



Human Rights  
Institute

# MODULE 1

## TOOLKIT FOR LAWYERS AT RISK

International legal protection of lawyers  
and those exercising lawyers' functions

*In partnership with*



Lawyers' Rights Watch Canada

Partners: Bar Human Rights Committee of England and Wales, Human Rights House Foundation, Lawyers for Lawyers and Lawyers' Rights Watch Canada

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#### **About the International Bar Association's Human Rights Institute (IBAHRI)**

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 160 countries. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

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The Bar Human Rights Committee (BHRC) is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. It has a membership comprised of barristers practising at the Bar of England and Wales, legal academics and law students. BHRC's Executive Committee members and general members offer their services pro bono, alongside their independent legal practices, teaching commitments and/or legal studies. BHRC also employs a full-time project coordinator.

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#### **About Human Rights House Foundation**

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#### **About Lawyers for Lawyers**

Lawyers for Lawyers (L4L) is an independent, non-political and not-for-profit lawyers' organisation established in 1986. L4L's mission is to promote the independent functioning of lawyers and the legal profession across the world in accordance with internationally recognised norms and standards, including the Basic Principles on the Role of Lawyers. Our work to support lawyers who are at risk as a result of discharging their professional duties, seeks to protect them from threats, risks and reprisals, strengthens their international recognition and protection in laws, policies and practices, and empowers them to fulfil their role as essential agents of the administration of justice. L4L was granted special consultative status with the UN Economic and Social Council in July 2013.

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#### **About Lawyers' Rights Watch Canada**

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders working to promote international human rights law, advocacy rights, the integrity of legal systems and the rule of law through advocacy, legal research and education. LRWC is a volunteer-run non-government organisation in Special Consultative Status with the Economic and Social Council of the United Nations.

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## LIST OF ACRONYMS

<b>AfCmHPR</b>	AfCHPR: African Charter on Human and Peoples' Rights
<b>AmCHR</b>	American Convention on Human Rights
<b>ArCHR</b>	Arab Charter on Human Rights
<b>ACtHPR</b>	African Court on Human and Peoples' Rights
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>AU</b>	African Union
<b>CAT</b>	Convention against Torture and other cruel, inhuman or degrading treatment or punishment
<b>CAT Committee</b>	Committee against Torture
<b>CCBE</b>	Council of Bars and Law Societies of Europe
<b>CCPR</b>	Covenant on Civil and Political Rights
<b>CED</b>	Committee on Enforced Disappearances
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CEDAW Committee</b>	Committee on the Elimination of Discrimination against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CMW</b>	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
<b>CoE</b>	Council of Europe
<b>CPED</b>	International Convention for the Protection of all Persons from Enforced Disappearance
<b>CRC</b>	Convention on the Rights of the Child
<b>CRC Committee</b>	Committee on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CRPD Committee</b>	Committee on the Rights of Persons with Disabilities
<b>DDPA</b>	Durban Declaration and Programme of Action
<b>ECHR</b>	European Convention on Human Rights
<b>ECOSOC</b>	Economic and Social Council
<b>ECtHR</b>	European Court of Human Rights
<b>HRC</b>	Human Rights Council
<b>HRD</b>	human rights defender
<b>IACmHR</b>	Inter-American Commission on Human Rights
<b>IActHR</b>	Inter-American Court of Human Rights
<b>IAHRS</b>	Inter-American Human Rights System
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICCPR-OP1</b>	Optional Protocol to the International Covenant on Civil and Political Rights
<b>ICCPR-OP2</b>	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICESCR - OP</b>	Optional Protocol to the Covenant on Economic, Social and Cultural Rights
<b>ICJ</b>	International Court of Justice
<b>ICMW</b>	International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families

## LIST OF ACRONYMS

<b>NGO</b>	non-governmental organisation
<b>OAS</b>	Organization of American States
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>OPCAT</b>	Optional Protocol to the Convention against Torture
<b>OP-CEDAW</b>	Optional Protocol to the Convention on the Elimination of Discrimination against Women
<b>OP-CRC-AC</b>	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
<b>OP-CRC-SC</b>	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
<b>OP-CRC-IC</b>	Optional Protocol to the Convention on the Rights of the Child on a communications procedure
<b>OP-CAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>OP-CRPD</b>	Optional Protocol to the Convention on the Rights of Persons with Disabilities
<b>SP</b>	Special Procedure
<b>SPT</b>	Subcommittee on Prevention of Torture
<b>SRIJL</b>	Special Rapporteur on the independence of judges and lawyers
<b>TB</b>	treaty body
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNGA</b>	United Nations General Assembly
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UPR</b>	Universal Periodic Review

# INTRODUCTION

## BACKGROUND

With lawyers at the forefront of protecting human rights, the effective implementation of United Nations and regional laws and standards relating to the independence and safety of the legal profession is at the heart of promoting and protecting human rights around the world.

## OVERVIEW OF THE TOOLKIT

### GENERAL OBJECTIVE

To strengthen the protection of lawyers and those exercising lawyers' functions who face risks as a result of carrying out their professional functions.

### SPECIFIC OBJECTIVES

- to provide guidance on the international human rights framework that protects those exercising lawyers' functions;
- to provide guidance about prevention, including risk assessment and risk management, in the discharge of legal practice;
- to provide guidance on how to access response and protection mechanisms at the regional and UN levels based on the experience of the main international lawyers' organisations; and
- to support joint actions among organisations that support lawyers.

### SCOPE

The Toolkit applies to those who perform the functions of a lawyer, in a professional manner, notwithstanding their title or registration to a specific association. As per the Basic Principles on the Role of Lawyers, the functions of a lawyer mostly consist in:<sup>1</sup>

- advising clients as to their legal rights and obligations;
- taking legal action to protect their interests; and
- assisting clients before courts, tribunals or administrative authorities.

### TOOLKIT COMPONENTS

The Toolkit is composed of:

- (1) training modules addressed to lawyers and organisations that support lawyers' work; and
- (2) practical tools aimed at assisting lawyers at risk.

## OVERVIEW OF MODULE 1

### **OBJECTIVE**

To enhance lawyers' capacity to use international human rights norms and recommendations, and engage with international and regional human rights mechanisms to ensure their professional independence and personal and professional safety.

### **CONTENT**

Module 1 is composed of four chapters. The first three chapters allow you to consolidate your knowledge about the UN and regional human rights systems, and international protection of the legal profession. The last chapter puts you in the driving seat, with a more practical approach to the international human rights system to support your legal practice.

#### **Get Started**

This chapter contains basic notions regarding the rationale of lawyers' protection at the international level and a schematic presentation of UN and regional human rights mechanisms as an introduction to the two subsequent chapters.

#### **Theory I: International Legal Framework Protecting Lawyers and Those Exercising Lawyers' Functions**

This chapter introduces the different sources of international law that come into play in the protection of lawyers. Notwithstanding the prima facie difference often referred to between 'hard' and 'soft' law, the body of norms and standards protecting lawyers has arguably crystallised over time as a unified normative framework. This chapter provides an overview of the rights and guarantees protecting lawyers at the international level.

#### **Theory II: International Human Rights Mechanisms: Role, Complementarity and Limitations**

This chapter addresses the respective role of each human rights mechanism at the UN and regional levels, their complementarity and their limitations. Mechanisms fulfil similar monitoring, adjudicatory or interpretative functions and should work in a coordinated manner. Effective engagement with the international system requires mastering both core features and limitations of the mechanisms.

#### **Practice: Engaging with the International Human Rights System**

This chapter responds to how lawyers can use international human rights norms, standards, decisions and recommendations to support their work, and provide better legal assistance and representation to clients. Focus is on the why and how to access the international legal material available at hand. As the next step, Module 3 focuses on engagement with the international human rights mechanisms at UN and regional levels.

## GET STARTED

### LEARNING OBJECTIVES

By the end of this chapter, you will be able to:

- articulate lawyer's protection with respect to international human rights law; and
- describe the main human rights mechanisms of the UN and regional human rights systems.



### KEY MESSAGES

There are currently four types of UN human rights mechanisms, usually subsumed within two systems referred to as:

- the 'UN Charter-based system', including the Human Rights Council (HRC) and two of its mechanisms, the Universal Periodic Review (UPR) and Special Procedures (SPs); and
- the 'treaty bodies' (TBs) system, currently comprised of ten bodies created by a human rights treaty.

Three regional human rights mechanisms in the Americas, Europe and Africa have similar functions (adjudicatory, interpretative or monitoring) to the UN TBs. Those regional human rights mechanisms are the African Commission on Human and Peoples' Rights (AfCmHPR), African Court on Human and Peoples' Rights (AfCtHR), European Court of Human Rights (ECtHR), Inter-American Court of Human Rights (IACtHR) and Inter-American Commission on Human Rights (IACmHR). In addition, newer bodies with fewer functions monitor human rights conditions in the countries of the Middle East and Southeast Asia: the Arab Human Rights Committee and the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, respectively.

All UN and regional human rights mechanisms contribute to the development of international standards, and issue country and thematic recommendations with the aim of helping countries to improve their human rights situations. Notwithstanding the specific scope of their mandate, all mechanisms address the independence of the justice system and the right to a fair trial, which is entrenched in all core human rights instruments as a necessary condition for the enforcement of all human rights.





