The Committee on the Elimination of Discrimination Against Women has also adopted a number of general recommendations, observations and suggestions, in accordance with Article 22.

5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted by the General Assembly on 10 December 1984 and entered into force on 26 June 1987.

In Article 1 "torture" is defined as:

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.

Article 2(1) imposes an obligation on States parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in territories under their jurisdiction. Neither exceptional circumstances nor an order from a superior officer or a public authority may be invoked as a justification for torture (Article 2(2), (3)).

States parties undertake to ensure that all acts of torture, attempts to commit torture and complicity or participation in torture are offences under their criminal law, and are punishable by appropriate penalties (Article 4). In certain circumstances, States parties are required to take measures to establish their jurisdiction over such offences (Articles 5-7).
Each State party is obliged to ensure that individuals alleging they have been subjected to torture in territories under its jurisdiction have the right to complain to its competent authorities (Article 13). Victims of acts of torture are entitled to redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of torture, his or her dependants are entitled to compensation (Article 14).

Pursuant to Article 16, States parties undertake to prevent in territories under their jurisdiction “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1.” The procedural guarantee in Article 13 entitles individuals alleging to have been subjected to such acts in territories under the jurisdiction of a State Party to complain to its competent authorities. However, CAT does not impose an obligation on States parties to ensure that such acts are offences under criminal law. Neither does CAT address the question of compensation for such individuals and their dependants.

In accordance with Article 17(1) a Committee against Torture consisting of 10 experts “of high moral standing and recognized competence” has been established:

   a) States parties are required to report every four years on measures taken to give effect to their undertakings under CAT;

   b) the Committee may also make such general comments as it considers appropriate (Article 19);

   c) the Committee may also consider inter-State and, subject to a declaration recognizing its competence having been made by the relevant State Party, as well as the exhaustion of available domestic remedies, individual communications (Articles 21, 22).

Disputes between States parties concerning the interpretation or the application of CAT can also be referred to the International Court of Justice (Article 29(1)).

Finally, CAT establishes a confidential procedure for the examination of reliable information containing “well-founded indications that torture is being systematically practiced in the territory of a State party” (Article 20). The powers of the Committee in connection with this procedure do not extend to acts of cruel, inhuman or degrading treatment or punishment.


The Convention on the Rights of the Child (CROC) entered into force on 2 September 1990. CROC recognizes that in addition to the full range of human rights recognized in international law, children are also entitled to a range of rights relating to their special needs and interests as children.

Part I (Articles 1-41) enumerates a number of general obligations, as well as a specific catalogue of the rights of children. In Article 1 the term “child” is defined as “every human being below the age of eighteen unless, under the law applicable to the child, majority is attained earlier.”

Article 2 imposes upon States parties the obligation to respect and ensure the rights in CROC to each child within their jurisdiction without discrimination of any kind.

Article 3 (1) specifies a general standard against which national laws and practices are to be evaluated. It provides that in all actions concerning children, “the best interests of the child shall be a primary consideration.”
Pursuant to Article 5, States parties undertake to respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community, to provide "in a manner consistent with the evolving capacities of the child" direction and guidance in the exercise by the child of his or her rights.

CROC addresses the civil and political, as well as economic, social, cultural and humanitarian rights of the child. These include:

- right to life and development (Article 6)
- right to protection from violence and neglect (Article 19)
- right to the highest attainable standard of health (Article 24)
- right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (Article 27)
- right to education in a manner directed to the development of respect for the child’s cultural identity (Articles 28-29).

Of particular significance is CROC’s recognition of the rights of children belonging to ethnic, religious and linguistic minorities and indigenous children, in community with other members of their group, to the enjoyment of their culture, the practice of their religion and the use of their language (Article 30). Related to this is the obligation in Article 20, in the consideration of options for a child temporarily or permanently deprived of his or her family environment, to pay regard to the desirability of continuity in the child’s upbringing and to the child’s ethnic, religious and linguistic background.

Article 40 enumerates the rights of children in connection with alleged infringements of the penal law and requires the availability of a variety of dispositions.

Article 43 makes provision for the establishment of a Committee on the Rights of the Child. This Committee consists of 10 experts of high moral standing and recognised competence, who serve in their personal capacity. States parties undertake to report two years after the Convention’s entry into force, and thereafter every five years, on “measures ... adopted which give effect to the rights recognized ... and on ... progress made on the enjoyment of those rights”.

Article 45 lists various measures to foster effective implementation of CROC and to encourage international cooperation in the field of children’s rights. At present, CROC contains no provision for inter-State or individual complaints.


Preamble

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,
Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105), Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant workers and members of their families frequently-find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,
Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

**Part I: Scope and Definitions**

**Article 1**

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

**Article 2**

For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

   (a) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;

   (b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

   (c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;

   (d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;

   (e) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;
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;

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;

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.

Article 3

The present Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

(b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;

(e) Students and trainees;

(f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

Article 4

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.
**Article 5**

For the purposes of the present Convention, migrant workers and members of their families:

(a) are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

**Article 6**

For the purposes of the present Convention:

(a) the term "State of origin" means the State of which the person concerned is a national;

(b) the term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) the term "State of transit," means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

**Part II: Non-discrimination with Respect to Rights**

**Article 7**

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

**Part III: Human Rights of All Migrant Workers and Members of their Families**

**Article 8**

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.

2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

**Article 9**

The right to life of migrant workers and members of their families shall be protected by law.

**Article 10**

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
Article 11

1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

4. For the purpose of the present article the term "forced or compulsory labour" shall not include:

   (b) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

   (c) Any service exacted in cases of emergency or clamity threatening the life or well-being of the community;

   (d) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

Article 12

Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.

Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.

Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary.
(a) For respect of the rights or reputation of others;
(b) For the protection of the national security of the States concerned or of public order (ordre public) or of public health or morals;
(c) For the purpose of preventing any propaganda for war;
(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Article 14

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

Article 15

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.
2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.
3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.
4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.
5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.
7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:
(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;

(b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

**Article 17**

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.
7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

Article 18

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:
   
   (a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;
   
   (b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;
   
   (c) To be tried without undue delay;
   
   (d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;
   
   (e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
   
   (f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
   
   (g) Not to be compelled to testify against themselves or to confess guilt.
   
   (h) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

4. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

5. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction
shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.

6. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

**Article 19**

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

**Article 20**

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

**Article 21**

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

**Article 22**

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated.
The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

8. In case of expulsion of a migrant worker or a member of his or her family, the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

**Article 23**

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

**Article 24**

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

**Article 25**

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

   (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
(b) Other terms of employment, that is to say, minimum age of employment, restriction on work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

**Article 26**

1. States Parties recognize the right of migrant workers and members of their families:

   (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

   (b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

   (c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

**Article 27**

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

**Article 28**

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

**Article 29**

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.
Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

Article 31

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin. 2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

Article 32

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

Article 33

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

   (a) Their rights arising out of the present Convention;

   (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State. 2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.

2. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

Article 34

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documentated or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in part VI of the present Convention.
Part IV: Other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation

Article 36
Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

Article 37
Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

Article 38
1. States of employment shall make every effort to authorize migrant workers and members of the families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

Article 39
1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 40
1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Article 41
1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.
2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

**Article 42**

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

**Article 43**

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:
   
   (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;
   
   (b) Access to vocational guidance and placement services;
   
   (c) Access to vocational training and retraining facilities and institutions;
   
   (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;
   
   (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;
   
   (f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;
   
   (g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

**Article 44**

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.
2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

**Article 45**

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

   (a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

   (b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

   (c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

   (d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

**Article 46**

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

   (a) Upon departure from the State of origin or State of habitual residence;

   (b) Upon initial admission to the State of employment;

   (c) Upon final departure from the State of employment;

   (d) Upon final return to the State of origin or State of habitual residence.

**Article 47**

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other
State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.

2. States concerned shall take appropriate measures to facilitate such transfers.

**Article 48**

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:
   
   (a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;
   
   (b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.

2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

**Article 49**

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

**Article 50**

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.

2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.

3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

**Article 51**

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the
mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

   (a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

   (b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

   (a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

   (b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

Article 53

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.

2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

Article 54

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:
(a) Protection against dismissal;
(b) Unemployment benefits;
(c) Access to public work schemes intended to combat unemployment;
(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

Article 55

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

Article 56

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment, except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.

2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.

3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

Part V: Provisions Applicable to Particular Categories of Migrant Workers and Members of their Families

Article 57

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part m and, except as modified below, the rights set forth in part IV.

Article 58

1. Frontier workers, as defined in article 2, paragraph 2 (a), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

Article 59

1. Seasonal workers, as defined in article 2, paragraph 2 (b), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the
territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

Article 60

Itinerant workers, as defined in article 2, paragraph 2 (A), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

Article 61

1. Project-tied workers, as defined in article 2, paragraph 2 (A) of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs 1 (b) and (c), article 43, paragraph 1 (d), as it pertains to social housing schemes, article 45, paragraph 1 (b), and articles 52 to 55.

2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.

4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

Article 62

1. Specified-employment workers as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs 1 (b) and (c), article 43, paragraph 1 (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).

2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

Article 63

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.
2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

Part VI: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

Article 64

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

Article 65

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

   (a) The formulation and implementation of policies regarding such migration;

   (b) An exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;

   (c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;

   (d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

Article 66

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

   (a) Public services or bodies of the State in which such operations take place;

   (b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

   (c) A body established by virtue of a bilateral or multilateral agreement.
2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

**Article 67**

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

**Article 68**

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:
   a. Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
   b. Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;
   c. Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

**Article 69**

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.
Article 70

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

Article 71

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.

2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

Part VII: Application of the Convention

Article 72

1. For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as “the Committee”);

a. The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2. Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;

b. Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

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

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

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

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 73

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

   a. Within one year after the entry into force of the Convention for the State Party concerned;

   b. Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.
Article 74

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

Article 75

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.
Article 76

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

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

i. If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
ii. If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

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

Article 77

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

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

3. The Committee shall not consider any communication from an individual under the present article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under the present article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

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

**Article 78**

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

**Part VIII: General provisions**

**Article 79**

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

**Article 80**

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

**Article 81**

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

   (a) The law or practice of a State Party; or

   (b) Any bilateral or multilateral treaty in force for the State Party concerned.
2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

**Article 82**

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

**Article 83**

Each State Party to the present Convention undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

**Article 84**

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

**Part IX: Final provisions**

**Article 85**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

**Article 86**

1. The present Convention shall be open for signature by all States. It is subject to ratification.

2. The present Convention shall be open to accession by any State.

3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

**Article 87**

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.
Article 88

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

Article 89

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.

3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 90

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

Article 91

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

**Article 92**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.

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

**Article 93**

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

In witness whereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

**8. Convention on the Rights of Persons with Disabilities**

**Preamble:** The States Parties to the present Convention,

(a) Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of
Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(f) Recognizing the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(g) Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

(h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) Recognizing further the diversity of persons with disabilities,

(j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(l) Recognizing the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(m) Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(n) Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,
Recognizing that women and girls with disabilities are often at greater risk, both within and outside the of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

**Article 1 - Purpose**

The purpose of the present Convention is 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.

Persons with disabilities include 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.
Article 2 - Definitions

For the purposes of the present Convention:

"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

"Language" includes spoken and signed languages and other forms of non-spoken languages;

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a 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;

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Article 3 - General principles

The principles of the present Convention shall be:

(a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) Non-discrimination;

(c) Full and effective participation and inclusion in society;

(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) Equality of opportunity;

(f) Accessibility;

(g) Equality between men and women;

(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4 - General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.
5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

**Article 5 - Equality and non-discrimination**

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

**Article 6 - Women with disabilities**

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

**Article 7 - Children with disabilities**

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

**Article 8 - Awareness-raising**

1. States Parties undertake to adopt immediate, effective and appropriate measures:

   (a) 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;

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

   (c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:
(a) 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 the workplace and the labour market;

(c) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(d) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(e) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

**Article 9 - Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
   (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
   (b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:
   (a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
   (b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
   (c) Provide training for stakeholders on accessibility issues facing persons with disabilities;
   (d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
   (e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
   (f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
(g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

**Article 10 - Right to life**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

**Article 11 - Situations of risk and humanitarian emergencies**

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 risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

**Article 12 - Equal recognition before the law**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall 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 circumstances, 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.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

**Article 13 - Access to justice**

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, 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.

**Article 14 - Liberty and security of the person**

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
   
   (a) Enjoy the right to liberty and security of person;

   (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

**Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment**

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

**Article 16 - Freedom from exploitation, violence and abuse**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

**Article 17 - Protecting the integrity of the person**

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

**Article 18 - Liberty of movement and nationality**

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:
   
   (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
   
   (b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
   
   (c) Are free to leave any country, including their own;
   
   (d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

**Article 19 - Living independently and being included in the community**

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

   (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

   (b) Persons with disabilities have access to a range of in-, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

   (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.
Article 20 Personal mobility

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

Article 21 - Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) Recognizing and promoting the use of sign languages.

