

INFORMATION NOTE

Whether the Recommendations of the United Nations Human Rights Treaty Bodies are Binding on Their Member States?

1. Background

1.1 At its meeting on 9 June 2006, the Panel on Home Affairs requested the Research and Library Services Division (RLSD) to conduct a study on whether the recommendations of the human rights treaty bodies established under the core human rights treaties of the United Nations (UN) are binding on their member states.¹

1.2 This note covers the following six human rights treaty bodies:

- (a) the Committee on the Elimination of Racial Discrimination (CERD);
- (b) the Committee on Economic, Social and Cultural Rights (CESCR);
- (c) the Human Rights Committee (HRC);
- (d) the Committee on the Elimination of Discrimination against Women (CEDAW);
- (e) the Committee against Torture (CAT); and
- (f) the Committee on the Rights of the Child (CRC).

1.3 Enquiries were sent to all six human rights treaty bodies requesting for information. Information for this note is obtained from the Internet, UN reports and relevant reference materials.

¹ The Panel also requested RLSD to study two issues, which were: (a) the principles and requirements for establishing a human rights commission in selected jurisdictions; and (b) whether Hong Kong's existing human rights framework was compliant with the Paris Principles. In this connection, RLSD has prepared two separate information notes, entitled *Principles and Requirements for Establishing a Human Rights Commission in Selected Jurisdictions* (IN05/06-07) and *Academics' Views on the Existing Human Rights Framework in Hong Kong* (IN06/06-07).

2. Arrangements of the human rights treaty bodies

2.1 The human rights treaty bodies covered by this note are committees of independent experts that monitor the implementation of the six core international human rights treaties (see table 1). Except CESCR², all treaty bodies are created in accordance with the provisions of the treaty that they monitor.

Table 1 — The six human rights treaties and their treaty bodies

Human Rights Treaties	Treaty bodies
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	CERD
International Covenant on Economic, Social and Cultural Rights (ICESCR)	CESCR
International Covenant on Civil and Political Rights (ICCPR) and its optional protocols	HRC
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
Convention on the Rights of the Child and its optional protocols	CRC

2.2 Each human rights treaty body is mandated to consider reports which State parties are obligated to submit periodically. These reports specify steps that have been taken to implement the provisions of the relevant treaty within each member state.

2.3 CERD, established under Article 8 of ICERD, has a function to consider reports submitted by State parties for the implementation of ICERD. On the other hand, HRC is established under Article 28 of ICCPR. Article 40(4) of ICCPR provides that "[t]he Committee shall study the reports submitted by the States Parties to the present Covenant". Both CERD and HRC have the authority to receive and act on inter-state and individual complaints³.

² See paragraph 2.6 of this note.

³ The inter-state and individual complaint procedures normally apply to all States parties to ICERD. The First Optional Protocol to ICCPR gives HRC competence to examine individual complaints with regard to alleged violations of ICCPR by States parties to the Protocol. The inter-state complaint procedure under ICCPR applies only to States parties which have made a declaration accepting the competence of HRC in this regard.

2.4 CAT is set up under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. One of the major functions of CAT is to examine regular reports submitted by States parties. In addition, CAT is entitled to consider individual complaints and conduct inquiries into alleged violations of its treaty's terms for those States parties that accept these two procedures.

2.5 Two other treaty bodies, CEDAW and CRC, are created for a wider stated purpose. CEDAW is created under Article 17 of the Convention on the Elimination of All Forms of Discrimination against Women "for the purpose of considering the progress made in the implementation of the.....Convention". CRC, established under Article 43 of the Convention on the Rights of the Child, has a general purpose "of examining the progress made by States parties in achieving the realization of the obligations undertaken" in the Convention.

2.6 ICESCR does not explicitly provide for the creation of a treaty body. Instead, the Economic and Social Council (ECOSOC)⁴ is given a mandate to monitor the implementation of ICESCR. CESCR is established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to ECOSOC in Part IV of ICESCR. CESCR, which first met in 1987, is regarded as a treaty body. Under the Resolution, CESCR "shall make suggestions and recommendations of a general nature on the basis of its consideration of those reports and of the reports submitted by the specialized agencies, in order to assist the Council to fulfil, in particular, its responsibilities under articles 21 and 22 of the Covenant".