## QUESTIONS



- What are the requirements and conditions to practise law in your country and be recognised as a 'lawyer'? Do you need to be licensed and become a member of an association?
- Have you, in your professional practice, experienced unlawful interference, harassment or other attacks? Do you know any other lawyer who has been in that situation? Are there systematic practices or emerging trends in your country that restrict the nature or scope of lawyers' activities or put their safety, liberty or independence at risk?
- What have you, your legal colleagues, or lawyers' organisations done in reaction to these interferences, restrictions or dangers? What domestic norms protect lawyers? What methods of recourse are available at the domestic level, and how effective are they?
- Do you see these interferences or restrictions as human rights violations? What links do you make between lawyers' rights and human rights?
- Do you know that there are international norms protecting the legal profession? Which ones are you familiar with?
- Have you ever brought a case against your country before a domestic, regional or international mechanism addressing the independence or safety of lawyers or judges in your country?
- If so, what was the outcome?
- What was your experience of making such a complaint?



## LAWYERS' SPECIAL PROTECTION

Recognised in a number of international instruments and jurisprudence, alongside the right to a fair trial and the right to liberty and security, the right to legal counsel<sup>2</sup> reflects the centrality of the legal profession to the rule of law and the protection of human rights. International and regional standards thus place the independence of the legal profession as the hallmark of a democratic system.

As 'agents of the administration of justice',<sup>3</sup> serving 'the interests of their clients',<sup>4</sup> lawyers fulfil states' obligations in providing legal assistance.<sup>5</sup> In turn, states are obliged to guarantee and ensure lawyers' protection. States shall thus create conditions that allow lawyers and those exercising lawyers' functions to freely, independently and professionally perform their professional duties,<sup>6</sup> while ensuring equality between all parties to the legal proceedings.

From there, the special protection granted to lawyers materialises through a number of guarantees and privileges recognised at regional, international and often domestic levels. These include the self-regulation of the legal profession recognised as independent, the principle of non-identification of lawyers with their clients, a system of immunities for oral and written expression during trials and the privilege of confidentiality in the lawyer–client communication that aims at securing the lawyers' core functions of providing independent and effective legal assistance and legal representation (see Table 1, pp 27–28).

Absolutely key in practice for lawyers' functioning, not all these guarantees are legally absolute, that is, non-derogable. However, international and regional mechanisms have recognised a high threshold of protection and strict conditions for derogation. The rationale is that a restriction put on lawyers, like on human rights defenders more broadly, is a restriction to a broader range of human rights of all or part of the community. In that

<sup>6</sup> Basic Principles on the Role of Lawyers, Principles 16, 17, 19, 20 and 25; UN Guidelines on Legal Aid, Principle 12; UN Declaration on HRD, Art 12 read together with Arts 9.3(b) and (c) and 11; AfCmHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Part H (k) and Part I (b), (e) and (f); CoE Recommendation 21, Principles I.1, I.4, I.7, I.8, V.3, V.4(b) and V.5'.



## THE UN CHARTER-BASED SYSTEM

Charter-based bodies are established under the UN Charter and constitute political bodies.

The UN Charter-based human rights mechanisms work within the ambit of the main organs of the UN, which are currently the UN General Assembly (UNGA), the Security Council, the Economic and Social Council (ECOSOC), the International Court of Justice (ICJ) and the UN Secretariat.

All were established in 1945 when the UN was founded.

## THE UNGA

The UNGA is made up of state representatives and is in charge of decision-making within the UN. It can set and update human rights standards. The UNGA has various committees in charge of specific themes. Its Third Committee covers social, humanitarian affairs and human rights issues that affect people all over the world. It meets in New York once a year between September and December.

## The HRC

The HRC was created in 2006.<sup>8</sup> It is an intergovernmental body comprised of 47 states elected directly and individually by secret ballot by the majority of the members of the UNGA. The membership is based on equitable geographical distribution. When electing members of the HRC, Member States shall take into account the contribution of candidates to the promotion and protection of human rights, and their voluntary pledges and commitments made thereto.<sup>9</sup> The UNGA, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the HRC of a member of the council that commits gross and systematic violations of human rights.<sup>10</sup>

The HRC is responsible for promoting and protecting human rights worldwide. It can address specific human rights violations and make recommendations to states.

It meets in ordinary sessions in Geneva three times a year (March, June and September).

If one-third of the Member States requests so, the HRC can decide at any time to hold a special session to address human rights violations and emergencies.

The HRC was created with the mandate<sup>11</sup> to:

- promote the full implementation of human rights obligations undertaken by states and provide technical assistance and capacity-building, in consultation with and with the consent of Member States concerned;
- serve as a forum for dialogue on thematic issues on all human rights; and
- make recommendations to the UNGA for the further development of international law in the field of human rights.

In addition, the HRC undertakes a UPR<sup>12</sup> of states and maintains a system of SPs, expert advice and a complaint procedure.<sup>13</sup>

8 UNGA, 'Human Rights Council' (2006) UN Doc A/RES/60/251.

9 *Ibid*, para 8.

10 *Ibid*, para 8.

11 *Ibid*, para 5.

12 *Ibid*.

13 *Ibid*, para 6.

## **The UPR**

The UPR was set up in 2007<sup>14</sup> as a peer-review process among states. It monitors the implementation of all human rights obligations of each state under review. It holds three sessions a year and reviews all UN Member States over a cycle of 4.5 years.

## **The HRC SPs**

When significant human rights concerns arise in a country or in relation to a specific issue, the HRC<sup>15</sup> (and prior to the HRC, the Commission on Human Rights) has the power to create an SP, with the aim of monitoring the implementation of human rights in relation to that specific country ('country mandates') or issue ('thematic mandates').

In 1994, one SP was set up specifically to protect lawyers: the Special Rapporteur on the independence of judges and lawyers (SRIJL).<sup>16</sup> Other SPs also play a role in the protection of lawyers given the overlap of the topic with their mandate. This is particularly the case of the Special Rapporteur on human rights defenders (HRDs), the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on counterterrorism.

## **OTHER UN CHARTER-BASED ORGANS**

The Security Council has primary responsibility, under the UN Charter, for the maintenance of international peace and security. It has 15 members (five permanent and ten non-permanent members).

The ECOSOC is the principal body for the coordination, policy review, policy dialogue and recommendations on economic, social and environmental issues, as well as the implementation of internationally agreed development goals. It serves as the central mechanism for activities of the UN system and its specialised agencies in the economic, social and environmental fields, supervising subsidiary and expert bodies. It has 54 members, elected by the UNGA for overlapping three-year terms. It is the UN's central platform for reflection, debate and innovative thinking on sustainable development.

The ICJ is the principal judicial organ of the UN. Its seat is at the Peace Palace in The Hague.

The UN Secretariat comprises the Secretary-General and tens of thousands of international UN staff members who carry out the day-to-day work of the UN as mandated by the UNGA and the organisation's other principal organs.

## **UN AGENCIES**

UN agencies can:

- develop and/or monitor international standards;
- build states' capacities and raise awareness about standards; and
- determine good practices within the scope of their respective mandates.

Since 1997, UN agencies have been called upon by the UN Secretary-General to adopt a human rights-based approach in their functioning, to ensure that human rights are enforced in a cross-cutting manner throughout the UN system.<sup>17</sup> The practice of UN agencies is uneven in that respect, and while some have adopted a human

14 UNHRC, 'Institution-building of the United Nations Human Rights Council' (2007) UN Doc A/HRC/RES/5/1, revised by UNHRC, 'Review of the work and functioning of the Human Rights Council' (2011) UN Doc A/HRC/RES/16/21 and Decision 17/119.

15 The Commission on Human Rights, established in 1946, was the body initially in charge of the appointment of SPs. In 2006, the Commission was replaced by the HRC.

16 OHCHR, 'Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers' Res 41/1994 (4 March 1994) UN Doc E/CN.4/1994/132.

17 Renewing the UN: a programme for reform: report of the Secretary-General (1997) UN Doc A/51/950, 8 <https://digitallibrary.un.org/record/245922?ln=en>, accessed 30 December 2019. At the UN World Summit in 2005, UN Member States undertook to 'integrate the

rights strategy, or systematically apply a human rights-based approach in their work, others are yet to integrate the approach systematically.

In the justice sector, the UN Office on Drugs and Crime (UNODC) has a particular role to play given its mandate to set up and revise existing standards and norms in crime prevention and criminal justice, and the monitoring of their use and application.<sup>18</sup>

In the 1980s, it was under the aegis of the UN Congress on the Prevention of Crime and Treatment of Offenders (organised by the UNODC since 1997) that the key reference standards on the independence of the judiciary, independence of lawyers and role of prosecutors were adopted (see Theory II, p 29).

## **THE TB SYSTEM**

TBs monitor the implementation of international human rights treaties by States Parties.

To date, the nine existing core human rights treaties have established ten TBs<sup>19</sup> in order to review States Parties' compliance with the treaty provisions.

The nine treaties recognise human rights for all (civil, political, economic, social and cultural rights), specific groups (women, persons with disabilities, children and migrant workers) or in specific circumstances (torture and enforced disappearances).

The Universal Declaration of Human Rights (UDHR), though not a treaty, is considered as the building block of the TB system and is a recognised customary force. The UDHR, together with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), are referred to as the 'International Bill of Rights'.