Article 22 - Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.
Article 23 - Respect for and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

   (a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

   (b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

   (c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

Article 24 - Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

   (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

   (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

   (c) Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
   
   (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
   
   (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
   
   (c) Reasonable accommodation of the individual's requirements is provided;
   
   (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
   
   (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
   
   (a) Facilitating 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;
   
   (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
   
   (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

6. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

**Article 25 - Health**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:
(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

Article 26 - Habilitation and rehabilitation

1. 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 habilitation 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:

   (a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

   (b) 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.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. 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.

Article 27 - Work and employment

2. States Parties recognize the right of persons with disabilities to work, on an equal basis with 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. 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:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) 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 for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

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

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

(e) 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;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. 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 forced or compulsory labour.

Article 28 - Adequate standard of living and social protection

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

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) 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;

(c) 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;

(d) To ensure access by persons with disabilities to public housing programmes;

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Article 29 - Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) 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;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

   i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

   ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.
Article 30 - Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

   (a) Enjoy access to cultural materials in accessible formats;

   (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

   (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures 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.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall 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.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

   (a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

   (b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

   (c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

   (d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

   (e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

Article 31 - Statistics and data collection

2. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:
(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

Article 32 - International cooperation

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

Article 33 - National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

3. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

4. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.
Article 34 - Committee on the Rights of Persons with Disabilities

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 35 - Reports by States Parties

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4.3 of the present Convention.

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

Article 36 - Consideration of reports

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.

4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.
5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

Article 37 - Cooperation between States Parties and the Committee

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.

2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

Article 38 - Relationship of the Committee with other bodies

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

(a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

Article 39 - Report of the Committee

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

Article 40 - Conference of States Parties

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.

2. No later than six months after the entry into force of the present Convention, the Conference of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties.
Article 41 - Depositary
The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 42 - Signature
The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

Article 43 - Consent to be bound
The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

Article 44 - Regional integration organizations
1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by this Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.
2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.
3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, any instrument deposited by a regional integration organization shall not be counted.
4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 45 - Entry into force
1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.
2. For each State or regional integration organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 46 - Reservations
1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.
2. Reservations may be withdrawn at any time.
Article 47 - Amendments

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article 48 - Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 49 - Accessible format

The text of the present Convention shall be made available in accessible formats.

Article 50 - Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

The Universal Declaration of Human Rights

On 10 December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights, the full text of which appears in the following pages. Following this historic act, the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."
PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

- Everyone has the right to life, liberty and security of person.

Article 4.

- No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
Article 5.

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

- Everyone has the right to recognition everywhere as a person before the law.

Article 7.

- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

- No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.

- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(a) Everyone has the right to own property alone as well as in association with others.

(b) No one shall be arbitrarily deprived of his property.

Article 18.

- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.
Article 22.

- Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

- Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
Chapter 8
The Protection of Human Rights Act, 1993

An Act to provide for the constitution of a National Human Rights Commission. State Human Rights Commission in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto.

Be it enacted by the parliament in the forty-fourth year of the Republic of India as follows-

Chapter I
PRELIMINARY

1. Short title, extent and commencement

(3) This Act may be called the Protection of Human Rights Act, 1993.

(4) It extends to the whole of India.

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State

(5) It shall be deemed to have come into force on the 28th day of September, 1993.

2. Definitions

(1) In this Act, unless the context otherwise requires-

(a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;

(b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;

(c) "Commission" means the National Human Rights Commission under section 3;

(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

(e) "Human Rights Court" means the Human Rights Court specified under section 30;

(f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966;

(g) "Member" means a Member of the Commission or of the State Commission, as the case may be, and includes the Chairperson;

(h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992;
(i) "National Commission for the Scheduled Castes and Scheduled Tribes" means the National Commission for the Scheduled Castes and Scheduled Tribes referred to in article 338 of the Constitution;

(j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990;

(k) "Notification" means a notification published in the official Gazette

(l) "Prescribed" means prescribed by rules made under this Act;

(m) "Public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code;

(n) "State Commission" means a State Human Rights Commission constituted under section 21.

(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

Chapter II
THE NATIONAL HUMAN RIGHTS COMMISSION

3. Constitution of a National Human Rights Commission

(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of:

(a) a Chairperson who has been a Chief Justice of the Supreme Court;

(b) one Member who is or has been, a Judge of the Supreme Court;

(c) one Member who is, or has been, the Chief Justice of a High Court;

(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

4. Appointment of Chairperson and other Members

1. The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal.
Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of

(a) The Prime Minister — Chairperson
(b) Speaker of the House of the People — Member
(c) Minister in-charge of the Ministry of Home Affairs in the Government of India — Member
(d) Leader of the Opposition in the House of the People — Member
(e) Leader of the Opposition in the Council of States — Member
(f) Deputy Chairman of the Council of States — Member

2. Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India

3. No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

5. Removal of a Member of the Commission

(1) Subject to the provisions of sub-section (2), the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be

(a) is adjudged an insolvent; or
(b) engages during his term of office in any paid employment outside the duties of his office: or
(c) is unfit to continue in office by reason of infirmity of mind or body; or
(d) is of unsound mind and stands so declared by a competent court; or
(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

6. Term of office of Members

1. A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

2. A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years. Provided that no Member shall hold office after he has attained the age of seventy years.

3. On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.
7. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorize one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Members

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed. Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

9. Vacancies, etc., not to invalidate the proceedings of the Commission.

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission

(1) The Commission shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be audited by the Secretary-General or any other officer of the Commission duly authorized by the Chairperson in this behalf.

11. Officers and other staff of the Commission

1. The Central Government shall make available to the Commission:

   (a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and

   (b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

2. Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

3. The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.
Chapter III
FUNCTIONS AND POWERS OF THE COMMISSION

12. Functions of the Commission

The Commission shall perform all or any of the following functions, namely:

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of
   (i) violation of human rights or abetment thereof or
   (ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court
    with the approval of such court;

(c) visit, under intimation to the State Government, any jail or any other institution under the control of the
    State Government, where persons are detained or lodged for purposes of treatment, reformation or
    protection to study the living conditions of the inmates and make recommendations thereon;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the
    protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend
    appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their
    effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the
    safeguards available for the protection of these rights through publications, the media, seminars and
    other available means;

(i) encourage the efforts of non-governmental organizations and institutions working in the field of human
    rights;

(j) such other functions as it may consider necessary for the protection of human rights.

13. Powers relating to inquiries

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court
    trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters,
    namely: summoning and enforcing the attendance of witnesses and examine them on oath;

   (a) discovery and production of any document;

   (b) receiving evidence on affidavits;

   (c) requisitioning any public record or copy thereof from any court or office;

   (d) issuing commissions for the examination of witnesses or documents;

   (e) any other matter which may be prescribed.
(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

14. Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission.

- summon and enforce the attendance of any person and examine him;
- require the discovery and production of any document; and
- requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report subbed to it under sub-section (4) and for this purpose the Commission may make
such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

15. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement —

(a) is made in reply to the question which he is required by the Commission to answer; or
(b) is relevant to the subject matter of the inquiry.

16. Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry, the Commission—

(a) considers it necessary to inquire into the conduct of any person; or
(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

Chapter IV

PROCEDURE

17. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may—

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it;

Provided that—

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

18. Steps after inquiry

The Commission may take any of the following steps upon the completion of an inquiry held under this Act namely:

a. where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority...
the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

1. approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

2. recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

3. subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;

4. the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

5. the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

19. Procedure with respect to armed forces

1. Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:

   (a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;

   (b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

2. The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

3. The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

4. The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

20. Annual and special reports of the Commission

(3) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(4) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.
Chapter V

STATE HUMAN RIGHTS COMMISSIONS

21. Constitution of State Human Rights Commissions

(1) A State Government may constitute a body to be known as the ... (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2) The State Commission shall consist of
   (a) a Chairperson who has been a Chief Justice of a High Court;
   (b) one Member who is, or has been, a Judge of a High Court;
   (c) one Member who is, or has been, a district judge in that State;
   (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been substituted.

22. Appointment of Chairperson and other Members of State Commission

1. The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of

(a) the Chief Minister — Chairperson
(b) Speaker of the Legislative Assembly — Member
(c) Minister in-charge of the Department of Home, in that State — Member
(d) Leader of the Opposition in the Legislative Assembly — Member
Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.

Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

2. No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee.

23. Removal of a Member of the State Commission

(3) Subject to the provisions of sub-section (2), the Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

(4) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be –

(a) is adjudged an insolvent; OR

(b) engages during his term of office in any paid employment outside the duties of his office; OR

(c) is unfit to continue in office by reason of infirmity of mind or body; OR

(d) is of unsound mind and stands so declared by a competent court; OR

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

24. Term of office of Members of the State Commission

(a) (1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier;

(5) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years;

(b) Provided that no Member shall hold office after he has attained the age of seventy years.

(6) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

25. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.
(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

26. Terms and conditions of service of Members of the State Commission

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed by the State Government.

Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

27. Officers and other staff of the State Commission

(1) The State Government shall make available to the Commission

(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and

(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

28. Annual and special reports of State Commission

(1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the corrections, if any.

29. Application of certain provisions relating to National Human Rights Commission to State Commissions

The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely :-

(a) references to "Commission" shall be construed as references to "State Commission";

(b) in section 10, in sub-section (3), for the word "Secretary General", the word "Secretary" shall be substituted;

(c) in section 12, clause (f) shall be omitted;

(d) in section 17, in clause (i), the words "Central Government or any" shall be omitted;
Chapter VI
HUMAN RIGHTS COURTS

30. For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.

Provided that nothing in this section shall apply if

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted, for such offences under any other law for the time being in force.

31. Special Public Prosecutor

For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Chapter VII
FINANCE, ACCOUNTS AND AUDIT

32. Grants by the Central Government

(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

33. Grants by the State Government

1. The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilized for the purposes of this Act.

2. The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

34. Accounts and Audit

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
(2) The Accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded only to the Central Government by the Commission and the Central Government shall cause the audit report to be laid as soon as may be after it is received before each House of Parliament.

35. Accounts and Audit of State Commission

1. The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

2. The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

3. The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

4. The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

Chapter VIII
Miscellaneous

36. Matters not subject to jurisdiction of the Commission

1. The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

2. The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.
37. Constitution of special investigation teams

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

38. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report paper or proceedings.

39. Members and officers to be public servants

Every Member of the Commission, State Commission and every officer appointed or authorized by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

40. Power of Central Government to make rules

1. The Central Government may, by notification, make rules to carry out the provisions of this Act.

2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:

   (a) the salaries and allowances and other terms and conditions of service of the Members under section 8;

   (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11;

   (c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of section 13;

   (d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and

   (e) any other matter which has to be, or may be, prescribed.

3. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session.
or in two or more successive sessions, and if, before the expiry of the session immediately following the
session or the successive sessions aforesaid, both Houses agree in making any modification in the rule
or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such
modified form or be of no effect, as the case may be; so however, that any such modification or
annulment shall be without prejudice to the validity of anything previously done under that rule.

41. Power of State Government to make rules

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all
or any of the following matters, namely:

(a) the salaries and allowances and other terms and conditions of service of the members under
section 26;

(b) the conditions subject to which other administrative, technical and scientific staff may be
appointed by the State Commission and the salaries and allowances of officers and other staff
under sub-section (3) of section 27;

(c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of
section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is
made, before each House of the State Legislature where it consists of two Houses, or where such
Legislature consists of one House, before that House.

42. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may by order
published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as
appear to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of the period of two years from the date of
commencement of this Act

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each house
of Parliament.

43. Repeal and Savings

(1) The Protection of Human Rights Ordinance, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be
deemed to have been done or taken under the corresponding provisions of this Act.
Chapter 9
NATIONAL HUMAN RIGHTS INSTITUTIONS

Principles relating to the Status of National Institutions (The Paris Principles)
Adopted by General Assembly resolution 48/134 of 20 December 1993 -Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:
   a. To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
      (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
      (ii) Any situation of violation of human rights which it decides to take up;
      (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
      (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
   b. To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
   c. To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
   d. To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
   e. To cooperate with the United Nations and any organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
   f. To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
   g. To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.
Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
   a. Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
   b. Trends in philosophical or religious thought;
   c. Universities and qualified experts;
   d. Parliament;
   e. Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

   a. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
   b. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
   c. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
   d. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
   e. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
   f. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
   g. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.
Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

a. Seeking an amicable settlement through conciliation or within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

b. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

c. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

d. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.
1. Competence and responsibilities

1.1 Establishment of national institutions: An NHRI must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence.

1.2 Human rights mandate: All NRHIs should be mandated with specific functions to both protect and promote human rights, such as those listed in the Paris Principles.

1.3 Encouraging ratification or accession to international human rights instruments: The Sub-Committee interprets that the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.

1.4 Interaction with the International Human Rights System: The Sub-Committee would like to highlight the importance for NRHIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NRHIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NRHIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NRHIs.

1.5 Cooperation with other human rights institutions: NRHIs should closely cooperate and share information with statutory institutions established also for the promotion and protection of human rights, for example at the state level or on thematic issues, as well as other organizations, such as NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.

1.6 Recommendations by NRHIs

NHRI recommendations contained in annual, special or thematic human rights reports should normally be discussed within a reasonable amount of time, not to exceed six months, by the relevant government ministries as well as the competent parliamentary committees. These discussions should be held especially in order to determine the necessary follow up action, as appropriate in any given situation. NRHIs as part of their mandate to promote and protect human rights should ensure follow up action to recommendations contained in their reports.