2.7 Each human rights treaty body is composed of independent experts, ranging from 10 to 23 members (see table 2). These members are nominated by States parties and elected by them for a fixed four-year renewable term.

Table 2 — Composition of the human rights treaty bodies

Human rights treaty bodies	Number of members
CERD	18
CESCR	18
HRC	18
CEDAW	23
CAT	10
CRC	18

⁴ ECOSOC is the primary body in UN dealing with the economic, social, humanitarian and cultural work of the UN system.

3. Whether the recommendations of the human rights treaty bodies are binding on their member states?

3.1 The six human rights treaties do not set out in detail how treaty bodies deal with the reports that they receive, but the procedure for consideration of reports is similar for all treaty bodies.⁵ The main feature of the procedure for consideration is the "constructive dialogue" in which a treaty body engages in a constructive dialogue with a delegation from the State party whose report it is considering. This procedure is not adversarial and its aim is to assist the State party in implementing the treaty as fully and effectively as possible. The notion of constructive dialogue reflects that treaty bodies are not judicial bodies, but are created to monitor the implementation of the treaties and provide encouragement and advice to States parties.⁶

3.2 After the conclusion of the dialogue, the treaty body will adopt certain "concluding observations/comments", acknowledging progress made and indicating to the States party where further action is required. All treaty bodies have adopted the practice⁷ of formulating a concluding remark known as "concluding observations" (CERD CESCO, HRC and CRC), "concluding comments" (CEDAW) and "conclusions and recommendations" (CAT) after the consideration of States parties' reports.

3.3 For example, the concluding observations of HRC are consensus comments on the positive and negative aspects of a State party's implementation of ICCPR. They are generally divided into the following sections: introduction, positive factors, and principal subjects of concern and recommendations.

3.4 Strictly speaking, suggestions and recommendations of the treaty bodies in the concluding observations/comments do not carry legally binding status on the member states.⁸ However, these recommendations are opinions of the only expert committees entrusted with and capable of making such pronouncements. For States parties ignoring or not acting on the suggestions and recommendations, it may be seen as bad faith in implementing their treaty-based obligations.⁹

⁵ For detailed analysis, see "Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process", HRI/MC/2005/4, May 2005.

⁶ *The United Nations Human Rights Treaty System*, Human Rights Fact Sheets No. 30, p. 31.

⁷ This practice was established by CESCO in 1990.

⁸ This position was confirmed by replies from various treaty bodies. For detailed analysis, see O'Flaherty (2006).

⁹ *The Committee on the Economic, Social and Cultural Rights (Rev.1)*, Human Rights Fact Sheets No. 16.

4. Follow-up to concluding observations/comments

4.1 All treaty bodies request States parties to provide information in their subsequent reports on the implementation of the suggestions and recommendations contained in the previous concluding observations/comments. Three treaty bodies have recently introduced formal procedures to closely monitor follow-up actions to concluding observations/comments.

4.2 At its sixty-fourth session in March 2004, CERD decided to appoint a co-ordinator to follow up on the implementation of its suggestions and recommendations. Subsequently, a co-ordinator was appointed for a period of two years. Various working papers have also been adopted by CERD to strengthen its role in monitoring the implementation of specific concluding observations and recommendations.¹⁰

4.3 In 2001, HRC created a new position, i.e. the Special Rapporteur for Follow-up on Concluding Observations. The Special Rapporteur, with the assistance of the HRC secretariat, assesses follow-up information provided by States parties and makes recommendations to HRC on any further steps that may be appropriate.

4.4 At its thirtieth session in May 2003, CAT introduced a follow-up procedure whereby it requests follow-up reports within one year. A rapporteur to monitor State parties' compliance with these requests has also been appointed.

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¹⁰ For example, see Committee on the Elimination of Racial Discrimination (2005) and (2006).

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11. *Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process*. HRI/MC/2005/4, May 2005.
12. *The Committee against Torture*. Human Rights Fact Sheets No. 17.
13. *The Committee on the Elimination of Racial Discrimination*. Human Rights Fact Sheets No. 12.

14. *The Committee on the Economic, Social and Cultural Rights (Rev.1)*. Human Rights Fact Sheets No. 16.
15. *The Rights of the Child (Rev. 1)*. Human Rights Fact Sheets No. 10.
16. *The United Nations Human Rights Treaty System*. Human Rights Fact Sheets No. 30.