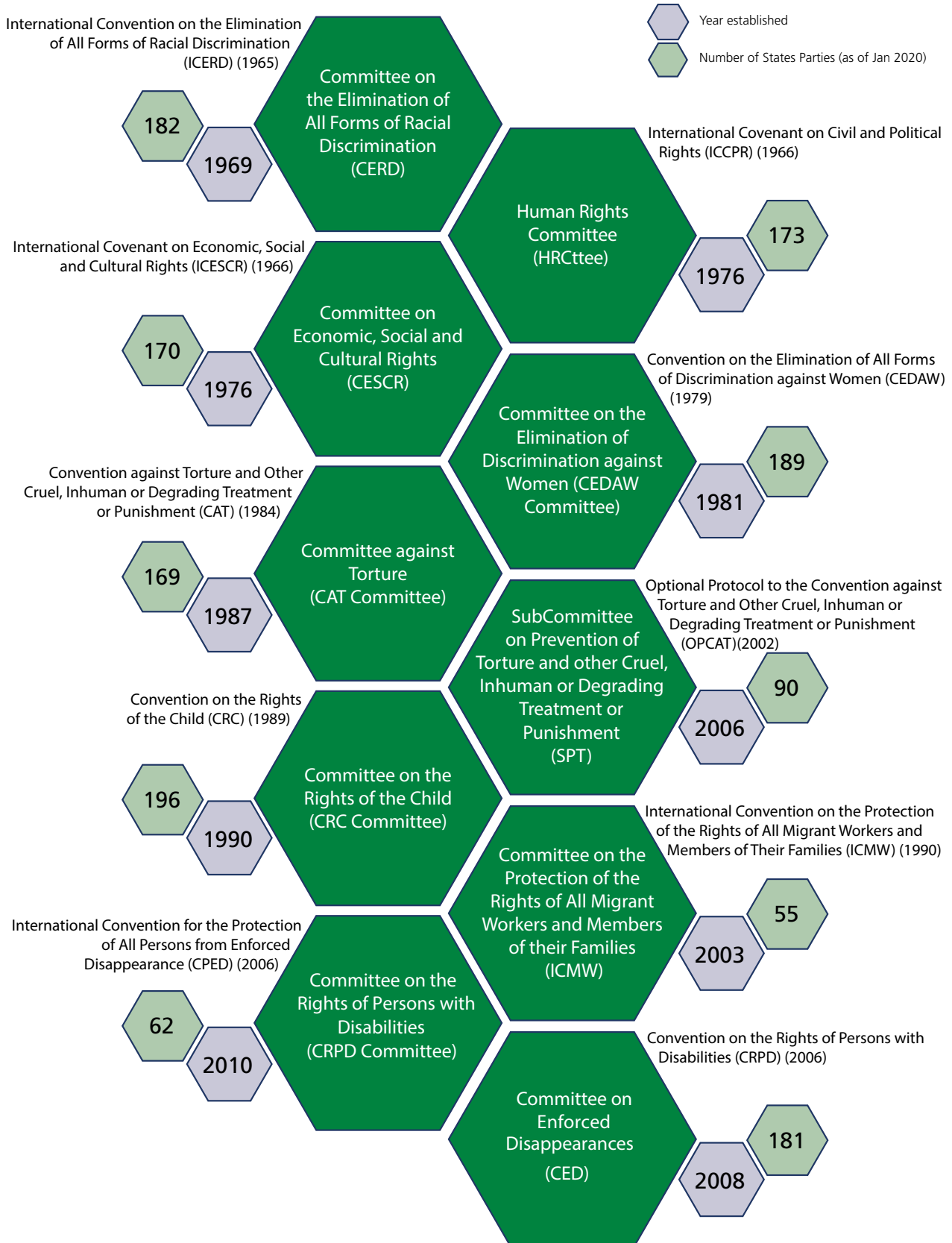
### **UN TBs and the international human rights treaties establishing them**

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promotion and protection of human rights into national policies'. UNGA, 2005 World Summit Outcome (2005) UN Doc A/RES/60/1 [www.refworld.org/docid/44168a910.html](http://www.refworld.org/docid/44168a910.html), accessed 30 December 2019.

18 See [www.unodc.org/unodc/en/justice-and-prison-reform/index.html?ref=menuaside](http://www.unodc.org/unodc/en/justice-and-prison-reform/index.html?ref=menuaside).

19 HRCttee, CESCR, CERD, CEDAW Committee, CAT Committee, SPT, CRC Committee, CMW, CRPD Committee and CED.



## REGIONAL HUMAN RIGHTS SYSTEMS

Regional human rights bodies monitor, promote and protect human rights in several geographic regions around the world. In Africa, the Americas and Europe, the regional human rights systems play a significant role in protecting human rights among their Member States. Like international TBs, they have monitoring, adjudicatory and/or interpretative functions.

Under their monitoring and adjudicatory functions, they review states' reports and decide states' responsibility for violations alleged in complaints submitted by individuals (see Theory II, p 29).

They can also set up special mechanisms, usually either special rapporteurs or working groups, tasked with monitoring and interpreting human rights obligations on specific thematic areas. Each special mechanism's capabilities are set forth in its mandate. Generally, special mechanisms may:

- advise the Commission in its processing of individual petitions, cases, and requests for precautionary and provisional measures related to their mandate;
- undertake country visits to investigate human rights conditions;
- conduct thematic reports and studies;
- develop recommendations to Member States;
- organise seminars, workshops and specialised meetings;
- raise awareness of human rights issues;
- receive information from individuals and civil society;
- provide the Commission with annual reports on their work; and
- contribute to the development of international human rights law.

In Africa, the AfCmHPR can create 'special mechanisms', and the mandate-holders are then appointed among its commissioners. A commissioner may thus serve as a Special Rapporteur or as chair or vice-chair of a Working Group (other members of the Working Groups are appointed outside the AfCmHPR). Of particular relevance here is the Special Rapporteur on HRDs of the AfCmHPR.

In the Americas, special mechanisms are independent experts appointed by the IACmHR outside the commission. This is the case with the IACHR Special Rapporteur on HRDs.

In Europe, the CoE has appointed a Commissioner for Human Rights, whose mandate on HRDs has been enhanced by the Declaration on the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities' ('UN Declaration on HRDs') adopted by the Committee of Ministers of the CoE in February 2008.

**Table 1. Regional human rights systems**

Europe	Inter-Americas	Africa
<p><b>European Convention on Human Rights (1950)</b> 47 States Parties</p>	<p><b>American Declaration of the Rights and Duties of the Man (1948)</b> All OAS Member States (35) are bound to respect the Declaration.</p> <p><b>American Convention on Human Rights (1969)</b> 25 States Parties</p>	<p><b>African Charter on Human and Peoples' Rights (1981)</b> 54 States Parties</p> <p><b>Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998)</b> 30 States parties</p>
<p><b>European Court of Human Rights (ECtHR)</b> Based in Strasbourg, France. Began its activities in 1959.</p>	<p><b>Inter-American Commission on Human Rights (IACmHR)</b> Based in Washington DC, US. Began its activities in 1959.</p> <p><b>Inter-American Court of Human Rights (IACtHR)</b> Based in San José, Costa Rica. Began its activities in 1979.</p>	<p><b>African Commission on Human and Peoples' Rights (AfCmHPR)</b> Based in Banjul, The Gambia. Began its activities in 1987.</p> <p><b>African Court on Human and Peoples' Rights (AfCtHPR)</b> Based in Arusha, the United Republic of Tanzania. Began its operations in 2006.</p>

Additionally, newer bodies with fewer functions monitor human rights conditions in the countries of the Middle East and Southeast Asia: the Arab Human Rights Committee and the ASEAN Intergovernmental Commission on Human Rights.

Also of note: a number of regional economic integration initiatives, such as the European Union and Economic Community of West African States, have established courts to deal with disputes arising between Member States or concerning the community's laws. These tribunals are not generally considered to be human rights courts because their core mandate is not human rights protection. However, some are authorised to consider individual complaints involving fundamental rights or to directly apply human rights treaties.



## THEORY I: INTERNATIONAL LEGAL FRAMEWORK PROTECTING LAWYERS AND THOSE EXERCISING LAWYERS' FUNCTIONS

### LEARNING OBJECTIVES

By the end of the chapter, you will be able to:

- describe the main sources of international law establishing lawyers' rights and guarantees, their legal force and their complementarity;
- describe the three regimes of protection applicable to lawyers and their scope of application; and
- describe the rights and guarantees protecting lawyers at the international level.

### KEY MESSAGES

- Lawyers' independence is an essential part of the rights to a fair trial and legal counsel. As it appears from its historical development, the protection granted to lawyers is an essential extension of fair trial rights,<sup>20</sup> which in turn protect all other human rights.
- The international legal framework protecting lawyers rests on:
  - General international human rights instruments, especially the nine core UN human rights treaties and three major regional human rights treaties.
  - Specific instruments protecting lawyers. The Basic Principles on the Role of Lawyers (the 'Basic Principles') constitute the international reference instrument for lawyers' protection. It is cited by the human rights mechanisms, in particular the UN Human Rights Committee,<sup>21</sup> as an authoritative statement of state duties to enable and maintain a properly functioning legal profession. The Basic Principles have been strengthened by two regional instruments, that is, the CoE Recommendation 21 (2000) on the freedom of exercise of the profession of lawyer ('CoE Recommendation 21'), and the ACHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa ('African Guidelines on the Right to a Fair Trial'). The Basic Principles protect, as a lawyer, any person who provides effective and competent legal assistance to a client, in accordance with the ethics of the profession. Conversely, CoE Recommendation 21 only protects lawyers with an official title formally granted at national level. This difference between a functional and procedural approach to lawyering may create in practice some discrimination, where persons exercising the same functions are not protected in the same manner.
  - Specific instruments protecting HRDs, the main one being the UN 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 UN Declaration on HRDs). This declaration provides protection to 'individuals, groups and associations... contributing to... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals'<sup>22</sup> and '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'.<sup>23</sup> In accordance with this broad categorisation, lawyers taking human rights cases can qualify as HRDs and benefit from the protection granted to them.
- International human rights treaties are legally binding ('hard law'). Conversely, the instruments currently

20 Phon Van den Biesen, Introductory remarks, in *Lawyers for Lawyers, Building on Basic principles* (Stichting NJCM-Boekerij 2011), 18.

21 CCPR, Concluding observations of the Human Rights Committee: Russian Federation, CCPR/C/RUS/CO/6, (2009), para 22; Concluding observations of the Human Rights Committee: Belarus, CCPR/C/79/Add.86, (1997), para 14; *Idieva v Tajikistan*, CCPR/C/95/D/1276/2004, (2009), para 3.6.