2. Composition and guarantees of independence and pluralism

2.1 Ensuring pluralism: The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasizes the importance of National Institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications.

The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:

a) Members of the governing body represent different segments of society as referred to in the Paris Principles;

b) Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;

c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or

d) Pluralism through diverse staff representing the different societal groups within the society.
The Sub-Committee further emphasizes that the principle of pluralism includes ensuring the meaningful participation of women in the National Institution.

2.2 Selection and appointment of the governing body: The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasizes the following factors:

a) A transparent process
b) Broad consultation throughout the selection and appointment process
c) Advertising vacancies broadly
d) Maximizing the number of potential candidates from a wide range of societal groups
e) Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.

2.3 Government representatives on National Institutions: The Sub-Committee understands that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions do not have decision making or voting capacity.

2.4 Staffing by secondment:
In order to guarantee the independence of the NHRI, the Sub-Committee notes, as a matter of good practice, the following:

a) Senior level posts should not be filled with secondees;
b) The number of seconded should not exceed 25% and never be more than 50% of the total workforce of the NHRI.

2.5 Immunity: It is strongly recommended that provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI.

2.6 Adequate Funding: Provision of adequate funding by the state should, as a minimum include:

a) the allocation of funds for adequate accommodation, at least its head office;
b) salaries and benefits awarded to its staff comparable to public service salaries and conditions;
c) remuneration of Commissioners (where appropriate); and
d) the establishment of communications systems including telephone and internet.

Adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the organization's operations and the fulfillment of their mandate.

Funding from external sources, such as from development partners, should not compose the core funding of the NHRI as it is the responsibility of the state to ensure the NHRI's minimum activity budget in order to allow it to operate towards fulfilling its mandate. Financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control.

2.7 Staff of an NHRI: As a principle, NHRI should be empowered to appoint their own staff.

2.8 Full-time Members:
Members of the NHRI should include full-time remunerated members to:

a) Ensure the independence of the NHRI free from actual or perceived conflict of interests;
b) Ensure a stable mandate for the members;
c) Ensure the ongoing and effective fulfillment of the mandate of the NHRI.

2.9 Guarantee of tenure for members of governing bodies
Provisions for the dismissal of members of governing bodies in conformity with the Paris Principles should be included in the enabling laws for NHRI.
a) The dismissal or forced resignation of any member may result in a special review of the accreditation status of the NHRI;
b) Dismissal should be made in strict conformity with all the substantive and procedural requirements as prescribed by law;
c) Dismissal should not be allowed based on solely the discretion of appointing authorities.

2.10 Administrative regulation

The classification of an NHRI as a public body has important implications for the regulation of its accountability, funding, and reporting arrangements.

In cases where the administration and expenditure of public funds by an NHRI is regulated by the Government, such regulation must not compromise the NHRI's ability to perform its role independently and effectively. For this reason, it is important that the relationship between the Government and the NHRI be clearly defined.

3. Methods of operation

4. Additional principles concerning the status of commissions with quasi-jurisdictional competence

5. Additional issues

5.1 NHRI during the situation of a coup d'état or a state of emergency: As a principle, the Sub-Committee expects that, in the situation of a coup d'état or a state of emergency, an NHRI will conduct itself with a heightened level of vigilance and independence in the exercise of their mandate.

5.2 Limitation of power of National Institutions due to national security: The Sub-Committee notes that the scope of the mandate of many National Institutions is restricted for national security reasons. While this tendency is not inherently contrary to the Paris Principles, it is noted that consideration must be given to ensuring that such restriction is not unreasonably or arbitrarily applied and is exercised under due process.

5.3 Functioning of an NHRI in a volatile context: The Sub-Committee acknowledges that the context in which an NHRI operates may be so volatile that the NHRI cannot reasonably be expected to be in full conformity with all the provisions of the Paris Principles. When formulating its recommendation on the accreditation status in such cases, the Sub-Committee will give due consideration to factors such as: political instability; conflict or unrest; lack of state infrastructure, including excessive dependency on donor funding; and the NHRI's execution of its mandate in practice.

6. Procedural issues

6.1 Application processes: With the growing interest in establishing National Institutions, and the introduction of the five-yearly re-accreditation process, the volume of applications to be considered by the Sub-Committee has increased dramatically. In the interest of ensuring an efficient and effective accreditation process, the Sub-Committee emphasizes the following requirements:

a) Deadlines for applications will be strictly enforced;
b) Where the deadline for a re-accreditation application is not met, the Sub-Committee will recommend that the accreditation status of the National Institution be suspended until the application is considered at the next meeting;
c) The Sub-Committee will make assessments on the basis of the documentation provided. Incomplete applications may affect the recommendation on the accreditation status of the National Institution;
d) Applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents;
e) Documents must be submitted in both hard copy and electronically;
f) All application related documentation should be sent to the ICC Secretariat at OHCHR at the following address: National Institutions Unit, OHCHR, CH-1211 Geneva 10, Switzerland and by email to: nationalinstitutions@ohchr.org; and
g) It is the responsibility of the applicant to ensue that correspondence and application materials have been received by the ICC Secretariat.

6.2 Deferral of re-accreditation applications: The Sub-Committee will apply the following policy on the deferral of re-accreditation applications:

a) In the event that an institution seeks a deferral of consideration of its re-accreditation application, a decision to grant the deferral can be taken only if written justifications for the deferral have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional;

b) Re-accreditation applications may be deferred for a maximum of one year, after this time the status of the NHRI will lapse; and

c) For NRHIs whose re-accreditation applications are received after the due date or who have failed to submit their applications, their accreditation status will be suspended. This suspension can be in place for up to one year during which time the NHRI may submit its application for re-accreditation. If the application is not submitted during this time, the accreditation status will lapse:

6.3 NHRIs under review: Pursuant to Article 16 of the ICC Statute, the ICC Chair or the Sub-Committee may initiate a review of a NHRI’s accreditation status if it appears that the circumstances of that NHRI may have changed in any way which affects its compliance with the Paris Principles. Such a review is triggered by an exceptional set of circumstances considered to be temporary in nature. As a consequence, the regular re-accreditation process will be deferred until the review is completed.

In its consideration of NHRIs under review, the Sub-Committee will apply the following process:

a) a NHRI can be under review for a maximum of one and a half years only, during which time it may bring information to the Sub-Committee to demonstrate that, in the areas under review, the NHRI is fully compliant with the Paris Principles;

b) During the period of review, all privileges associated with the existing accreditation status of the NHRI will remain in place;

c) If at the end of the period of review the concerns of the Sub-Committee have not been satisfied, then the accreditation status of the NHRI will lapse.

6.4 Suspension of Accreditation: The Sub-Committee notes that the status of suspension means that the accreditation status of the Commission is temporarily suspended until information is brought before the Sub-Committee to demonstrate that, in the areas under review, the Commission is fully compliant with the Paris Principles. An NHRI with a suspended A status is not entitled to the benefits of an A status accreditation, including voting in the ICC and participation rights before the Human Rights Council, until the suspension is lifted or the accreditation status of the NHRI is changed.

6.5 Submission of information: Submissions will only be accepted if they are in paper or electronic format. The Statement of Compliance with the Paris Principles is the core component of the application. Original materials should be submitted to support or substantiate assertions made in this Statement so that the assertions can be validated and confirmed by the Sub-Committee. No assertion will be accepted without material to support it.

Further, where an application follows a previous recommendation of the Sub-Committee, the application should directly address the comments made and should not be submitted unless all concerns can be addressed.

6.6 More than one national institution in a State: The Sub-Committee acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution.

In very exceptional circumstances, should more than one national institution seek accreditation by the ICC, it should be noted that Article 39 of the ICC Statute, formerly Article 3(g) of the ICC Rules of Procedure provides that the State shall have one speaking right, one voting right and, if elected, only one ICC Bureau member. In those circumstances the conditions precedent for consideration of the application by the Sub-Committee are the following:

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1) Written consent of the State Government (which itself must be a member of the United Nations).

2) Written agreement between all concerned national human rights institutions on the rights and duties as an ICC member including the exercise of the one voting and the one speaking right. This agreement shall also include arrangements for participation in the international human rights system, including the Human Rights Council and the Treaty Bodies.

The Sub-Committee stresses the above requirements are mandatory for the application to be considered.

6.7 NHRI annual report

The Sub-Committee finds it difficult to review the status of an NHRI in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo review by the Sub-Committee. The Sub-Committee stresses the importance for an NHRI to prepare and publicize an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

Adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) by email after the SCA meeting of March 2009.

Geneva, June 2009
ANNEX 1

Rules of Procedure for the ICC Sub-Committee on Accreditation*

1. Mandate

In accordance with the Statute of the Association International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (Article 1.1), the Sub-Committee on Accreditation has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to the ICC on the compliance of applicants with the Paris Principles.

2. Composition of the Sub-Committee

2.1. For the purpose of ensuring a fair balance of regional representation on the Sub-Committee on Accreditation, it shall be composed of one (1) ICC NHRI accredited ‘Status A’ for each of the four (4) regional groups as established by the ICC Statute (Section 7), namely Africa, Americas, Asia-Pacific, and Europe.

2.2. Members are appointed by regional groups for a term of three (3) years renewable.

2.3. The Chair of the Sub-Committee on Accreditation shall be selected, for a term of one (1) year, renewable a maximum of two (2) times, on a rotational basis from within the Sub-Committee so that each region assumes office in turn; in the event that a member of the Sub-Committee whose turn it is to be named Chair declines the office, the Chair shall pass to the region next in line or to another NHRI in that region.

2.4. The Office of the United Nations High Commissioner for Human Rights (OHCHR) shall be a permanent observer to the Committee and in its capacity as Secretariat of the ICC, support the Sub-Committee’s work, serve as a focal point on all communications and maintain records as appropriate on behalf of the ICC Chairperson.

3. Functions

3.1. Each regional group representative to the Sub-Committee on Accreditation shall facilitate the application process for NHRIIs in the region.

3.2. The regional grouping representative shall supply NHRIIs from their region with all relevant information pertaining to the accreditation process, including a description of the process, requirements and timelines.

3.3. In accordance with the ICC Statute (Section 5), any NHRI seeking membership or seeking re-accreditation shall apply to the ICC Chairperson, supplying all required supporting documents through the ICC Secretariat.

3.4. These applications and support documents shall be provided to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee. Subject to rule 3.5 of these Rules, an Institution undergoing re-accreditation that does not comply with this deadline will be suspended until such time as the required documentation is submitted and reviewed by the Sub-Committee.

3.5. Applications and documents submitted after this deadline will only be examined during the subsequent meeting of the Sub-Committee, unless the situation warrants otherwise, as determined by the ICC Chairperson. In the event that the delay involves an Institution seeking re-accreditation, a decision to not suspend the Institution can be taken only if written justifications for the delay have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional.

3.6. Any civil society organization wishing to provide relevant information pertaining to any accreditation matter before the Sub-Committee shall provide such information in writing to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee.

3.7. The ICC Chairperson, with support from the ICC Secretariat, will ensure that copies of the applications and supporting documentation are provided to each member of the Sub-Committee on Accreditation.

3.8. The ICC Chairperson, with support from the ICC Secretariat, will also provide a summary of particular issues for consideration by the Sub-Committee,
4. Procedures

4.1. The Sub-Committee on Accreditation will meet after the General Meeting of the ICC in order to consider any accreditation matter under Section 5 of the Statute.

4.2. The Chairperson of the Sub-Committee on Accreditation may invite any person or institution to participate in the work of the Sub-Committee as an observer.

4.3. Additional meetings of the Sub-Committee may be convened by the Chair with the agreement of the ICC Chairperson and members of the Sub-Committee on Accreditation.

4.4 When, in the view of the Sub-Committee, the accreditation of a particular applicant Institution cannot be determined fairly or reasonably without further examination of an issue for which no policy has been articulated, it shall refer that matter directly to the ICC Bureau for determination and guidance. An ultimate decision as to accreditation can only be taken once the ICC Bureau provides that decision or guidance.

4.5 The Sub-Committee may, pursuant to Article 11.2 of the ICC Statute, consult with, the applicant Institution, as it deems necessary, to come to a recommendation. The Sub-Committee shall, also pursuant to and for the purposes set out in Article 11.2, consult with the applicant Institution when an adverse decision is to be recommended. These consultations may be in the form deemed most appropriate by the Sub-Committee but must be supported by written documentation; in particular the substance of verbal consultations must be recorded and be available for review. Since the ICC Bureau makes the final decision on membership, an Institution undergoing a review retains its membership status during the consultation process.

5. Accreditation Classifications

In accordance with the Paris Principles and the ICC Statute, the different classifications for accreditation used by the Sub-Committee are:

A: Voting Member - Fully in compliance with each of the Paris Principles;

B: Non-Voting Member - Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination;

C: No Status - Not in compliance with the Paris Principles.

