



FACT SHEET 5:

The international bill of rights

After the end of World War II a series of conventions and declarations began to articulate universal human rights.

A convention (sometimes called a covenant) is a binding treaty, coming into force upon ratification by a certain number of States. Article 26 of the *Vienna Convention on the Law of Treaties* provides that: 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'

A declaration is not legally binding but carries moral weight because it is adopted by the international community.

The United Nations was established, partly to continue the work of the dissolved League of Nations, in response to proposals for the creation of a new world body to monitor relations between States.

The United Nations is an international organisation representing the body of States, established according to the United Nations Charter in 1945.¹ One of the purposes of the United Nations is to promote and encourage respect for human rights through international co-operation.

There are currently one hundred and ninety two member States. Each has one vote in the United Nations parliament, the General Assembly [<http://www.un.org/ga/>].

What is known as the International Bill of Human Rights is made up of:

- *Universal Declaration of Human Rights (1948)*
- *International Covenant on Civil and Political Rights (1966)*
- *International Covenant on Economic, Social and Cultural Rights (1966)*
- *Optional Protocol to the International Covenant on Civil and Political Rights*
- *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

In 1948 the United Nations General Assembly adopted the UDHR. This was the first time that countries agreed on a comprehensive statement of inalienable human rights. The UDHR is not a treaty, so it does not directly create legal obligations for States. The Declaration has however, had a profound influence on the development of international human rights law. It is argued that because States have constantly invoked the Declaration over more than 50 years, it has become binding as a part of customary international law.²

On the same day that it adopted the UDHR, the United Nations General Assembly asked its Commission on Human Rights to draft a covenant on human rights, which could become a binding treaty. After six years of drafting and debate, in 1952 the General Assembly requested that the Commission on Human Rights draft two covenants rather than one. The covenants, *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* were opened for signature in 1966 and entered into force in 1976.

For the rules on treaties coming into force go to:

<http://untreaty.un.org/English/TreatyHandbook/chapter4.htm>

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1966 (ICCPR)

Civil and political rights include the right to freedom of conscience and religion, the right to be free from torture, and the right to a fair trial.

Most of these rights are not absolute. Instead they are subject to reasonable limitations which are created for a legitimate purpose. For example, it may be legitimate to limit a right in order to protect national security, public order or the general welfare of a democratic society.

Some rights, such as the right not to be held in slavery and the right to be free from torture are absolute. Article 4 of the ICCPR identifies absolute (or non-derogable) rights which can not be infringed in any circumstances.

Human Rights Explained

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Australia agreed to be bound by the ICCPR on 13 August 1980, subject to certain reservations.³ Article 2(2) of the ICCPR requires Australia to take all necessary legislative and other measures to give effect to the rights in the Convention. The ICCPR is scheduled to the *Australian Human Rights Commission Act 1986* (Cth) (the AHRC Act), and the Australian Human Rights Commission is responsible for monitoring Australia's compliance with the ICCPR.⁴

The ICCPR has two Optional Protocols. An optional protocol supplements the original convention with additional obligations.

Optional Protocol to the International Covenant on Civil and Political Rights 1966

On 25 September 1991, Australia agreed to be bound by the First Optional Protocol to the ICCPR. This means the United Nations Human Rights Committee can hear complaints from individuals who allege that the Australian Government has violated their rights under the ICCPR. However, the findings of the Human Rights Committee are not enforceable. For examples refer to the case studies.

Second Optional Protocol to the International Covenant on Civil and Political Rights

On 2 October 1990, Australia agreed to be bound by the Second Optional Protocol to the ICCPR. The purpose of this protocol is for States to eliminate the death penalty.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 1966 (ICESCR)

Economic, social and cultural rights include the right to an adequate standard of living, the right to education, the right to fair wages and the right to safe working conditions.

Article 2(1) of the ICESCR requires States to take steps, including legislative measures, to achieve the 'progressive realisation' of ICESCR rights. This requires that States only demonstrate in good faith the fulfilment of the rights over time within their capacities. For example, it is assumed that where States have inadequate resources to ensure free education is provided, they will work towards achieving this goal.

The United Nations Committee on Economic Social and Cultural Rights (the CESCR) monitors compliance with the ICESCR and provides guidance on how countries should interpret the ICESCR.⁵

An increasing number of countries, across all continents and legal systems, have incorporated judicial review of economic, social and cultural rights. These include South Africa, Finland, Argentina, Mauritius, Canada, Latvia, France, India, Bangladesh, Nigeria, and most countries in Central and Eastern Europe.

On 10 December 1975, Australia agreed to be bound by the ICESCR. The ICESCR does not, however, form part of Australia's domestic law and is not scheduled to, or declared under, the AHRC Act. However, the AHRC Act does give the Aboriginal and Torres Strait Islander Social Justice Commissioner specific statutory functions in relating to protecting and promoting the human rights of Aboriginal persons and Torres Strait Islanders.⁶ In the performance of these functions the Social Justice Commissioner must have regard to a number of international declarations and conventions, including the ICESCR.⁷

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

This Optional Protocol was adopted by the United Nations General Assembly on 10 December 2008. It will be open for signature for State Parties to the ICESCR from 24 September 2009.

There have been numerous other human rights treaties developed since 1966. A list of the major human rights treaties is available at the Office of the High Commissioner for Human Rights website [<http://www.ohchr.org/EN>].

¹ Article 1, United Nations Charter available at <http://www.un.org/aboutun/charter/index.html>.

² Henry J Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, (2nd ed), Oxford University Press, Oxford, 2000.

³ For a list of Australia's reservations, see <http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.html>.

⁴ Since 1986, the Commission has had the powers to investigate alleged violations of the ICCPR, although it has no power of penalty or enforcement. The Commission also has other powers to monitor Australia's compliance with the ICCPR, including the power to examine whether federal legislation complies with Australia's obligations under the ICCPR. See *Australian Human Rights Commission Act 1986* (Cth), s 11(1)(e) and s 11(1)(f).

⁵ Committee for ESCR *General Comment No. 03: The Nature of States Parties Obligations*, U.N. Doc HRI\GEN\1\Rev.1 at 45 (1994), available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument).

⁶ *Australian Human Rights Commission Act 1986* (Cth) s46C(1).

⁷ *Australian Human Rights Commission Act 1986* (Cth) s 46C(4)(a).