22 UN Declaration on HRDs Defenders, 4th preambular paragraph.

23 *Ibid*, 8th preambular paragraph.

protecting lawyers and HRDs specifically are non-binding legal instruments ('soft law'). The latter, however, provide an authoritative interpretation of the former, and 'soft law' instruments protecting lawyers refine the right to a fair trial, which is entrenched in international human rights treaties.<sup>24</sup> The implementation of these instruments depends on their actual use by legal practitioners and other HRDs.



## SECTION 1. INTERNATIONAL LEGAL SOURCES OF PROTECTION

The ICJ Statute<sup>25</sup> identifies the following as sources of international law: international conventions, international custom, general principles of law recognised by nations, and judicial decisions and teaching of experts.

International conventions or treaties are often referred to as 'hard law', as agreements and rules of international law that impose precise and legally binding obligations on states. By contrast, non-treaty instruments, which may be formally referred to as Resolutions, Declarations, Basic Principles or Guidelines, are usually referred to as 'soft law'. They are adopted by the UNGA, HRC or other intergovernmental body, but are not formally legally binding.

Lawyers' protection is integrally intertwined with their central and critical function in ensuring independent and equal access to fair trials, and determination of rights in accordance with international human rights law. As such, the right to a fair trial, recognised in all UN and regional human rights treaties,<sup>26</sup> and the principle of independence of the judiciary and prosecution services still constitute the main legal basis to lawyers' protection.

Taking a broad approach of the different normative developments, we can distinguish as international sources of law protecting lawyers:

- the general principles of international law and customary international law insofar as they protect the independence of the judiciary and lawyers and the right to a fair trial;
- core human rights treaties insofar as they recognise the rights to a fair trial and security, the right to legal counsel and fundamental rights of lawyers; and
- 'soft law' instruments protecting lawyers and HRDs, such as the Basic Principles and Declaration on HRDs, respectively.

Finally, international standards have been developed by professional organisations that provide further guidance for the interpretation of lawyers' protection.

Notwithstanding the usual divide between treaty (or 'hard law') and non-treaty (or 'soft law') provisions, all norms and standards protecting human rights in the administration of justice, including the independence of lawyers, have been interpreted in a comprehensive manner by human rights mechanisms. In that respect, the SRIJL (see above) has significantly contributed to the unity of the human rights system by interpreting treaty and non-treaty provisions jointly and on an equal footing in thematic and country reports, as well as communications sent to countries. Other human rights mechanisms have also done so. As a result, in 2003, the Special Rapporteur noted that the 1985 UN Basic Principles on the independence of the judiciary 'have become a common reference source for international human rights bodies and procedures'.<sup>27</sup>

In light of the reference made to them by courts and states over time, it can be argued that existing norms relating

24 UDHR, Art 10; ICCPR, Art 14; CAT, Art 7.3 and 13; CPED, Arts 11.3 and 12; CRC, Art 40.2(b) (ii); ICMW, Art 18; ECHR, Art 6; AmCHR, Art 8; AfCHPR, Arts 7 and 26; and ArCHR, Arts 13 and 16.

25 Art 38.1 of the Statute of the ICJ provides for four sources of law:

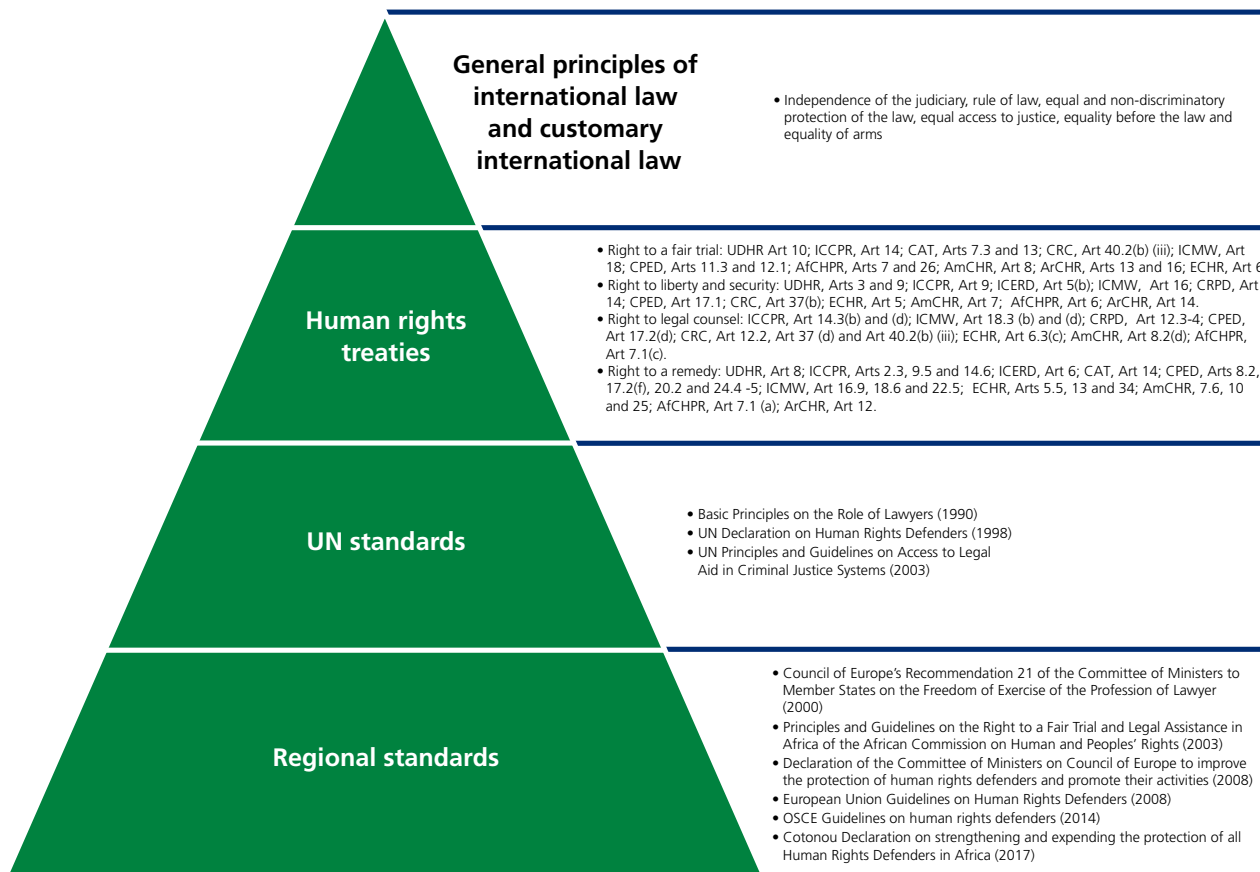
- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.'

26 See n 25 above.

27 UNCHR, 'Report of the Special rapporteur on the independence of judges and lawyers, Leandro Despouy' (2003) UN Doc E/CN.4/2004/60, para 71.

to lawyers can be effective even without further formalisation in international law. This demonstrates that soft law is not to be brushed aside as lesser than, but rather is to be regarded as complementary to, the binding treaties with particular regard given to its normative value, as well as its role of informing the construction of binding customary international norms.

**International legal sources of protection for lawyers and those exercising lawyers' functions**



**SECTION 1.1. CUSTOMARY INTERNATIONAL LAW AND GENERAL PRINCIPLES OF INTERNATIONAL HUMAN RIGHTS LAW**

Customary international law is defined as a source of international law emerging from consensus among states exhibited both by widespread conduct (states' practice) and a discernible sense of obligation (states' *opinio juris*). The ongoing development of converging standards and recommendations through declarations and other instruments, and continuous reference to them and implementation at country level over a long period of time, produce a ripple effect, which might eventually lead to the development and consolidation of international customary norms. International norms can thus, over time, obtain the status of customary international law and become legally binding and applicable to all states, notwithstanding their initial legal status or the absence of ratification. Unlike treaties, which are only binding on States Parties, customary norms are binding on all states.

The right to a fair trial, entrenched in Article 10 of the UDHR and all main human rights treaties,<sup>28</sup> is recognised as customary international law.

28 See n 25 above.

So is the principle of independence of the judiciary, consubstantial to the independence of the legal profession. The SRIIL expressed that ‘the general practice of providing independent and impartial justice is accepted by States as a matter of law and constitutes, therefore, an international custom in the sense of article 38 (1) (b) of the Statute of the International Court of Justice’.<sup>29</sup>

In support of this, the Vienna Declaration on Human Rights constitutes an important recognition of the state obligation to set up an independent judiciary and legal protection for the realisation of human rights, recognised as universal, indivisible, interdependent and interrelated.

*‘The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.’*

Vienna Declaration and Programme of Action, para 27

*Adopted by the World Conference on Human Rights in Vienna on 25 June 1993*

In addition to customary norms, a number of general principles of international law underpin the protection of lawyers. General principles are commonly shared principles that can be found in the domestic systems, which, as such, can also be applied in international law. They are inducted from the legal reasoning of international courts. General principles underlying lawyers’ protection encompass the principle of rule of law, equal and non-discriminatory protection of the law, equal access to justice, equality before the law and equality of arms (see the International Legal Digest).

## **SECTION 1.2. INTERNATIONAL AND REGIONAL HUMAN RIGHTS TREATIES**

Treaties (also formally called ‘conventions’ or ‘covenants’) are concluded following the decision-making process prescribed under international law. They become legally binding instruments for States Parties upon ratification.<sup>30</sup> Most treaties establish mechanisms to oversee their implementation.