6. Report and Recommendations

6.1 Pursuant to Article 12 of the ICC Statute, where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:

(i) The recommendation of the Sub-Committee shall first be forwarded to the applicant;

(ii) An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt;

(iii) Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;

(iv) Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;

(v) If at least four members of the ICC Bureau coming from not less than two regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;

(vi) The decision of the ICC Bureau on accreditation is final.
6.2 General Observations are to be developed by the Sub Committee and approved by the ICC Bureau.

6.3 The General Observations, as interpretive tools of the Paris Principles, may be used to:

(a) Instruct Institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;

(b) Persuade domestic governments to address or remedy issues relating to an Institution's compliance with the standards articulated in the General Observations;

(c) Guide the Sub-Committee on Accreditation in its determination of new accreditation applications, reaccreditation applications or special reviews:

   i. If an Institution falls substantially short of the standards articulated in the General Observations, it would be open for the Sub-Committee to find that it was not Paris Principle compliant.

   ii. If the Sub-Committee has noted concern about an Institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an Institution to address those concerns in future applications. If the Sub-Committee is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the Sub-Committee to interpret such lack of progress as non-compliance with the Paris Principles.

* Adopted by the members of the International Coordinating Committee at its 15th session, held on 14 September 2004, Seoul, Republic of Korea. Amended by the members of the ICC at its 20th session, held on 15 April 2008, Geneva
1. Introduction

The United Nations High Commissioner for Human Rights has emphasised the global identification of National Human Rights Institutions (NHRIs) as essential partners in the task of protecting and promoting human rights at the national and regional levels. In order to preserve this international recognition and trust, NHRIs must continue to be credible, legitimate, relevant and effective. This can be achieved by ensuring that the Paris Principles, the principal source of normative standards for National Institutions, guide the work of NHRIs.

NHRIs may become a member of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC) when they are assessed by the ICC in compliance with the Paris Principles. The assessment of NHRIs is carried out in accordance with article 3(c) of the Rules of Procedure of ICC. The Sub-Committee on Accreditation (the Sub-Committee) has been mandated to consider and review applications for accreditation and to make recommendations to the ICC members with regard to the compliance of applicant institutions with the Paris Principles. Applications are received and processed by the National Institutions Unit of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat.

2. How to make an application

In accordance with the ICC Rules of Procedure, the following documentation is required to make an application for accreditation to the ICC:

2.1. Copy of the legislation or other instrument by which the NHRI is established and empowered (statute, and/or constitutional provision, and/or presidential decree);
2.2. Outline of the organizational structure of the organization, including details of staff and annual budget;
2.3. A copy of the most recent annual report or equivalent document;
2.4. A detailed statement showing that the organization complies with the Paris Principles using the framework document provided by the ICC Secretariat as a guide; and
2.5. Any other relevant documents to support the application.

Where possible, applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents. Documentation should be submitted in both hard copy and electronic format to the ICC Secretariat at OHCHR at the following address: National Institutions Unit, OHCHR, CH-1211 Geneva 10, Switzerland and by email to: nationalinstitutions@ohchr.org.

3. General Observations of the ICC Sub-Committee on Accreditation

During the 18th Session of the ICC held in October 2006, the Sub-Committee made General Observations in relation to accreditation. These General Observations have been formulated on common or important interpretative issues and are intended to be guiding observations for members on the application process or for the implementation of the Paris Principles. General Observations should be seen as guidelines for applicants in relation to what the Sub-Committee will consider during their review of accreditation applications.

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1 Additional General Observations were made by the ICC Sub-Committee to the ICC at its 19th Session in March 2007. These have not yet been adopted by the ICC and are currently with ICC members for comment. As a result, they have not been included in this document as guidelines for applicants.
3.1 General Observations adopted by the ICC in October 2006:

1. Application processes: With the growing interest in establishing National Institutions, and the introduction of the five-yearly re-accreditation process, the volume of applications to be considered by the Sub-Committee has increased dramatically. In the interest of ensuring an efficient and effective accreditation process, the Sub-Committee emphasises the following requirements:

   a. Deadlines for applications will be strictly enforced; „wi
   b. Where the deadline for a re-accreditation application is not met, the Sub-Committee will recommend that the accreditation status of the National Institution be suspended until the application is considered at the next meeting;
   c. The Sub-Committee will make assessments on the basis of the documentation provided. Incomplete applications may affect the recommendation on the accreditation status of the National Institution;
   d. Applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents;
   e. Documents must be submitted in both hard copy and electronically;
   f. All application related documentation should be sent to the ICC Secretariat at OHCHR at the following address: National Institutions Unit, OHCHR, CH-1211 Geneva 10, Switzerland and by email to: nationalinstitutions@ohchr.org; and
   g. It is the responsibility of the applicant to ensure that correspondence and application materials have been received by the ICC Secretariat.

2. Limitation of power of National Institutions due to national security: The Sub-Committee notes that the scope of the mandate of many National Institutions is restricted for national security reasons. While this tendency is not inherently contrary to the Paris Principles, it is noted that consideration must be given to ensuring that such restriction is not unreasonably or arbitrarily applied and is exercised under due process.

3. Ensuring pluralism: The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasises the importance of National Institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications.

   The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:

   a) Members of the governing body represent different segments of society as referred to in the Paris Principles;
   b) Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;
   c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
   d) Pluralism through diverse staff representing the different societal groups within the society.

   The Sub-Committee further emphasises that the principle of pluralism includes ensuring the meaningful participation of women in the National Institution.

4. Selection and appointment of the governing body: The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasises the following factors:

   a) A transparent process
   b) Broad consultation throughout the selection and appointment process
   c) Advertising vacancies broadly
   d) Maximising the number of potential candidates from a wide range of societal groups
e) Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.

5. **Encouraging ratification or accession to international human rights instruments**: The Sub-Committee interprets that the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.

6. **Government representatives on National Institutions**: The Sub-Committee understands that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions do not have decision making or voting capacity.
The following document should be completed as part of the accreditation application should be completed using references to primary sources, in order to provide the Sub-Committee with essential background information on the NHRI. It is essential that the NHRI substantiate each statement made in this report by reference to its enabling instruments) or official reports.

STATEMENT OF COMPLIANCE WITH THE PARIS PRINCIPLES
OF THE [NAME OF NATIONAL INSTITUTION]
-{Date}-

I. CHARACTER OF THE NHRI

1. Establishment
Discuss the instruments that establish the NHRI. Please explain:
• When and by what enabling legislation the NHRI was established;
• What the legislative status is of the NHRI, i.e. whether it has been established by law or if it is entrenched in the Constitution;
• If there is any other mechanism that gives the NHRI its legitimacy;
• The geographic jurisdiction of the NHRI.

2. Independence
Discuss the mechanisms that guarantee the independence of the NHRI. Please explain:
• The nature of the Institution's accountability i.e. indicate the line of accountability;
• Whether or not the NHRI receives instruction from the government;
• By what means conflicts of interest are avoided;
• Whether members incur legal liability or not for actions taken in their official capacity.

3. Appointments processes and organisational infrastructure

3.1. Composition of the NHRI's membership and appointment processes

The Paris Principles state that: In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Please explain:
• The composition of the NHRI membership, i.e. what positions are created by the enacting law and what positions have actually been filled and are in operation (Please include heads and deputy heads of the organization);
• The appointment mechanisms for membership to the NHRI and whether these procedures are applied in practice;
• The terms of office of members;
• Whether the members receive adequate remuneration;
• The procedures for dismissal and/or resignation and how they operate in practice.
• If there is an advisory body in addition to the membership, and if so please set out the membership requirements of this body.

Applicants may wish to provide information relating to the following General Observation of the ICC Sub-Committee:

**Selection and appointment of the governing body:** The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Subcommittee emphasises the following factors:

a) A transparent process
b) Broad consultation throughout the selection and appointment process
c) Advertising vacancies broadly
d) Maximising the number of potential candidates from a wide range of societal groups

Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.

### 3.2. Pluralism

The Paris Principles state that: The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought,

(c) Universities and qualified experts;

(d) Parliament, and

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

The ICC has adopted the following General Observation on Pluralism as formulated by the ICC Sub-Committee on Accreditation:

**Ensuring pluralism:** The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasises the importance of National Institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications.

The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:

- **e) Members of the governing body represent different segments of society as referred to in the Paris Principles;**
- **f) Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;**
- **g) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums;**
h) Pluralism through diverse staff representing the different societal groups within the society. The Sub-Committee further emphasises that the principle of pluralism includes ensuring the meaningful participation of women in the National Institution. Please explain how your organisation meets the requirement of Pluralism.

3.3. Organisational infrastructure

The Paris Principles state that: The national institution shall have an infrastructure which is suited to the conduct of its activities, in particular adequate funding which should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its-independence.

3.3.1 Organisational Structure

Please provide:

- An outline of the organisational structure of the NHRI and explain whether the Institution has an infrastructure which allows it to function according to its mandate;
- A list of the staff of the NHRI or, if provided in another document, refer to the organisational chart illustrating the staffing structure of the NHRI;
- Any information relating to the budget of the NHRI, its accounts and financial records including whether or not the NHRI has the control and management of its own budget, i.e. if the NHRI is financially independent from the government in how its budget is spent.

3.3.2 Staffing

Please explain: if the NHRI has the authority to hire staff and if there are any limitations on this authority; whether the NHRI is adequately resourced and staffed; and whether the staff reflect the principle of pluralism.

3.3.3 Regular meetings

The Paris Principles state that: Within the framework of its operation, the national institution shall meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened.

Please state the frequency and composition of the NHRI meetings in practice.

4. Relations with Civil Society and human rights institutions

4.1. Formal Relationships with Civil Society

The Paris Principles state that: Within the framework of its operation, the national institution shall, in view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.
Please explain:
• Whether the enabling legislation formalises relationships between the NHRI and civil society, and if yes, describe the mechanism;
• If the Institution cooperates with the full range of civil society, i.e. this includes NGOs, trade unions, professional organisations, individuals or organisations espousing trends in philosophical or religious thought, universities and qualified experts, parliament and government departments.

4.2. Regular Consultations

The Paris Principles state that: Within the framework of its operation, the national institution shall maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions).

Please explain whether the NHRI maintains consultation with the above mentioned human rights bodies in the country, and the content of these consultations.

4.3. Cooperation with the United Nations, regional and national institutions

The Paris Principles state that: A national institution shall have the responsibility to cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights. Furthermore, a national institution shall have the responsibility to contribute to the reports which States are required to submit to UN bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence.

Please explain:
• Your legislative basis for this function and give an account of such reports the NHRI contributed to;
• The Institution's history of co-operation with regional and international bodies.

5. Accessibility

5.1. Procedures and mechanisms to ensure accessibility

The Paris Principles state that: A national institution shall have the responsibility to publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Please discuss the procedures and mechanisms of the NHRI to ensure accessibility to the broader population and in particular, to people who are exposed to human rights violations or non-fulfilment of their rights, i.e. women, ethnic, linguistic, religious or other minorities, non-nationals and persons with disability, as well as the poor.
5.2. Procedures and mechanisms for addressing public opinion

The Paris Principles state that: Within the framework of its operation, the national institution shall address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

Please explain: how the NHRI addresses public opinion; whether it makes publications or services available in several languages; and if it makes interpretation available.

5.3. Working Groups

The Paris Principles state that: Within the framework of its operation, the national institution shall establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions.

Please state the working groups set up by the NHRI, if any, and where the NHRI has established local or regional offices, state their location and whether the offices have access for persons with disabilities.

IV. COMPETENCE AND RESPONSIBILITIES

6. General Jurisdiction and Functions

6.1. Mandate to promote and protect human rights.

The Paris Principles state that: A national institution shall be vested with competence to promote and protect human rights. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text.

Please set out and explain the legislative mandate of the Institution and which rights the Institution addresses: i.e. civil, political, social, economic and cultural.

6.2. The mandate in practice

The Paris Principles state that: Within the framework of its operation, the national institution shall: freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner.

Please explain how the NHRI is able to exercise its mandate in practice.

6.3. Functions regarding national legislation

The Paris Principles state that: A national institution shall have the responsibility to promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.

Please set out your legislative basis for this function and discuss how the NHRI carries out this responsibility.

6.4. Encouraging ratification and implementation on international standards

The Paris Principles state that: A national institution shall have the responsibility to encourage ratification of international human rights instruments to which the State is a party, and to ensure their effective implementation.
Please set out your legislative basis for this function and discuss how the NHRI carries out this responsibility indicating specific examples.

6.5. Programmes for teaching and research

The Paris Principles state that: A national institution shall have the responsibility to assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles.

Please set out your legislative basis for this function and discuss the NHRI's initiatives in such programmes.

6.6. General powers

The Paris Principles state that: A national institution shall, inter alia, have the responsibility to submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.

(ii) Any situation of violation of human rights which it decides to take up.

(iii) The preparation at reports on the national situation with regard to human rights in general, and on more specific matters.

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where-necessary, expressing an opinion on the positions and reactions of the Government.

6.6.1. Please set out your legislative basis for this function and discuss how the NHRI carries out this responsibility.

6.6.2. Please set out your legislative basis for this function and discuss how the NHRI is active in monitoring domestic-human rights situations.