At international level, the nine core UN human rights treaties mentioned above have each been formally adopted by a resolution of the UNGA and any UN Member State can be a party. TBs are responsible for the monitoring of the treaty establishing them. In addition, the UN Charter-based human rights mechanisms, namely the HRC, the UPR and the SPs, are also competent to interpret and monitor the obligations set out in those treaties.

At regional level, core existing human rights treaties are restricted to states that are members of each regional organisation.

All international and regional treaties recognise the right to a fair trial,<sup>31</sup> the right to legal counsel<sup>32</sup> and fundamental rights of lawyers (see Table 1 below, p 27).

The right to a fair trial has been first and foremost entrenched in Article 14 of the ICCPR, which has been explained by the HRCtee through its General Comment No 32. The fair trial notion lies in the individual’s right to have his/her case heard by an independent court in order to protect and enforce his/her rights. The right to a fair trial is construed as both a right and an essential procedural guarantee for the effective exercise of other human rights and a procedural means to safeguard the rule of law. It therefore applies in both criminal and non-criminal cases.

29 UNHRC, ‘Report of the Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán’ (2017) UN Doc A/HRC/35/31. See also, E/CN.4/1995/39, paras 32 and 35.

30 See Art 11 of Vienna Convention, Means of expressing consent to be bound by a treaty. ‘The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.’

31 See n 25 above.

32 See n 2..

The state has the obligation to provide access to independent, impartial and competent courts to determine criminal charges or rights and to ensure that the administration of justice is fair, in balance (equality of arms) and effective. State duties encompass many elements: equality before the courts; right to a fair and public hearing by a competent, independent and impartial tribunal; and the so-called 'minimum guarantees' in criminal trials.

Minimum guarantees in criminal proceedings include (Art 14(3),(5)(6) and (7), ICCPR):

- to be informed promptly of the charge;
- to have adequate time and facilities to prepare a defence and to communicate with counsel;
- to be tried without undue delay;
- to be tried in person;
- to legal assistance and to have legal assistance assigned to the accused, where the interests of justice so require, and without payment if the accused is unable to pay for it;
- to cross-examine prosecution witnesses and to obtain the attendance and examination of witnesses on behalf of the accused on the same conditions as the prosecution;
- to have the assistance of an interpreter;
- to be free from self-incrimination;
- to have a conviction and sentence reviewed by a higher court;
- to be paid compensation where a criminal conviction has been overturned or where a person has been pardoned in situations involving a miscarriage of justice; and
- not to be tried or punished more than once.

The right to legal counsel has been first and foremost entrenched in Art 14, para 3 of the ICCPR, and reiterated in a number of treaties.<sup>33</sup> It has been interpreted by international and regional human rights mechanisms as the right to prompt, independent, effective and competent legal assistance. It is read together with the right to adequate time, facilities and access to all appropriate information to prepare one's defence, the right to confidentiality in lawyer-client communications and the right to free legal aid in case the interest of justice so require and the accused is unable to pay for it. Several requirements relating to the role of lawyers must be met, both in civil and criminal proceedings. The state must ensure that the lawyer appointed is qualified to represent the accused and has the necessary training, experience and skills commensurate with the nature and gravity of the offence allegedly committed, and the rights and particular needs of the accused, and that the lawyer is in a position to exercise the role effectively.

### **SECTION 1.3. DECLARATIONS, GUIDELINES, UNGA AND HRC RESOLUTIONS AND OTHER NON-TREATY INSTRUMENTS**

The UN adopted several sets of basic principles and guidelines (see the Annex) as framework models for how a country's domestic laws and institutional structures can protect the independence of the judiciary. The origins of these instruments can be found in efforts aimed at exploring the necessary preconditions of a proper administration of justice and the fair trial principles, as essential requirements for citizens to enjoy the benefits of their rights.

A decade later, the adoption of the UN Declaration on HRDs complements the protection of lawyers working in human rights. In 2012, the UN Guidelines on Legal Aid extend the regime applicable to lawyers to the broader group of 'legal aid providers'.

33 *Ibid.*

These instruments, though not formally legally binding, may be adopted or ‘welcomed’ by a resolution of the UNGA, which vests the instrument with a particular importance. That is the case with the Declaration on HRDs, which was adopted unanimously by the UNGA in 1998.<sup>34</sup> The Basic Principles were unanimously ‘welcomed’ by the UNGA in 1990.<sup>35</sup>

In addition to these framework instruments, both the UNGA and HRC regularly adopt resolutions reiterating and advancing standards on the administration of justice and HRDs (see ‘Useful resources’). These thematic resolutions, whether adopted by the HRC or UNGA, though not legally binding, constitute recommendations providing traction to international human rights norms, standards and recommendations.

Non-treaty instruments rarely benefit from a formally established monitoring system. In practice, they are referred to as sources of interpretation in the monitoring of binding instruments and contribute to the development and consolidation of international customary norms. ‘Soft law’ can thus be described as law in the making.

## **Specific instruments protecting lawyers**

### ***UN instruments***

#### **Basic Principles on the Role of Lawyers (1990)**

During the 1980s, the UN Congress on the Prevention of Crime and Treatment of Offenders (organised by the UNODC since 1997) played a particular role in the development of framework instruments on how states can effectively implement international obligations to ensure individual rights to fair trial and provide guarantees for the independence of the judiciary. Alongside standards on the independence of the judiciary, the role of prosecutors, the use of force and firearms by law enforcement officials, the treatment of prisoners and so on (see Annex),<sup>36</sup> the Basic Principles were unanimously adopted in 1990.<sup>37</sup>

The Basic Principles still constitute ‘the most comprehensive international normative framework aimed at safeguarding the right of access to legal assistance, the independent functioning of the legal profession’ of the legal profession and the liberty and security of lawyers.<sup>38</sup> Although adopted at a conference aimed at strengthening international and regional cooperation in the fight against crime, the Basic Principles are broadly worded to encompass lawyers’ roles in civil matters so as to protect economic, social and cultural rights, as well as civil and political rights of all persons, especially the poor and other disadvantaged groups.

The preamble of the Basic Principles states that the main purpose of the document is ‘to assist Member States in their task of promoting and ensuring the proper role of lawyers and ensuring lawyers’ functioning without any improper interference’. It further explicitly mentions that the principles ‘should be respected and taken into account by governments within the framework of their national legislation and practice’.

In this approach, the Basic Principles function primarily as a framework in which provisions of existing (national) law should be interpreted. Thus, while the Basic Principles do not possess autonomous legal power, their substance has made significant impact on the interpretation of existing legal rules.

Furthermore, soon after their adoption, a SP, the SRIJL, was created by the UN Commission on Human Rights, with the mandate to monitor and clarify, in light of current practice, international standards addressing the independence of judges and lawyers. As mentioned above, the Special Rapporteur has greatly contributed to compiling binding and non-binding instruments into one body of norms governing the administration of justice.

34 UNGA, ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’ (1999) UN Doc A/RES/53/144.

35 UNGA, ‘Human rights in the administration of justice’ (1990) UN Doc A/RES/45/166.

36 Phon Van den Biesen, see n 21 above..

37 UN, Basic Principles, 7 September 1990, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 [www.refworld.org/docid/3ddb9f034.html](http://www.refworld.org/docid/3ddb9f034.html) accessed 17 December 2018.

38 UNHRC, ‘Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán’ (2017) UN Doc A/HRC/35/31, para 17.

The Basic Principles have been referred to in the case law of regional courts<sup>39</sup> and UN mechanisms.<sup>40</sup> Although not legally binding, they have constantly been used by governments to point out other governments' ill-treatment of attorneys.<sup>41</sup> They provide UN Member States with an instrument to refer to when cautioning other states about problems within their justice system. Norms that safeguard lawyers have afforded human rights organisations a means to strengthen and reform legal systems, especially in common law regimes where the adversarial system is central.

These elements suggest that existing norms relating to lawyers can be effective even without further formalisation in international law.

## **UNGA and HRC resolutions on the administration of justice and the independence of judges and lawyers**

### **UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012)**

The 2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems ('UN Guidelines on Legal Aid') 'provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system' (para 6).

The Guidelines flesh out the right to legal aid and define legal aid as including 'legal advice, assistance and representation for persons detained, arrested or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that provided at no cost for those without sufficient means or when the interests of justice so require' (para 8).

The Guidelines extend the regime applicable to lawyers to the broader group of 'legal aid providers', including lawyers, as well as non-governmental organisations, community-based organisations, religious or non religious charitable organisations, professional bodies and associations and academia (para 9). The Guidelines recommend to entrust an independent legal aid authority with regulatory functions, including the setting of accreditation, training and a disciplinary process in accordance with a code of ethics (Guideline 11, para 59). As for lawyers, states must ensure that legal aid providers are able to 'carry out their work effectively, freely and independently', with the guarantees of access to their clients in full confidentiality, time and facilities to provide effective legal assistance and not to be threatened with prosecution or administrative, economic and other sanctions for any action taken in accordance with recognised professional duties, standards and ethics (Principle 12).

Over the last decade two resolutions have been regularly presented by states at the UNGA and HRC that address more specifically the administration of justice:

- A resolution on the administration of justice is presented one year at the HRC and the alternate year at the UNGA.
- A resolution on the independence of judges and lawyers is presented to the HRC every two years.

A list of these resolutions can be found in the annex.

## **Regional instruments**

The African Union (AU), EU and OAS have adopted recommendations, resolutions or guidelines on the independence of lawyers. These instruments are not binding, and thus occupy a similar status to the Basic Principles and Guidelines. However, in practice, regional 'soft law' instruments serve the interpretation of regional conventions binding upon

39 See, eg, IACtHR, *Castillo Petruzzi et al*, 30 May 1999, paras 138–142. ECHR, *Kulikowski v Poland*, A. 18353/03, 19 August 2009, para 32; ECHR, *Nikula v Finland*, A. 31611/96, 21 June 2002, para 27.

40 CCPR, 'Concluding observations of the Human Rights Committee: Russian Federation' (2009) UN Doc CCPR/C/RUS/CO/6, para 22; 'Concluding observations of the Human Rights Committee: Belarus' (1997) UN Doc CCPR/C/79/Add.86, para 14; *Idieva v Tajikistan* (2009) UN Doc CCPR/C/95/D/1276/2004, para 3.6.

41 See IBAHRI, 'The role of the Universal Periodic Review in Advancing Human Rights in the Administration of Justice' (2016), [www.ibanet.org/Article/NewDetail.aspx?ArticleUid=742C8431-9C25-4D0B-BB05-F7950B22B5C4](http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=742C8431-9C25-4D0B-BB05-F7950B22B5C4) accessed 30 December 2019.

states, namely the European Convention of Human Rights and the African Charter of Human and Peoples' Rights. As such, each regional mechanism is expected to implement its respective treaty following the interpretation provided in these instruments.

## **Europe**

### **CoE Recommendation 21 on the Freedom of Exercise of the Profession of Lawyer (2000)**

In 2000, after the first resolution on the independence, efficiency and role of judges adopted in 1994,<sup>42</sup> the Committee of Ministers of the Council of Europe adopted a similar recommendation, Recommendation 21, on the Freedom of Exercise of the Profession of Lawyer. This Resolution complements Art 6, para 3 of the European Convention on Human Rights recognising the right to a fair trial.

In 2018, the European Parliament called on the Committee of Ministers to adopt a convention on the profession of lawyer, building on the existing standards set out in Recommendation No R (2000) 21.

## **Africa**

### **ACHPR Resolution on the Right to Recourse and Fair Trial (1992)**

In 1992, the African Commission adopted the Resolution on the Right to Recourse and Fair Trial, clarifying some of the component parts of the broad rights related to criminal proceedings provided for under the African Charter, substantiating the implementation of the right to a fair trial recognised in Art 7 of ACHPR.

### **ACHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003)**

In 2003, the African Commission elaborated fair trial rights even further, with the adoption of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa AfCmHPR, Guidelines on the Right to a Fair Trial. This instrument addresses rights, procedures and safeguards at every stage of criminal proceedings, and provide guidance to states on fulfilling their obligations to establish functioning and effective legal aid systems, in particular for people without their own lawyers and without sufficient means to pay for legal assistance. Several of the provisions of this standard are reflected in the UN Guidelines on Legal Aid.

Since then, the African Commission has developed guidelines addressing torture prevention,<sup>43</sup> pre-trial detention<sup>44</sup> and counterterrorism,<sup>45</sup> which all reassert the right to legal counsel.

## **Americas**

In 2013, the IACHR adopted a thematic report on Guarantees for the Independence of Justice Operators. This report was developed in light of persistent interference in the work of the justice systems in the region, in exercise of the IACHR's essential function of promoting the observance and defence of human rights in the American states and of the authority given in Art 41 of the ACHR and Art 58 of its Rules of Procedure.

The report identifies the obligations that the Member States of the OAS have undertaken to ensure access to justice through guarantees that must be afforded to justice operators to enable them to discharge their functions independently, while enhancing observance of the standards of international law and identifying certain obstacles still present in some states of the hemisphere.

42 Recommendation R(94) 12 on the Independence, Efficiency and Role of Judges, adopted by the Committee of Ministers of the CoE on 13 October 1994.

43 ACHPR, Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) (2008).

44 ACHPR, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (2014).

45 ACHPR, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa (2015).



## Special instruments protecting HRDs

### *UN instruments*

#### **UN Declaration on HRDs (1998)**

In 1998, the Declaration on HRDs was formally adopted by the UNGA Resolution A/RES/53/144.

The declaration provides for the support and protection of HRDs in the context of their work. It outlines some specific duties of states and the responsibilities of everyone with regard to defending human rights, in addition to explaining its relationship with national law.

The declaration is not, in itself, a legally binding instrument, but articulates rights enshrined in other international instruments that are legally binding, such as the ICCPR. It does not, as such, create new rights but articulates existing rights and applies them to the practical role and situation of HRDs. It gives attention, for example, to access to funding by organisations of HRDs and to the gathering and exchange of information on human rights standards and their violation.

#### **UNGA and HRC Resolutions on HRDs**

Both the UNGA and HRC regularly adopt resolutions on the protection of HRDs (see the annex).

In HRC Resolution 22/6, the HRC stresses that legislation affecting the activities of HRDs and its application must be consistent with international human rights law, including the ICCPR, ICESCR and Declaration on HRDs, and 'condemns the imposition of any limitations on the work and activities of human rights defenders enforced in contravention of international human rights law'.

## Regional instruments

### *Europe*

The main instruments are:

- the 2008 Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities;
- the 2008 European Union Guidelines on Human Rights Defenders; and
- the guides for HRDs published by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR).

### *Africa*

No specific instrument has been adopted by the ACHPR; however, a mechanism is in place with the ACHPR Special Rapporteur on HRDs.

### *Americas*

No declarations or resolutions specifically about HRDs have been adopted; however a specific mechanism has been set up with the IACHR Special Rapporteur on HRDs.

## **SECTION 1.4. PROFESSIONAL STANDARDS DEVELOPED BY INTERNATIONAL AND REGIONAL NGOS**

In addition to norms adopted by states, international organisations of legal professionals – such as the International Bar Association (IBA), the International Association of Judges and the International Association of Prosecutors – have adopted professional standards, which reiterate and develop the standards spelt out at the UN level.

The main international instruments adopted by the IBA addressing lawyers' protection are:

- IBA Standards for the independence of the legal profession (1990);
- IBA Guide for establishing and maintaining discipline procedures for lawyers (2007); and
- IBA International principles on conduct for the legal profession (2011).

At regional levels, some codes of conduct, such as the one developed by the Council of Bars and Law Societies of Europe (CCBE), constitute key reference instruments.<sup>46</sup>

## SECTION 2. SCOPE AND CONTENT OF PROTECTION

### SECTION 2.1. HUMAN RIGHTS REGIMES AND THEIR APPLICABILITY

Three regimes can apply to lawyers:

1. the general human rights regime setting up human rights for all (civil, political, economic, social and cultural rights), specific groups (women, persons with disabilities, children and migrant workers), or in specific circumstances (torture and enforced disappearances);
2. international standards applicable to lawyers; and
3. international standards applicable to HRDs.

If everyone is protected under the general human rights regime, special protection measures require definition of their scope of application and of who is protected as a lawyer, and as a HRD.

#### Who is a 'lawyer'? Who is protected 'as a lawyer'?

International and regional instruments adopt a more or less restrictive scope to lawyers' protection and integrate to a greater or lesser extent the broader group of those providing legal assistance in a professional manner.

Following a procedural approach, a 'lawyer' is defined as a legal professional holding a specific title to practise law, according to requirements established in national law.

Following a functional approach, the person who performs the functions of a lawyer, notwithstanding his/her title or registration to a specific association, is protected as a 'lawyer'. The functions of a lawyer consists in:<sup>47</sup>

- advising clients as to their legal rights and obligations;
- taking legal action to protect their interests; and
- assisting clients before courts, tribunals or administrative authorities.

A functional approach to lawyering provides better protection than a procedural approach. The latter may create unequal protection and discrimination among persons fulfilling, in practice, the same functions.

The International Legal Digest (Tool 1) provides a detailed presentation of the approach and criteria retained by international and regional instruments to define the scope of lawyers' protection.

#### Who is a 'HRD'? Do lawyers qualify as 'HRDs'?

A 'HRD' is a person 'who, individually or with others, act peacefully to promote or protect human rights' (Art 1). The Declaration on HRDs refers to 'individuals, groups and associations... contributing to... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals' (4th preambular paragraph).

What is most important in characterising a person as an HRD is not the person's title or the name of the organisation he/she works for, but rather the character of the work undertaken to promote or protect human rights without

<sup>46</sup> CCBE, Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers (2013).

<sup>47</sup> Basic principles, Principle 13.

resorting to violence.

HRDs can include journalists and media professionals working on human rights issues, bloggers, lawyers, farmers, students, environmentalists, land rights activists, trade-unionists and labour rights activists, victims of human rights violations and their families, climate change activists, pro-democracy activists, indigenous rights advocates, educators and others.

They may work in a professional capacity as HRDs and be paid a salary, or conversely be volunteers and receive no remuneration. Many professional activities do not involve human rights work all of the time but can have occasional links with human rights.

Examples of actions include:

- the promotion and protection of civil and political rights, as well as the promotion, protection and realisation of economic, social and cultural rights;
- collecting and disseminating information on violations of protected rights;
- supporting victims of human rights violations;
- actions to secure accountability and to end impunity for rights violations;
- supporting better governance and government policy;
- climate change activists;
- environmental activists;
- contributing to the implementation of human rights treaties; and
- human rights education and training.

The Basic Principles place the protection of human rights at the core of lawyers' work: 'Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession' (Principle 14). The Preamble of the Basic Principles highlights the 'effective access to legal services provided by an independent legal profession' as required for the 'adequate protection of the human rights and fundamental freedoms to which all persons are entitled'.

Furthermore, collective actions of lawyers through national bar associations are key to achieve law and policy changes that protect human rights. Bar associations can act on behalf of the profession, creating significant pressure to prevent or foster institutional or legal changes. Speaking broadly, whenever there is a point of policy to be advocated, lawyers' associations may initiate, organise and promote human rights causes lawfully.