6.6.3. Please set out your legislative basis for this function and give an account of what reports have been prepared.

6.6.4. Please set out your legislative basis for this function and discuss the NHRI's activity in this area and explain whether the Institution monitors government compliance with their advice and recommendations.
6.7. Power to gather information

The Paris Principles state that: Within the framework of its operation, the national institution shall: hear any person and obtain any information and any documents necessary for assessing situations falling within its competence.

Please discuss the NHRI's competence in this area. (Please complete this section if the NHRI does not have quasi-jurisdictional competence as set out in section 7 below.)

7. Quasi-jurisdictional competence (optional)

The Paris Principles state that: A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, and associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, their functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

If the NHRI has a mechanism for Individual Complaints Handling and Powers of Investigation, please provide an overview of the mechanism.
The Asia Pacific Forum of National Human Rights Institutions (APF) is the leading regional human rights organisation in the Asia Pacific.

Established in 1996, we are a member-based organisation that supports the establishment and strengthening of independent national human rights institutions in the region.

The APF provides practical support to its members to assist them in their role of promoting, monitoring and protecting human rights.

We also provide specialist advice to governments and civil society groups.

Our members

From a membership of four in 1996, the APF continues to grow. Today the APF is made up of 17 member institutions, drawn from all parts of the Asia Pacific.

The APF has three membership categories: full members, candidate members and associate members.

To be admitted as a full member, a national human rights institution must comply with international standards set out in the United Nations 'Paris Principles'.

Decisions about membership are made by the Forum Council, the APF's governing body.

Any national human rights institution in the Asia Pacific region can apply to join the APF.

Find out more: www.asiapacificforum.net/members
Services and activities

The APF offers a wide range of services and support to its members, regional governments and civil society organisations.

- **Advice**: Specialist advice is provided to governments and civil society on the steps involved in establishing independent national human rights institutions, including compliance with the "Paris Principles", operational issues, resourcing and "best practice" models.

- **Training**: Tailored training programs strengthen the capacity of APF members to carry out their core functions, including investigating and resolving complaints, reviewing laws and policies and delivering human rights education. The APF’s current training programs include training on the international human rights system, conducting national inquiries, torture prevention, NHRI and human rights defenders, and media and communication skills.

- **Workshops**: Thematic workshops bring together APF members, governments and NGOs to discuss emerging human rights issues and develop national and regional approaches.

- **Networks**: Professional and issue-based networks support APF members to share information and resources, develop partnerships and establish "best practice" standards.

- **Staff exchanges**: Institution-to-institution staff exchanges help develop the individual skills of staff, strengthen links between national institutions and implement specific activities of the APF and its members.

- **Annual Meeting**: The largest annual human rights gathering in the region, the APF Annual Meeting is our major decision-making forum and a catalyst for developing new programs and initiatives.

- **International participation**: We advocate policy as well as coordinate the participation and collaboration of member institutions in the United Nations, the International Coordinating Committee of National Institutions and other international and regional mechanisms.

Find out more: www.asiapacificforum.net/services
Advisory Council of Jurists

The Advisory Council of Jurists (ACJ) prepares independent legal advice for the APF on crucial human rights issues facing the region.

Comprised of eminent jurists from across the Asia Pacific, the ACJ has developed a substantial body of regional jurisprudence on the interpretation and application of international human rights standards.

Since 1998 it has made recommendations to APF member institutions on a broad range of human rights issues, including the death penalty, torture, trafficking, anti-terrorism, education and the environment.

Find out more: www.asiapacificforum.net/acj

Governance

The APF is an independent, non-profit legal entity, with a ‘board of directors’ – the Forum Council – that reflects the APF’s broad regional diversity.

The Forum Council is the APF’s decision-making body. It is made up of representatives from each full member institution.

The Forum Council sets the APF’s policies and priorities, decides membership applications and exercises all the powers set out in the APF constitution. It is led by a Chairperson and two Deputy Chairpersons. These positions are rotated annually between APF members.

The APF Secretariat implements the decisions of the Forum Council and manages the day-to-day operations of the APF.

Partners

The APF has a broad range of stakeholders including governments, civil society and international organisations such as the United Nations.

Funding

The APF is supported by contributions from member institutions and grants from governments, the United Nations, foundations and other non-government organisations.

To ensure its continued independence and impartiality, the APF aims to maintain a diversified base of support for its activities.
Stay informed

The APF Bulletin provides a monthly round-up of human rights news and views from our member institutions around the Asia Pacific. Subscribe online at: www.asiapacificforum.net.

Contact us

Street address: Level 8, Piccadilly Tower
133 Castlereagh Street
Sydney, NSW 2000
AUSTRALIA.

Mailing address: GPO Box 5218
Sydney, NSW 2001
AUSTRALIA.

Phone: +61 2 9284 9846
Fax: +61 2 9284 9825
Email: apf@asiapacificforum.net
Web: www.asiapacificforum.net

The Asia Pacific Forum of National Human Rights Institutions

The Asian NGOs Network on National Human Rights Institutions (ANNI)

Compiled and Printed by
Asian Forum for Human Rights and Development (FORUM-ASIA)
Editors:
Emerlynne Gil
Pia Alexandra Muzaffar Dawson

Cover and Layout:
Cody Skihrier

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Asian Forum for Human Rights and Development (FORUM-ASIA)
12th Floor, Room 12-01, Times Square Building
Sukhumvit Road, Between Soi 12-14,
Khlong Toei, Khlong Toei
Bangkok, 10110 Thailand
Foreword

The Asian NGOs Network on National Human Rights Institutions (ANNI) was established in December 2006, during the 1st Regional Consultation and Cooperation between National Human Rights Institutions (NHRIs) and NGOs in Asia, which was organized by the Asian Forum for Human Rights and Development (FORUM-ASIA), in Bangkok, Thailand. The idea was to establish a network of Asian NGOs and human rights defenders engaged with NHRIs with the primary goal of helping establish and develop accountable, independent, effective, and transparent NHRIs in Asia. National human rights institutions are viewed as primary protection mechanisms for human rights defenders working on the ground. In the report of the former UN Special Representative of the Secretary General on the situation of human rights defenders (E/CN.4/2006/95, par. 76), Ms. Hina Jilani observed that NHRIs, such as commissions and ombudsmen, can play a critical role in the protection of human rights defenders.

Since its establishment, the ANNI has immersed itself in pursuing its goal. Aside from this book, it has produced two other publications: The Performance of National Human Rights Institutions in Asia 2006: Cooperation with NGOs and Relationship with Governments (published in 2006) and The 2008 ANNI Report: An Assessment of the Performance and Establishment of National Human Rights Institutions in Asia (published in 2008). It is also the first network of NGOs that consistently engages with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICQ) by submitting parallel reports to the ICC Sub-Committee on Accreditation. In 2008, the ANNI submitted four (4) NGO Parallel Reports to the ICC Sub-Committee on Accreditation for the accreditation review of the Human Rights Commission of Malaysia (SUHAKAM), the National Human Rights Commission of Mongolia, National Human Rights Commission of Nepal and the National Human Rights Commission of Thailand. It can be said that these reports prompted more discussion and engagement between the NHRIs and civil society organizations in these countries. More significantly, the report on the SUHAKAM contributed towards the decision of the ICC Sub-Committee on Accreditation to recommend that the SUHAKAM implement measures to improve its performance within a period of one year, otherwise it will be downgraded to “B” status under the ICC.

In 2009, the ANNI submitted two (2) NGO Parallel Reports to the ICC Sub-Committee on Accreditation for the Special Review of SUHAKAM and for the Re-Accreditation Review of the Human Rights Commission of Sri Lanka. These two reports contributed towards the decision of the ICC Sub-Committee on Accreditation to defer the decision on SUHAKAM and to maintain the “Ti” status of the Human Rights Commission of Sri Lanka. In the case of SUHAKAM, this has effectively prompted the Malaysian government to table an amendment bill in the Parliament in its efforts to make SUHAKAM comply with the Paris Principles.

In the past two years, we have seen the growing role of NHRIs at the regional and international levels. NHRIs now hold independent participation status at the UN Human Rights Council. There are also now vigorous efforts to secure the independent status of NHRIs at the UN Commission on the Status of Women (CSW) that would be analogous to the rights they hold at the Human Rights Council. This growing role of NHRIs reinforces the importance and significance of the work of the ANNI in monitoring NHRIs and holding them accountable under the Paris Principles. If NHRIs are to have a space in these bodies to speak, then it should be assured that they are indeed an independent voice from the government and fully comply with the Paris Principles. Only then NHRIs will contribute positively and constructively for the advancement of human rights in these intergovernmental bodies.
From the 2008 ANNI Report, members of the ANNI saw three major trends emerging from the national reports. First, it was observed that there is a general decline of the independence of NHRIs in Asia. There are three reasons for this lack of autonomy. It may be that the enabling law of the national institution has created a structure that it is either wholly or partially dependent on one of the branches of government. The appointment process of commissioners also allows governments to exercise some influence on the choice of commissioners and that many of these NHRIs do not have fiscal autonomy, relying more on budgets from their governments to run their operations. Second, many NHRIs in the region focus more on the promotion, instead of the protection aspect of their mandate. Third, there is a general lack of cooperation between NHRIs and NGOs in the region.

In November 2008, the ANNI held its 1st Training Workshop in Bangkok, Thailand, where these three main trends were taken into consideration as the members discussed the focus of the 2009 ANNI Report. With these three main trends in mind, the members of the ANNI developed new objectives and indicators for the 2009 ANNI Report.

The 2009 ANNI Report now closely examines three main areas. On the issue pertaining to the independence of NHRIs, the members focused on the selection process of new members of NHRIs in their particular countries. With respect to the effectiveness of NHRIs, the national reports looked specifically on the complaints handling systems of NHRIs. Finally, the national reports took a closer look as well at the consultation and cooperation between NGOs and NHRIs.

The 2009 ANNI Report covers the period from 01 January 2008 to 30 December 2008, with additions of critical developments occurring during the first quarter of 2009. Writers of the national reports took care to ensure that there is no duplication in terms of the content of the national report in the 2008 ANNI Report.

FORUM-ASIA, as convenor of the ANNI, extends its deepest appreciation to all ANNI members, writers, and editors who have worked hard to produce the national reports. We also would like to thank the NHRIs in Asia, and all the other friends and partners of the ANNI, who made this publication possible through their input and guidance. We especially would like to express our deepest gratitude to Professor Nohyun Kwak, Mr. Ciaran Maolain, and Professor Brian Burdekin, for sharing with the ANNI their expertise as the members formulated guidelines and indicators for the drafting of the reports. Also, without the financial support of Ford Foundation, Sweden International Development Agency and Hivos, ANNI’s work and this publication would not be made possible.

Again, with this report, we hope to express our deep and sincere commitment to work with NHRIs in building a community devoted to the promotion and protection of human rights in Asia.

Yap Swee Seng
Executive Director FORUM-ASIA
India: Losing its long established standards?
Prepared by People's Watch-India

1. Introduction

The study of the performance of the NHRC in India gains great importance due to the fact that it is one of the most 'prestigious' of the NHRIs in the world's largest democracy - India. The Indian democracy boasts the existence of the following national-level NHRIs:

i. the National Human Rights Commission (NHRC) of India created under the Protection of Human Rights Act 1993;

ii. the National Commission for Women (NCW) created under the National Commission for Women Act 1990;

iii. the National Commission for Minorities (NCM) created under the National Commission for Minorities Act 1992;

iv. the National Commission for Scheduled Castes (NCSC) established under Art 341 and 342 of the Indian Constitution and formally bifurcated from the National Commission for Scheduled Castes and Scheduled Tribes in the year 2004;

v. the National Commission for Scheduled Tribes established under Art 341 and 342 of the Indian Constitution and formally bifurcated from the National Commission for Scheduled Castes and Scheduled Tribes in the year 2004;

vi. the National Commission for Protection of Child Rights (NCPCR) created under the Commission for Protection of Child Rights Act 2005;

vii. the National Commission for Safai Karamcharis (NCSK) created under the national Commission for Safai Karamcharis 1993;

viii. the Central Information Commission (QQ created under the Right to Information Act of 2005; and the Chief Commissioner for Persons with Disabilities

ix. (CCPWD) created under the Persons with Disabilities Act 1995-

At the state level, there are 18 State Human Rights Commissions, 34 State Womens Commissions, 15 State Minorities Commissions, 24 State Information Commissions, 12 state headquarter offices of the National Commission for Scheduled Castes, 35 State commissioners for Persons With Disabilities, 6 state headquarter offices of the National Commission for Scheduled Tribes and one state commission for protection of Child Rights. Thus, there are almost 145 statutory human rights institutions at the state level in India.

Since all these institutions at both the national and state levels contribute to the promotion and protection of human rights in India, national, regional and global human rights community should start addressing and monitoring these institutions' performance, capacity-building, and representations at the UN and other international fora, instead of focusing solely on the

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2 Contact person: Mr. Henri Tiphagne, Executive Director, People's Watch-India and Member of the National Core Group of NGOs of the NHRC in India. This report was done with the assistance of Ms. Esther Miller, Mr. Rod Sanjabi (interns and volunteers of People's Watch) and Mr. Subash Mohapatra of FFDA.
NHRC It is also time for the NHRC and the Office of the High Commissioner for Human Rights in Geneva to ensure that its cooperation and collaboration with all these statutory institutions is institutionalized in the years to come. All Treaty Monitoring bodies and Special Procedure Holders who deal with India should also address these institutions for assistance in their work.

II. Independence of the NHRC:

The Paris Principles lay out two primary qualities to be satisfied in the composition of human rights institutions — independence and pluralism. The NHRC of India fails on both counts. The Protection of Human Rights Act of 1993 stipulates that of the five members of the Commission, three (including the Chairperson) must be current or former members of the judiciary; meanwhile, the only requirement for the other two seats on the Commission is that they be filled by "persons having knowledge of, or practical experience in, matters relating to human rights". (PHRA, §3(d)). These two seats are currently filled by Shri Satyabrata Pal and Shri P.C Sharma, retired members of the Indian Foreign Service (IFS) and the Indian Police Service-(IPS) respectively. For the whole duration of the NHRC's existence, these positions have been filled by members who, like Pal and Sharma, have records of government or government related employment.

Former employees of the 'National Government' are unlikely to be 'independent' from government interests. In the case of Mr. P C Sharma, a former Director of the CBI and lifelong employee of the IPS, independence cannot be expected, regardless of the individual's best intentions; since the respondents in most cases brought before the NHRC are also members of the IPS or their own subordinates. Apparent biasness is thus unavoidable.

The NHRC's record does little to dispel this notion. Though the Paris Principles are clear that NHRIs must function independently of government, the composition of India's NHRC does not even pay lip service to this requirement. When Mr. P.CSharma was first appointed to the NHRC in 2004, his appointment was challenged in the Supreme Court. The Supreme Court, however, upheld his appointment in 2005. Nonetheless, the record shows that there was widespread dissatisfaction with the placement of an EPS employee on the NHRC—even the sitting chair of the Commission was opposed to Sharma's appointment. Sharma's appointment had also paved the way for many other SHRC in appointing retired IPS officers as Members of the SHRCs in the country - something that some of the former Special Rapporteurs who happened to be IPS officers resented when their names were proposed for such positions.

Since the Indian judiciary is overwhelmingly male, the three seats on the NHRC allocated to judges are likely to be filled by males in the foreseeable future (as is currently the case). The two other members are also male. The Paris Principles state that a "pluralist representation of the social forces (of civilian society)" is a necessity for an institution such as the NHRC, and lays out guidelines through which such a pluralist representation can be achieved. The absence of any female members in the NHRC, in addition to the monopoly on membership held by retired government officials, highlight that the NHRC does not take this call for pluralist representation seriously.

In 23 March 2009, Ms. Navaneethan Pillai, the UN High Commissioner for Human Rights, remarked on the absence of women from the NHRC. Two days later, Mr. P.C. Sharma was reappointed for a second term after his first appointment itself had been challenged in the Supreme Court. Despite Ms. Pillai's criticism—among that of many others—and despite the considerable controversy surrounding Sharma's initial appointment in 2004, the NHRC's appointment committee did not recommend a female replacement for Mr. P.C. Sharma. The practical
effect of this action is that there will not be a single female member on the NHRC for at least the next five years. In this instance the NHRC missed an excellent opportunity to strengthen its authority by following the recommendations outlined in the Paris Principles—similarly, the NHRC had missed a chance to include a member from the SCs, STs, and OBCs of India.

Does the NHRC truly believe that the "pluralist representation of social forces (of civilian society)" is satisfied by having one member from the IPS and the other from the TPS? The NHRC's neglect of the pluralism requirement of the Paris Principles is a breach of not only the Principles themselves, but of existing statute in India. The Protection of Human Rights Act requires that the NHRC "study treaties and other international instrument on human rights and make recommendations for their effective implementation". There is no doubt that the Paris Principles envision more pluralism than is currently present on the NHRC. But there is no record of the NHRC making any recommendation with regard to the issue of its membership. This characteristic failure of the NHRC is a breach of its statutory obligations under the PHRA. Indeed, the Paris Principles call for the incorporation of agents of civil society in the NHRC. No such appointments have been made since the NHRC's inception in 1993 while the Indian human rights movement has long existed in this country due to the sacrifices of many human rights defenders from civil society, many of whom are also women of caliber.

Clearly, the NHRC must be a more transparent body in order to speak with authority on the state of human rights in India in general and in specific cases. The appointment process is completely opaque; the public has no way of knowing how or why Mr. P.C. Sharma was appointed and re-appointed, and whom his competitors were for the role. If the NHRC wishes to be taken seriously, this appointment process must be brought into daylight.

**NHRC without a Chairperson for the next two years?**

The NHRC is presently without a Chairperson and functions only with an Acting Chairperson. The NHRC was rendered headless after its chairman, Justice S. Rajendra Babu retired on May 31. Three days later, a former Supreme Court judge, Justice G.P. Mathur, was appointed as its acting chief. The reason for this stop-gap arrangement is that the Protection of Human Rights Act 1993 specifies that the NHRC chairperson "shall be a person who has been a Chief Justice of the Supreme Court." Further, the retired chief justice of India (CJI) should not be more than 70 years of age. The Act specifies that "a person appointed as a member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of 70 years, whichever is earlier". Of all the former chief justices of India who are alive, only two are below the age of 70. In the given circumstances, the earliest the government can hope to get a regular NHRC chief would be in May next year when the incumbent CJI K.G. Balakrishnan retires from the Supreme Court. It would also depend on whether Justice Balakrishnan would be interested in accepting the post, should such an offer be made to him.

**NHRC’s Destruction of Records**

The NHRC destroys all records after six months of adjudication in case there is no positive recommendation made in the case(s). No other official body in India follows this custom. This policy reveals a profound lack of transparency with regard to the Commission's work, paralleling the lack of transparency in the appointment process. If all documentation coming out of the NHRC is destroyed, then it is clear, that its actions are non-reviewable, even by the Supreme Court of India, beyond a six-month period. Such a profound lack of accountability, both in the appointment process and with regard to its decisions, has grave implications for the distribution of power in India: it effectively places the Commission above the national judiciary.
The case of Arjun Paswan, a man tortured and robbed by Railway Police in Bihar, is an example that confirms this fact. Mr. Paswan’s case was dismissed by the NHRC, only to be remanded by the Delhi High Court for further proceedings before the NHRC. The Commission never followed this order. Surely, this lack of accountability was never the intent of the PHRA, but the existing reality necessitates greater transparency in the appointment and record-keeping processes. Anything less will in fact be a continued breach of both the Paris Principles and the PHRA itself.

NHRC’s National Core Group

The National Human Rights Commission of India had reconstituted its National Core Group of NGOs on 10th October 2006. The members included Dr. Anand Grover, the present UN Special Rapporteur on Health, Ms. Maja Daruwala, the Director of the Commonwealth Human Rights Initiatives and Dr. Babu Mathew, Director of Action Aid India. This Core Group has so far met only on five occasions - 6 December 2006, 28 & 29 April 2007, 12 September 2007, and 17 July 2008. The last two meetings of the National Core Group of NGOs of NHRC were held just prior to the 12 and 13th APF. During the last meeting, a plea was made specifically requesting for at least two meetings a year. Unfortunately, the National Core Group of NGOs has not met since July 2008. The NHRC’s unwillingness to convene the National Core Group of NGOs and the Commission’s non-engagement with NGOs speaks extremely poorly about the putting into practice of the Paris Principle of ‘cooperation’ and the NHRC.

In India, the civil society that has spearheaded efforts for the protection and promotion of Human Rights and the establishment of statutory Human Rights Institutions. There is a vibrant Dalit civil society, an even more vibrant national women civil society, a vibrant civil society working with fishermen, with the physically challenged, with persons suffering from HIV/AIDS, with persons engaged in the promotion of communal harmony, with the civil society organizations engaged in making the right to education - the right to health a reality - the right to security etc a reality for the larger sections of the poor in our country. Human Rights and its promotion are activities that many National / State level and local civil society organizations are engaged in. Human Rights Defenders have paid the cost for the sacrifices they have made in this large country. However, it is a pity that since its inception till today, not a single member of this vibrant human rights community has been invited to serve as a member of the NHRC.

The Regional Conference on Human Rights of the South Asian Association for Regional Cooperation (SAARC) countries in New Delhi and its respect for the Paris Principles

Another case in point is an invitation by the NHRC to the National Core Group of NGOs to attend the “Regional Conference on Human Rights” of the South Asian Association for Regional Cooperation (SAARC) countries in New Delhi from 24-27 January 2009. The invitees were to include the Chairperson/ Chief Commissioner from the NHRIs of Afghanistan, Bangladesh, Nepal, Sri Lanka and Maldives and representatives from relevant bodies/individuals from Bhutan and Pakistan. Later, in response to a mail from one of the members of the National Core Group of NGOs requesting for a space for NGOs in the conference, the NHRC said that it had decided to extend the invitation to NGOs only for the inaugural of this program. Thereafter, the program was postponed and was reconvened from 16 April to 18 April 2009 in Delhi—but this time with no invitation extended to the National Core Group of NGOs of the NHRC.

The first Conference of National Human Rights Institutions of South Asian Countries on "Human Rights Awareness and National Capacity Building", organized by the National Human Rights Commission of India, was
attended by the Afghanistan Independent Human Rights Commission, the National Human Rights Commission of Bangladesh, the Human Rights Commission of the Maldives, the National Human Rights Commission, Nepal, the Sri Lanka Human Rights Commission and the National Human Rights Commission of India. The participating NHRIs agreed to:

- work towards national capacity building through sharing of experience, information and best practices on human rights;
- take steps to promote human rights awareness, and towards this end, hold conferences at least once in two years, apart from exchanges of visits, training programs and bilateral or regional cooperation between the NHRIs;
- work together to identify and cooperate on capacity building for dealing with human rights issues like human rights awareness, human trafficking and migrant labour;
- work collectively at UN fora, including the Human Rights Council, for an independent status for NHRIs, distinct from NGOs;
- appeal to the respective Governments to support and provide necessary wherewithal to NHRIs to ensure that they become fully compliant with Paris Principles, which includes administrative and financial autonomy.

All these resolutions were made without a single NGO being present there from South Asia.

**Special Rapporteurs of the NHRC: a 'reserved berth' for former IAS / IPS / former Senior functionaries of the NHRC?**

NHRC has established the practice of appointing Special Rapporteurs' since 1997 -1998: "The annual report 1997-98 states "These Special Rapporteurs, chosen from persons of the highest repute, of impeccable integrity and with a pronounced commitment to human rights, have been of immense help to the Commission. They constituted a group, outside formal acuiniisfrative structures of the Commission, to act as the eyes and ears of the Commission, to follow up the endeavours of the Commission at the highest levels with its full authority, and to undertake such special studies and other assignments as may be requested from them from time to time."

In a meeting of the Special Rapporteurs and Special Representatives of the NHRC in the year 2000, the role and the functions of the Special Rapporteurs (SRs) were further clarified to include ‘that they were to act as informal mechanisms, outside the regular set up of the Commission, and function as a credible machinery to apprise the Commission of ground realities, and to facilitate the efforts of the Commission to carry out the functions assigned to it’.

In the year 1999 - 2000, there were 4 SRs, in 2001 - 2002, there were 3 SRs and 4 Special Representatives; in 2002 - 2003 there were 6 SRs; in 2003 - 2004 the SRs continued to be almost the same as earlier; in the year 2004 - 2005, there were 5 SRs. Many of the existing SRs resigned in the year 2006. However, it is surprising to note that although it is more than almost two years that Mr. P.G.J. Namboothiri, Mr. K.R. Venugopal and Mr. A.B. Tripathy have resigned as the Special Rapporteurs, their names still continue to figure in the website of the NHRC as late as July 2009. In addition, what is surprising is that during the year under consideration 2008 - 2009, there has been a spate’ of Special Rapporteurs who have been appointed. At least 9 different Special Rapporteurs were appointed in 2008.
A matter of concern once again is the appointment of only retired Indian Administrative Service (IAS) and the Indian Police Service (IPS) Officers as SRs of the NHRC in a country where vibrant human rights civil society has existed many years prior to the constitution of the NHRC itself. This is a clear indication that civil society representatives are seen to be "untouchables" to the NHRC and that there is an urgent need, after almost 16 years of its existence, to start a vibrant national movement for the inclusion of the human rights civil society in its functioning - a factor duly acknowledged in public by several past functionaries and architects of the NHRC in India, including many of the past Chairpersons.

When persons of repute from the Indian civil society like Mr. Miloon Kothari, Dr. Anand Grover have been appointed as SRs of the United Nations, a question arises as to whether it is incompetence of the members of civil society organisations or the lack of trust on the part of the NHRC on civil society representatives in appointing them as SRs. The NHRC's own belief in the principles of 'independence' and 'cooperation', both enshrined in the Paris Principles will be better expressed only when NHRC starts placing the much desired trust in civil society more.