In 2016, in a report dedicated to lawyers at risk, the SRIJL highlighted that "When acting on behalf of their clients in defending their human rights and fundamental freedoms, lawyers should also be regarded as human rights defenders, and in that role they should fall under the protective scope of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental".<sup>48</sup>

A *contrario*, as explicitly stated in the report of the SRIJL, not all lawyers are HRDs 'simply by virtue of their professional affiliation'.<sup>49</sup> The SRIJL highlights here that if all lawyers are expected to ensure respect and protection of human rights in their respective legal practice, when issues related thereto occur, the reality may be different. As a result, lawyers will be protected insofar as they are actually engaging in the defence of human rights, whether on a permanent or ad hoc basis, in relation to their legal practice or not.

48 UNHRC, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Mónica Pinto' (2016) UN Doc A/71/348, para 35.

49 Ibid, para 36.

## SECTION 2.2. INTERNATIONAL RIGHTS AND GUARANTEES PROTECTED

UN and regional standards and recommendations have defined a triple layer of protection for lawyers providing for:

1. the organisation of an independent and self-governing legal profession;
2. guarantees for lawyers' functioning; and
3. lawyers' individuals rights.

**Table 2. International rights and guarantees protecting lawyers and those exercising lawyers' functions**

General principles of international law:		
Rule of law, equal and non-discriminatory protection of the law, equal access to justice, equality before the law and equality of arms		
<p><b>Right to a fair trial:</b> UDHR Art 10; ICCPR, Art 14; CAT, Arts 7.3 and 13; CPED, Arts 11.3 and 12; CRC, Art 40.2(b) (ii); ICMW, Art 18; ECHR, Art 6; AmCHR, Art 8; AfCHPR, Arts 7 and 26; ArCHR, Arts 13 and 16.</p> <p><b>Right to liberty and security:</b> UDHR, Arts 3 and 9; ICCPR, Art 9; ICERD, Art 5(b); ICMW, Art 16; CRPD, Art 14; CPED, Art 17.1; CRC, Art 37(b); ECHR, Art 5; AmCHR, Art 7; AfCHPR, Art 6; ArCHR, Art 14.</p> <p><b>Right to legal counsel:</b> ICCPR, Art 14.3(b) and (d); ICMW, Art 18.3 (b) and (d); CRPD, Art 12.3-4; CPED, Art 17.2(d); CRC, Art 12.2, Art 37 (d) and Art 40.2(b)(iii); ECHR, Art 6.3(c); AmCHR, Art 8.2(d); AfCHPR, Art 7.1(c).</p> <p><b>Right to a remedy:</b> UDHR, Art 8; ICCPR, Arts 2.3, 9.5 and 14.6; ICERD, Art 6; CAT, Art 14; CPED, Arts 8.2, 17.2(f), 20.2 and 24.4 -5; ICMW, Art 16.9, 18.6 and 22.5; ECHR, Arts 5.5, 13 and 34; AmCHR, 7.6, 10 and 25; AfCHPR, Art 7.1(a); ArCHR, Art 12.</p>		
Guarantees for the organisation of an independent and self-governing legal profession	Guarantees to lawyers' functioning	Lawyers' individual rights
<p>The law regulating the legal profession should:</p> <ul style="list-style-type: none"> <li>• be elaborated with the meaningful participation of the legal profession, and concerns raised by lawyers effectively addressed (SR IJL (2018) A/73/365);</li> <li>• establish an independent and self-governing bar association (Basic Principles, Principle 24; CoE Recommendation 21, Principle V (2); AfCmHPR Guidelines on the Right to a Fair Trial Principle I (I));</li> <li>• include, at a minimum, provisions relating to the: (1) independence of such associations; (2) their composition; and (3) the definition of their functions (SR IJL (2018) A/73/365);</li> </ul> <p>States shall further:</p> <ul style="list-style-type: none"> <li>• ensure the independence of the legal aid system, whether provided by state and/or non-state actors (UN Guidelines on Legal Aid in Criminal Justice, Principle 12) and guarantee collaboration with professional associations of lawyers to ensure that everyone has effective and equal access to legal services (Basic Principles, Principle 25);</li> <li>• respect the role of professional associations in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, and providing legal services (Basic Principles, Preamble); CoE Recommendation 21, Principles V.3 and V.5)</li> <li>• ensure a non-discriminatory, independent, transparent, objective and fair admission process into the legal profession (Basic Principles, Principles 10–11);</li> <li>• ensure representativeness of the legal profession (Basic Principles, Principle 11);</li> </ul>	<p>States shall guarantee the lawyers':</p> <ul style="list-style-type: none"> <li>• right to practice free from any intimidation, harassment or interference, including prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics (Basic Principles, principles 16, 17, 19, 20 and 25; UN Guidelines on Legal Aid, principle 12; UN Declaration on HRDs, Arts 9.3(c), 11 and 12; AfCmHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, part H (k) and part I (b), (e) and (f); CoE Recommendation 21 (2000), principles I.1, I.4, I.7, I.8, V.3, V.4(b) and V.5)</li> <li>• right not to be identified with one's client's cause (Basic Principles, Principle 18; African Guidelines on the Right to a Fair Trial, principle I (g))</li> <li>• right to access one's clients (ICCPR Art 14.3(b); CPED, Art 17.2 (d); UN Declaration on HRDs, Art 9.3 (c); Basic Principles, principle 16(b); AfCmHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, part I(b)2 and part M2(e); CoE Recommendation 21, principle I.5)</li> <li>• right to adequate time, facilities and access to all appropriate information to prepare the client's defence: ICCPR, Art 14.3(b); CRC, Art 40.2(b)(ii); ICMW, Art 18.3(b); AfCHPR, Art 7.1(c); AmCHR, Art 8.2(b) and (c); ArCHR, Art 16.2; ECHR, Art 6.3(b); Basic Principles, principle 21; AfCmHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, parts I (d), M.2 (e) and N.1 (a) and (c); CoE Recommendation 21, principle I (7).</li> <li>• right to confidentiality in the lawyer–client communications (AmCHR, Art 8.2(d); UN Guidelines on Legal Aid, guideline 3, para 43(d); Basic Principles, principles 8 and 22; AfCmHPR, Principles and Guidelines on the Right to a Fair</li> </ul>	<p>States shall guarantee the lawyers':</p> <ul style="list-style-type: none"> <li>• right to life: UDHR, Art 3; ICCPR, Art 6; AfCHPR, Art 4; AmCHR, Art 4; ArCHR, Art 5; ECHR, Art 2.</li> <li>• right not to be subjected to torture: UDHR, Art 5; ICCPR, Art 7; CRC, Art 37(a); CMW, Art 10; CRPD, Art 15; AfCHPR, Art 5; AmCHR, Art 5.2; ArCHR, Art 8; ECHR, Art 3.</li> <li>• freedom of opinion and expression: UDHR, Art 19; ICCPR, Art 19; ICERD, Art 5.d (viii); ICMW, Art 13; CRPD, Art 21; AmCHR, Art 13; AfCHPR, Art 9; ArCHR, Art 32; ECHR, Art 10; Basic Principles, Principle 23;</li> <li>• freedom of association and assembly: UDHR, Art 20; ICCPR, Arts 21 and 22; ICESCR, Art 8; ICERD, Art 5.d(ix); ICMW, Arts 40 and 26; AfCHPR, Arts 10 and 11; AmCHR, Arts 15 and 16; ArCHR, Art 24; ECHR, Art 11; Basic Principles, principles 23 and 24</li> <li>• freedom of movement: UDHR, Art 13; ICCPR, Art 12; ICERD, Art 5(d) (i) and (ii); CRPD, Art 18; AfCHPR, Art 13; AmCHR, Art 22; ArCHR, Arts 26 and 27.</li> <li>• right to participate in public affairs: UDHR, Art 21; ICCPR Art 25; CEDAW Art 7; ICMW, Art 41; CRPD, Art 29; AfCHPR, Art 13; AmCHR, Art 23; ArCHR, Art 24; Basic Principles, principle 23; UN Declaration on HRDs, Art 8; AfCmHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Part I(k); CoE Recommendation 21, principle V.4(d) .</li> <li>• right to property: UDHR, Art 17; ICERD, Art 5(d) (v); CMW, Art 15; AfCHPR, Art 14; AmCHR, Art 21; ArCHR, Art 31; ECHR, Protocol 1, Art 1</li> </ul>

- ensure initial and continuing education requirements in law, ethics and human rights, UN Declaration on HRDs, Art 15 as first reference) (Basic Principles, Principle 9; CoE Recommendation 21, Principle II, (1)–(3) and Principle V (4)g; AfCmHPR Guidelines on the Right to a Fair Trial, Principle I (a));
- provide the legal profession with a primary role in the drafting of professional standards (Basic Principles, Principle 26; CoE Recommendation 21, Principle V (1) and (4)g; AfCmHPR Guidelines on the Right to a Fair Trial, Principle I (m)); and
- ensure that lawyers' disciplinary proceedings are in accordance with the applicable professional standards and ethics of the legal profession, the disciplinary body is independent, lawyers have a right to due process and the right to judicial appeal (Basic Principles, Principles 26–29; CoE Recommendation 21, Principle VI; AfCmHPR Guidelines on the Right to a Fair Trial, Principle I (n–p)).
- Trial and Legal Assistance in Africa, Part I (c); CoE Recommendation 21, principles I.5 and I. 6 and III.2)
- - immunities for statements made in court or outside of a court of law in the course of representing their clients (UN Guidelines on Legal Aid, principle 12; Basic Principles, principles 16(c) and 20; AfCmHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, part I, (b)3 and (e); CoE Recommendation 21, principles I.4)
- - right to promote and strive for the protection and realisation of human rights (UN Declaration on HRDs, Art 1) including the right to develop new human rights ideas and advocate their acceptance (UN Declaration on HRDs, Art 7);
- right to communicate with NGOs and intergovernmental organisations (UN Declaration on HRDs, Art 5) and access and communicate with international human rights bodies, in the context of the right to an effective remedy (UN Declaration on HRDs, Art 9.4);
- - right to access information about human rights and fundamental freedoms and their implementation (UN Declaration on HRDs, Arts 6(a) and 14);
- right to provide professionally qualified legal assistance in defending human rights (UN Declaration on HRDs, Art 9.3(c)) in the context of the realisation of the right to an effective remedy (UN Declaration on HRDs, Art 9(1));
- - right to the lawful exercise of his/her occupation or profession, with the correlated duty to respect human rights, when this profession affects human rights (UN Declaration on HRDs, Art 11) ;
- duty to educate on human rights (UN Declaration on HRDs, Art 16); and
- promote human rights and fundamental freedoms, and contribute to the promotion and advancement of democratic societies, institutions and processes, and social and international orders conducive to human rights (UN Declaration on HRDs, Art 18).
- right to work: UDHR, Art 23; ICESCR, Arts 6, 7; ICERD, Art 5.e(i); CEDAW Art 11; ICMW, Arts 25, 55 and 70; CRPD Art 27; AfCHPR, Art 15; ArCHR, Art 34
- right to privacy: UDHR, Art 12; ICCPR, Art 17; CRPD, Art 22; AmCHR, Art 11; ArCHR, Art 21; ECHR, Art 8.