The Right to Information Act of 2005 speaks about the duty for 'Public Authorities' to provide 'voluntary disclosure' of information under Sec 4 (b) of the Act. Nowhere in the website of the NHRC has there been provided any information whatsoever neither on this sudden need for SRs in the NHRC nor on the special tasks that they are to engage themselves in. This in no way is to underwrite the need for SRs in the country.

The NHRC needs Honorary SRs for all the districts of this country, to act as the 'eyes and ears' of the NHRC. But they have to be young, spirited, and persons who strongly believe in human rights and are willing to act swiftly. We cannot only look for retired IAS and IPS authorities to be appointed as SRs, although it also cannot be denied that there are persons from these agencies who turned out to be effective SRs.

'Deemed Members' of the NHRC

The Protection of Human Rights Act, 1993 and as amended in 2006, provides for the NHRC to include the Chairpersons of the National Commission for Minorities (NCM), the National Commission for Scheduled Castes (NCSQ), the National Commission for Scheduled Tribes (NCST) and the National Commission for Women (NCW) to be 'deemed members' of the Commission for the discharge of functions spewed in 12. These are very important functions of the NHRC and it has been envisaged as a provision to provide for 'cooperation' between existing statutory Human Rights Institutions in the country - one of the important principles contained in the Paris Principles.

In the earlier years of the functioning of the NHRC, the said meetings of the 'full Commission' - meaning the NHRC along with the then Chairpersons of the NCM, the NCSC/ST and the NCW were held regularly for quite some years. However, this practice was stopped when the NCSC and the NCST became bifurcated as two independent National Commissions. Even then, the Chairperson of the other two Commissions, namely the NCM and the NCW were never invited for meetings of the Full Commission of the NHRC. Even after the amendment of the Protection of Human Rights Act, 1993 in 2006, it is sad to note that the NHRC has never so far convened a meeting which included the 'deemed members', such as the Chairpersons of the NCM, NCSC, NCST and the NCW.

Such reluctance on the part of the NHRC of India to conduct periodic meetings of this sort once again puts forward the question whether the NHRC of India indeed is committed to put into practice the 'principle of cooperation' under the Paris Principles. It should be
emphasized that the specialized institutions in India have developed expertise in their fields, which would undoubtedly enrich the work of the NHRC of India. A collaboration of the specialized institutions and the NHRC of India would serve Indian civil society well, as envisaged in provisions 12 (b) to 12 (j) of the PHRA 1993.

The country today sees a host of NHRI s with 'complaint handling powers' covering a wide variety of thematic issues pertaining to the human rights of Women, of Minorities, of the Scheduled Castes, of the Scheduled Tribes, of Children, of Persons With Disabilities, on the Right to Information and of Safai Karmacharis. Many of these thematic NHRI s are also represented as independent statutory institutions in the States, totaling to over 130 such statutory institutions in the Country.

But it is unfortunate that the NHRC constituted under the PHRA 1993, and which today has over 15 State Human Rights Institutions functioning under the same Act and whose Chairpersons, General Secretaries and Members are invited for periodic meetings convened by the NHRC, have never had the opportunity of attending a single meeting of the Asia Pacific Forum (APF) in the last 13 years, nor have they been exposed to any of the capacity building programs offered by the APF or by the Office of the UN High Commissioner for Human Rights.

It is urged that the State Human Rights Commissions and the other specialized institutions in India should also be given the benefit of these training programmes by the abovementioned bodies. India is said to be the world's largest democracy and the building of the capacity of the State Human Rights Commissions and the specialized institutions would benefit the entire country.

Need for Independent Staff within the NHRC

Every annual report of the NHRC in India from the year 1993 to 1994 has a Chapter titled "Administration and logistical support". In order to guarantee independence of the NHRI, the ICC Sub-Committee on Accreditation notes that senior level posts in any NHRI should not be granted by secondment and that the number of seconded staff should not exceed 25%, and never be more than 50% of the total workforce of the NHRI. There is therefore, the urgent need for the NHRC to start recruiting staff of its own and if need be, also recruit functionaries from NGOs who have experience and have been working in the field of human rights.

III. Effectiveness:

The Need for Urgent Reforms in the Complaints - Handling Systems of the NHRC

The NHRC has been slapped with a fine of Rs100,000 (approximately. US$2,000) by the Delhi High Court for "blatant violation of the human rights of a constable who was employed with it for 10 years before being 'thrown out'". In a recent order, Justice Kailash Gambhir rebuked the NHRC for not hearing the plea of constable Rajender Prasad who wanted his 10-year job regularised and said: "There has been blatant violation of the human rights of the petitioner. "Since the Commission failed to protect the human rights of the petitioner who will be thrown on the road to struggle again to search for a job, the same being in serious violation of his human rights, cost of Rs 100,000 is imposed for their inhuman act," the court said.

This case illustrates the extent of neglect the NHRC of India is showing with respect to its duty to adjudicate human rights claims. Most recently, this neglect—and the underlying lack of sympathy it shows for victims of human rights violations—has taken a number of particularly insidious forms. The NHRC has revealed, at best, a casual contempt for its own vital role in policing human rights violations by the Indian Police Service and others.
In one case, for instance, regarding a gang-rape and assault of civilians by an insurgent group in Tripura, the NHRC did not deny that the crimes had taken place, but rather claimed that Rs. 15000 (approximately US$300) in government compensation for an individual's death and a total of Rs. 6000 (approximately US$125) compensation for rape victims was sufficient to show "that the Government was alive to the suffering of the victims and it had taken appropriate steps to apply balm to their wounds." This means that, according to the NHRC, Rs. 15000 is acceptable compensation for wrongful death. Human rights groups question this kind of attitude of whether this indeed displays some sympathy for the victims of human rights violations.

Oftentimes, in cases of custodial death and custodial rape, the police are registered as complainants because they are obliged by law to report the cases within 24 hours. Though there are no guidelines prohibiting the registration of multiple complainants in cases before the NHRC, and indeed there are numerous examples of multiple-complainant cases, in practice, in cases in which the police are registered as complainants, families of the specie victims are claims since another party has brought them. There is no legal basis for this peculiar practice, and it does have grave implications. While it denies victims and their families a chance for a fair hearing of their claims, it also allows the police, as registered complainants, to control the prosecution of claims against their very own members. This regularly leads to an illegitimate dismissal of cases, even though custodial death is clearly a serious offense for which evidence is often easy to provide: beyond the very fact of the victims' deaths, post-mortem reports such as that of Tadipatri Eswaraiah often reveal the kind of evidence necessary for a conviction, if only the claim were pursued by a diligent aggrieved party. Eswaraiah's death was eventually determined to have been brought about by misconduct, but only after extensive proceedings and an initial falsification of evidence. This episode highlights the problematic nature of the NHRC's practice of registering the police as complainants for their own alleged offenses.

One particularly egregious case that exemplifies the NHRC's lack of seriousness came about when the victim of a brutal beating and robbery by Railway Police brought his case before the NHRC. The regional Superintendent of Railway Security had acknowledged that the crimes had taken place, and had indeed indicted five employees of the Railway Police in connection with the case. Rather than giving the victim his day before an impartial adjudicative body, the NHRC dismissed his claim on the grounds that the complainant's comments had been filed too late; this, however, was patently false. The complainant's comments had been filed eight days before the deadline. Not only does this dismissal on procedural grounds show a lack of sympathy for the victim, but since the grounds themselves were false, an observer can only assume that the NHRC had some malicious reason for denying the victim his rights.

In the case of the death of one Ms. Karupee (see case chart below from People's Watch-India) in police custody in the year 2002, there was a complaint sent by an NGO -People's Watch-to the NHRC to which the NHRC did not respond. However, People's Watch has come to know that the NHRC has taken on file in NHRC Case NO 937 / 22 / 2002-2003-CD a 'complaint/ based on the intimation of a custodial death from the District Superintendent of Police of Ramnad District, Tamil Nadu with the date of the incident as 12 January 2002. According to the database maintained in the NHRC's web site it is stated that additional information was requested on 2 April 2009. However, it is the fact that in this case, there was no request for information made and no progress was seen even by the NGO that filed the case.
On 06 September 2008, the court directed the Additional Director Generals of Police (CB-CID) to nominate a team and to file the final report within a period of six months. Further, it was directed that the State Government has to pay Rs. 3 lakhs - including Rs. 1 lakhs already awarded by the order of the State Government dated 01 March 2006 to the family of the victim (ROC. C2/13493/2006) by the proceedings of the District Collector, Ramanathapuram.

**Case Details of File Number: 937/22/2002-2003-CD**

<table>
<thead>
<tr>
<th>Diary No.</th>
<th>10968</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of the Complainant</td>
<td>THE SUPDT. OF POLICE, RAM NAD</td>
</tr>
<tr>
<td>Address</td>
<td>TAMIL NADU, TAMIL NADU</td>
</tr>
<tr>
<td>Name of the Victim</td>
<td>MRS. KARUPPIW/O SONALI KATTUPARAMAKUDDI</td>
</tr>
<tr>
<td>Address</td>
<td>PARAMAKUDI TOWN, TAMILNADU, TAMIL NADU</td>
</tr>
<tr>
<td>Date of Incident</td>
<td>12/1/2002</td>
</tr>
<tr>
<td>Direction issued by the Commission</td>
<td>A fifty year old woman named Karuppi was suspected of involvement in a case of theft registered at P.S. Paramakudi, District Ramnad, Tamil Nadu. She was repeatedly called to the Police Station between 26 November 2002 and 30 November 2002 for interrogation. On 1 December 2002, in the early hours, she was found hanging from the wireless tower within the premises of the Police Station. The postmortem revealed contusions on the right hand and shoulder. The authorities who inquired into the circumstances of death concluded that the contusions may have been caused due to police excess. He also observed that no woman police official had been joined in interrogation of the deceased. He recommended criminal prosecution of Inspector Hameed and SI N. Kathiresan. Secretary, Public (Law &amp; Order) Department informed the Commission through a letter dated 12 January 2006 that criminal action had been ordered against the delinquent police officers and an amount of Rs. one lakh had been sanctioned for payment to the next of kin of the deceased. In the proceedings dated 21 December 2006, the State Government was directed to inform the Commission about the status of criminal prosecution of the errant police officers and also to submit the proof of payment to the family of the deceased. The required information and proof of payment have not been received so far. The NHRC issued a reminder to Chief Secretary, Government of Tamil Nadu directing him, to inquire whether criminal prosecution has been launched against Inspector Hameed and SI Kathiresan and, if so, what is the status of the criminal case. The NHRC also requested for him to submit the proof of payment of Rs. one lakh to the next of kin of deceased Karuppi.</td>
</tr>
<tr>
<td>Action Taken</td>
<td>Additional Information Called for (Dated 4/22/2009)</td>
</tr>
<tr>
<td>Status on 7/9/2009</td>
<td>Commission is considering the reports received from concerned authority.</td>
</tr>
</tbody>
</table>

The case above illustrates the slow and long-winded processes being taken by the NHRC in responding to cases of human rights violations. It also shows the level of sympathy being shown by the NHRC to victims and their families.
NHRC’s Fact-Finding Report on Salwa Judum

The official Fact-Finding Report from the NHRC on the issue of the Salwa Judum and Naxalite violence has been the focus of much warranted criticism. Since 2005, the violent civil war in Dantewada district of Chhattisgarh, between the Naxalites, a Maoist ‘Peoples War Group’, and Salwa Judum, a vigilante force sponsored by state and local officials, has been all over the media. The Salwa Judum, a militia movement armed by the Chhattisgarh Government, has contributed to massive human rights violations in the Southern districts of Chhattisgarh, created an atmosphere of violence and distrust, and led to the displacement of thousands of tribal people. The plight of these tribal people, who are caught in the middle a war zone, has mostly been ignored. In April 2008, it seemed that the government was finally going to do something about the situation when the NHRC had been mandated by the Supreme Court to form a Fact-Finding Team to conduct an “inquiry” into the “allegations of large scale human rights violations by Salwa Judum activists, Naxalites, and security forces in the State of Chhattisgarh.” The only golden moment for the people of Chhattisgarh was the Supreme Court decision itself, which ordered the sending of a team to investigate the situation. However, the choice of an incompetent NHRC team led to the failure of the mission.

The NHRC was directed by the Supreme Court in April 2008; to appoint an appropriate fact-finding team with such members as it deemed fit to inquire into the “allegations of large-scale human rights violations” by the Salwa Judum, Naxalites, state police, SPOs, and security forces in the State of Chhattisgarh. For some unknown reason, the Commission directed its own Internal Police Unit to create a Fact-Finding Team. The Director General of the NHRC created a team of 16 police officers, three of which were IPS officers, headed by Deputy Inspector General of Police Sudhir Chowdhary. This raised some concerns from human rights groups because it is common knowledge in the country that some police officers, whether retired or in service, have generally supported the creation of the Salwa Judum. The Fact-Finding team also lacked any representative of the local tribal communities, or any independent experts on health, education, sexual violence, or even any of the NGOs associated with the NHRC. The Commission ignored a direct request from the NHRC National Core Group of NGOs to include a civil society representative in the investigation process. The NHRC’s decision to appoint a team composed entirely of police officers shows the NHRC’s total lack of understanding of the task it was mandated to do, as well as its need to have more sensitivity to the issues of victims of human rights violations.

The NHRC investigation was impaired further, by their reliance on the involvement of Special Police Officers (SPOs) and Salwa Judum leaders whose very activities were the ones under scrutiny. It was reported that in a number of instances, the villagers hid and fled upon seeing the convoy of the NHRC approaching. The convoy included vehicles from the special forces, the very same groups whose alleged human rights violations against the villagers were, being investigated and examined. It should also be noted that there were leaders from the Salwa Judum who were with the security forces that accompanied the NHRC fact-finding team. According to the NHRC, the police and security forces and Salwa Judum members were there “to provide security.” In reality, however, their presence made it impossible for an independent and impartial inquiry. For example, testimonies given by people who have been displaced from their villages about burning of villages and killings of the people were not included in the fact-finding report because the NHRC team was unable to gather any witness testimonies to corroborate their stories. In one case, in the village of Chintalnar, the villagers were actually threatened for talking to the NHRC.
One of the most serious flaws in the NHRC's investigation methods was its refusal to accept the testimonies given by refugees, treating them as the accused, and in some cases discrediting petitioners, stating that their allegations were based on hearsay. On the other hand, "the statements made by the Salwa Judum camp residents and SPOs have been accepted, especially when they allege that a person was killed not by Salwa Judum, but by Naxalites." In the report the NHRC found that 'reportedly, many of those who did not join Salwa Judum were branded as supporters of Naxalites.' The perception that those not in a Salwa Judum camp must be Naxalites, has affected the report from the start.

In a letter sent to Justice Rajendra Babu by Nandini Sundar, it was stated: "We fear for the safety of the others, and do not wish the NHRC investigation to turn into a source of further harassment of villagers who have already lost everything, including their loved ones." The NHRC once again showed an inability to see the reality of the situation when they came to the conclusion that none of the villagers had been discriminated against for not joining Salwa Judum camps. It seems that the NHRC cannot see a basic case of cause and effect. In the NHRC's report it notes that "rations are only available in the camps." However, it somehow doesn't see how villagers' not having access to rations is a form of discrimination. The NHRC team chose to visit two of the least affected villages to prove that discrimination was not happening, instead of focusing on those that were affected by the Salwa Judum. If the NHRC was truly there to get to the bottom of the claim of human rights abuses, one would think they would go to the places most affected by the violence to compile the majority of their evidence.

The NHRC Fact-Finding team, being made up entirely of police officers, went against its own guidelines on encounter killings, in favor of the biased version submitted by the police. The NHRCs guidelines clearly states, "all cases where the police officer involved in the encounter killing is from the same Police Station as the encounter being investigated/registered, such cases should be handed over to an independent investigating agency like the state CB-CID." The NHRC team found that there were suspicious circumstances under which the encounters were reported, but even that doubt did not affect the outcome of their findings.

Another very worrying conclusion in Official Report of the NHRC is the team's justification of the states recruiting procedure "and the vigilantism of SPOs." In paragraph 7.04 of its report, it says that "[t]he allegation of the petitioners that Naxalite violence has increased after Salwa Judum and further aggravated the problem which shows that this experiment has failed is a very narrow view of this complicated problem. Surely the petitioners would not support the subjugation and killings of tribals by Naxalites for years before Salwa Judum. The tribals cannot be denied the right to defend themselves against the atrocities perpetrated by the Naxalites, especially when the law-enforcers are themselves ineffective or not present." The only conclusion that can be drawn from this statement is that the NHRC is in support of the continued violence. It gives justification to revenge killings by a private vigilante force, citizens killing other citizens. "Selective killings by Naxalites of Salwa Judum [meaning "peace mission"] leaders and activists and attacks by Naxalites on Salwa Judum leaders were responsible, to a large extent, for changing the complexion of the movement from a non-violent one to an armed resistance." The NHRC team put all the blame for the violence on the naxalites. "The Campaign for Peace and Justice in Chhattisgarh (CPJC) has observed that the NHRC team's findings do not reflect the ground realities and the need to enforce the rule of law and human rights." This is no excuse, if the state government cannot do anything to protect its' own citizens then it needs to be replaced. The finding goes against all of the NHRCs statutes to safeguard human rights.
The composition of the team consisting solely of police, since the main conflict was between the police and the Naxalites with the villagers caught in the middle was one of the many mistakes made by the NHRC. Another one was the process of public enquiry which did not allow petitioners to speak freely in front of independent investigators, making witnesses feel intimidated and afraid. The whole mission was compromised by the composition and methods of the NHRC’s investigating team. Until today, the people of Chhattisgarh continue to face the ongoing human rights violations against them.43

Human rights groups are urging the Government of Chhattisgarh to accept responsibility for supporting policies that have led to the escalating violence against the villagers. However, when an independent enquiry was made into the Chhattisgarth government’s policies, they resisted by daiming that “[f]here is no failure on the part of the State of Chhattisgarh and therefore independent investigation is uncalled for and unwarranted.”44 Currently, there is no evidence that the government is attempting to do anything to improve the situation.45 Instead, the officials have used the NHRC report as a justification to ignore the rising violence.46

The State Human Rights Commissions (SHRCs)

There are at present 18 SHRCs functioning in the country. It is pertinent therefore to have an idea of how these SHRCs function. We give below a short report on a few of the SHRCs in India that were not covered in the last year's report

Orissa State Human Rights Commission (OSHRQ)

The OSHRC was established on 11 July 2003. As stated by sources, 6,569 complaints were received from the victims and their concerns between July 2003 and May 2008. The Commission took cognizance of 505 cases on suo-motu. Out of the total 7,074 cases, 3,621 have been finalised, thereby leaving 3,453 cases undecided at present. Out of these pending cases, 2,160 are pending due to non-receipt of investigation reports.

It was revealed that from these cases, 1,649 cases were against the police, about pollution and on religious matters. 140 cases were regarding jails, 58 cases were regarding child torture, 49 cases were regarding health problems, 46 cases regarding labour harassment, 51 cases were regarding Scheduled Tribes (ST) and Scheduled Castes (SC), 250 cases were regarding torture on women, 815 cases were regarding employment and 732 cases were regarding persons with disabilities.

The Forum for Fact-finding Documentation and Advocacy (FFDA) has filed over 50 complaints between 2005 and 2008. Most of the cases were dismissed on locus-standi. The FFDA argued that complaints are not public interest litigation and the OSHRC is a not a high court. It is a quasi-judicial body that cannot dismiss the complaints by treating the complaints as public interest litigation. The lack of understanding by the OSHRC of its role as a human rights institution, as illustrated by this example, makes the victims of human rights violations more vulnerable.

There are many vacancies in the OSHRC and more often than not, the appointments to posts within the OSHRC are given as political concessions. Expertise on human rights is never a consideration for filling these vacancies. This therefore contributes to the rising incompetence by the staff at the OSHRC. In the highly publicized sex scandal case of former Speaker of the Orissa Legislative Assembly, OSHRC played a major role in enabling the perpetrator be free of any kind of liabilities. Human rights groups had raised grave concerns over the way the OSHRC handled this case, raising questions about its impartiality and independence.
Chhattisgarh State Human Rights Commission (CSHRC)

On 1 November 2000, the tribal and Dalit-dominated eastern part of Madhya Pradesh, consisting of 16 districts, were brought into a new administrative set up and recognized as a new state, Chhattisgarh. The hopes and aspirations of the people of the said region are that they would get an exploitation-free zone with their own people, where they can have peace, progress and social justice.

The CSHRC was established in early 2001, soon after the formation of the new state. It was initially headed by former High Court Judge, Justice Mr. K.M. Agrawal. Justice Agrawal was not satisfied with his appointment and left the CSHRC immediately after his appointment. To fill the vacancy, a newly appointed member, Mr Jacob, a retired police Inspector General of former Madhya Pradesh Rank, became the acting chairperson.

In December 2003, the Bharatiya Janata Party came to power and Dr. Raman Singh became the new Chief Minister. In early 2004, he appointed his own uncle Mr. Lai Jayaditya Singh, a retired district court judge, as a member and acting chairperson of the CSHRC. He still currently occupies this position.

The FFDA files cases before the CSHRC on the issues of torture by state agents, and atrocities related to castes committed by state agents. It also sends in cases regarding the denial of public services, starvation, and other human rights violations. However, most cases are not registered by the CSHRC because the commission staff asks for money from complainants when they register the case. In 2007, Dr. Subash Mohapatra went to the CSHRC to file a complaint on a human rights violation and was asked to give some money to the employees receiving the complaint so that said complaint would be registered. Dr. Subash Mohapatra refused to pay and thus, was physically assaulted by the employees of the CSHRC and was arrested on charges of disturbing public authorities in the discharge of their duties. He was eventually acquitted by the district court in 2009. Under the Act on the Right to Information, Dr. Subash Mohapatra was able to get information that over 2500 cases on pension grievances have been disposed of by CSHRC during the recent years.

In another case, Dr. Subash Mohapatra requested the CSHRC to conduct a post-mortem of a body of an alleged custodial torture victim. Despite the sufficient evidence presented and the report made available to commission, the CSHRC disposed of the petition and freed the state agents involved in the mater. Mr. L.J. Singh, the Chairperson, later said to Dr. Mohapatra, "Subash, why do you come with petition every day? Why don't you sit with us and resolve this? We are all family. It is a family matter. I hope you will understand me."

In another case, when a bank recovered loan from a Dalit girl for her father's debt from her scholarship amount, the CGHRC disposed of the petition saying that "the state enterprises are not state agents". It should be noted that the bank was a state-owned cooperative bank and human rights organisations, such as People's Watch, are currently challenging this ruling.

Punjab State Human Rights Commission (PSHRC)

The PSHRC receives around 15,000 complaints on human rights violations every year and hears around 80 complaints daily. It in only running, however, with two members, instead of the five members, as mandated by its enabling law. It is now composed of a Chairman (Retired Chief Justice R S Mongia) and a non-judicial member (K K Bhatnagar).

The Commission decides on matters like custodial deaths, custodial torture, custodial rape and illegal detention. In case the Commission decides to make any recommendation to the State Government on any matter, it has to constitute a larger bench (of at least three members). One post became vacant in August 2007.
while two more posts were vacant since 4 May 2008, leaving only two members in the Commission. Recently, from 31 July 2008 to 15 August 2008, the working in the panel came to a halt as under the rules, a single member cannot take cognizance of new matters. All new cases had to be adjourned.

Endnotes

1. 1- Sec3(c) Of the Protection of Human Rights Act 1993
2. NHRC Case No Case 131/19/2005-2006 and Case No. 10/23/2004-2005
3. In a public address that had been organized by the NHRC in New Delhi during her visit to India returning from Nepal
4. As per Sec 4 (1) of the Protection of Human Rights Act which states that the committee comprises:
   a. The Prime Minister — Chairperson
   b. Speaker of the House of the People — Member
   c. Minister in-charge of the Ministry of Home Affairs in the Government of India — Member
   d. Leader of the Opposition in the House of the People — Member
   e. Leader of the Opposition in the Council of States — Member
   f. Deputy Chairman of the Council of States — Member
5. Sec 12(f) of the PHRA, 1993.
6. Nagendar Sharma, Hindustan Times New Delhi, June 30, 2009
7. Order of the Delhi High Court in WP
8. NHRC Case No. 2422/4/2004-2005
9. Lr in D.O. No. 121917/2008-Cood dated 27th October, 2008 from the Jt Sec HRC to NHRC Natl Core Group Members.
10. Dt 2nd No 2008 addressed to the Jt Sec NHRC
13. Website of the NHRC as in July 2009
14. Sec 12(b) to (j) of the PHRA 1993.
15. ICC Sub Committee on accreditation - General observations.
16. IANS June 24th 2009
17. NHRC Case No. 10/23/2004-2005
18. NHRC Case No. 819/1/2004-2005
22. K Balagopal The NHRC on Salwa Judum: a most friendly inquiry
23. K Balagopal The NHRC on Salwa Judum: a most friendly inquiry
24. K Balagopal The NHRC on Salwa Judum : a most friendly inquiry
25. CPJC www.ohcr.org/english/law/disappearance.htm
27. Letter to Babu from Nandini Sundar
28. CPJC www.ohcr.org/english/law/disappearance.htm
30. CPJC www.ohcr.org/english/law/disappearance.htm
32. www.ohcr.org/english/law/disappearance.htm
33. CPJC www.ohcr.org/english/law/disappearance.htm
34. Frontline Volume 25 - Issue 23:: Nov. 08-21,2008 (http://www.hindu.com/fline/ fl2523/stories/20081121252308800.htm)
35. Letter Justice Rajendra Babu from Nandini
36. NHRC Report section 1.50
37. CPJC www.ohcr.org/english/law/disappearance.htm
38. NHRC Statue and CPJC www.ohcr.org/english/law/disappearance.htm
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43. CPJC www.ohcr.org/english/law/disappearance.htm
44. CPJC www.ohcr.org/english/law/disappearance.htm
45. CPJC www.ohcr.org/english/law/disappearance.htm
46. CPJC www.ohcr.org/english/law/disappearance.htm