## THEORY II: INTERNATIONAL HUMAN RIGHTS MECHANISMS: ROLE, COMPLEMENTARITY AND LIMITATIONS

### LEARNING OBJECTIVES

By the end of this chapter, you will be able to:

- describe the role of each of the UN and regional human rights mechanisms in the protection and promotion of human rights;
- compare the different UN and regional mechanisms in their functions; and
- describe the legal bearing of the recommendations or decisions issued by each human rights mechanism.



### KEY MESSAGES

- At the UN level, four types of human rights mechanisms exist, namely the TBs, the HRC and two mechanisms placed under the HRC: the SPs and the UPR.
- At the regional level, in Europe, the Americas and Africa, a human rights system exists that comprises human rights courts or commissions and within or along those, special mechanisms.
- Human rights mechanisms can exercise some or all of the three functions below:
  - monitor the implementation of human rights according to a treaty (TBs/regional mechanisms), a delimited thematic area (thematic SPs) or all the country human rights obligations (UPR), or in a specific country (country SPs);
  - adjudicate individual complaints and issue individual communications in all circumstances (SPs) or when the state has proceeded to the requirements required in the treaty through either a declaration or ratification of a protocol (TBs); and
  - interpret human rights obligations binding state and non-state actors under a specific treaty (TBs) or a thematic area (SPs).

These mechanisms have different legal bearing. Regional courts are judicial bodies, while regional commissions and UN treaty bodies constitute quasi-judicial bodies. Special mechanisms are independent experts and their recommendations benefit from the corresponding authority. States recommendations made at the UPR exercise political traction.



## SECTION 1. UN HUMAN RIGHTS SYSTEM

### SECTION 1.1. THE UN CHARTER-BASED SYSTEM

#### UNGA and UN HRC

As mentioned above, in their mission of the promotion and protection of human rights, both the UNGA and HRC regularly adopt resolutions on the 'independence of judges and lawyers', 'administration of justice' and 'HRDs' (see the annex).

Other thematic or country resolutions may also turn out to be relevant for the lawyers' role or protection, depending on the focus chosen.

In addition, the HRC undertakes a UPR<sup>50</sup> of states and maintains a system of SPs, expert advice and a complaint procedure.<sup>51</sup>

## The UPR

### Core features

The UPR was established as a peer-review process with the following features:<sup>52</sup>

- it is based on objective and reliable information, of the fulfilment by each state of its human rights obligations and commitments in a manner that ensures universality of coverage and equal treatment with respect to all states;
- it is a cooperative mechanism, based on interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs;
- it shall complement and not duplicate the work of TBs; and
- it holds three sessions a year and reviews all UN Member States over a cycle of 4.5 years.

### Strengths and limitations

<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Predictable (every 4.5 years), transparent (access to all information and webcast) and supported by a wide range of information supplied by the State under Review, UN bodies and civil society.</li> <li>• Wide scope of review of all obligations of the State under Review.</li> </ul>
<b>Limitations</b>	<ul style="list-style-type: none"> <li>• UPR recommendations are not legally binding.</li> </ul>

## The HRC SPs

### Core functions

Created by the HRC (and prior to the HRC, the Commission on Human Rights) a 'SP' monitors the implementation of human rights in relation to that specific country ('country mandates') or issue ('thematic mandates').

The task of an SP is set out in the resolution creating or extending its mandate. The mandate of any SP is threefold and revolves around:

**Human rights interpretation and monitoring through annual thematic reports:** SPs assess important and topical questions within the scope of their mandate and develop annual thematic reports containing recommendations to states. SPs report annually to the HRC.<sup>53</sup> The majority of the mandates also report to the UNGA.<sup>54</sup>

**Individual communications:** SPs are competent to receive individual complaints and issue communications in order to 'inquire into any substantial allegations transmitted to him/her and report his/her conclusions thereon'.<sup>55</sup>

**Country visits:** SPs assess the implementation of human rights within the scope of their mandate.

There are currently 12 country mandates and 44 thematic mandates. These mechanisms play an important role in addressing specific or cross-cutting issues among treaties.

### Strengths and limitations

50 UNGA, 'Human Rights Council' (2006) UN Doc A/RES/60/251, para 5.

51 *Ibid*, para 6.

52 *Ibid*, para 5(e).

53 See [www.ohchr.org/EN/HRBodies/SP/Pages/AnnualreportsHRC.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/AnnualreportsHRC.aspx) accessed 30 December 2019.

54 See [www.ohchr.org/EN/HRBodies/SP/Pages/GAReports.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/GAReports.aspx) accessed 30 December 2019.

55 OHCHR, 'Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers' Res 41 (1994) UN Doc E/CN.4/1994/132.

- |                    |   |
|--------------------|---|
| <b>Strengths</b>   | <ul style="list-style-type: none"> <li>• No treaty ratification required for a SP to intervene.</li> <li>• Only rapid response mechanism of the UN system.</li> <li>• Specific thematic/country recommendations.</li> </ul> |
| <b>Limitations</b> | <ul style="list-style-type: none"> <li>• Working languages limited to English, French and Spanish.</li> <li>• Limited capacities.</li> <li>• Recommendations not legally binding.</li> </ul>                                |



## SECTION 1.2. THE TREATY BODY SYSTEM

### Core functions

TBs monitor the implementation of international human rights treaties by States Parties.

As mentioned above, the nine existing core human rights treaties have established ten TBs<sup>56</sup> in order to review states parties' compliance with the treaty provisions.

Each TB is comprised of independent experts elected by the States Parties to the treaty. They are not permanent bodies but hold three sessions a year, with each lasting from one to three weeks.

During each session, a TB exercises its monitoring, adjudicatory and interpretative functions.

- Under their **monitoring functions**, TBs **review the State Party to the Treaty** periodically, every four or five years depending on the treaty in issue. Increasingly TBs undertake **follow-up country visits some time after the review**. Some undertake inquiry visits based on evidence of serious and grave violations.
- Under their **adjudicatory function**, they receive **individual complaints**. Individual access is contingent on the acceptance of that right by the relevant State Party, either by a declaration at the time of ratification or accession, or through ratification of or accession to an optional protocol to the convention. It is also required to have exhausted all domestic remedies. Domestic courts have the primary responsibility for human rights adjudication and should adjudicate in a way that reflects the complementarity of international adjudication.

TBs' decisions on individual complaints, also referred to as 'views', are recognised as having quasi-judicial authority

The HRCtee, CAT, CERD and CEDAW have established a monitoring mechanism: they appoint a rapporteur for monitoring the implementation of the committee's decision.

- Under their **interpretative function**, TBs adopt '**General Comments**' or '**General Recommendations**'. These instruments are authoritative interpretations of the treaty. Legal practitioners have a key role to play in ensuring that their interpretation of treaties are in line with the TBs' interpretation in their legal practice.

### Strengths and limitations

- |                    |  |
|--------------------|--|
| <b>Strengths</b>   | <ul style="list-style-type: none"> <li>• Development of individual communications mechanisms, as part of the evolution of international law over the last several decades, recognising the importance of individuals and their rights within the international legal framework.</li> <li>• More transparent in the recent years (all TBs sessions are now webcast).</li> </ul> |
| <b>Limitations</b> | <ul style="list-style-type: none"> <li>• States delay in reporting and late confirmation of when a country will be reviewed.</li> <li>• Backlog in individual complaints: four to five years to obtain a decision.</li> </ul>  |

<sup>56</sup> HRCtee, CESCR, CERD, CEDAW, CAT, SPT, CRC, CMW, CRPD and CED.



## SECTION 2. REGIONAL HUMAN RIGHTS MECHANISMS

Regional human rights mechanisms in charge of the monitoring of their respective treaties consist of a committee of independent experts appointed by the CoE, the OAS and the AU.

Like international TBs, regional human rights mechanisms have monitoring, and, in Europe, Africa and the Americas, adjudicatory and interpretative functions. Under their monitoring and adjudicatory functions, they review states' reports and receive individual complaints. Mechanisms vary as to the degree of individual access to them.

- In Africa, the AfCmHPR and AfCtHPR monitor compliance with the African Charter on Human and Peoples' Rights. States, individuals or NGOs can submit individual cases to the African Commission and the African Court. Unlike the commission, the African Court can only receive cases if relevant declarations have been made by the state in question. Only nine states have done so so far.
- In the Americas, the IACmHR and IACtHR monitor compliance with the AmCHR. Individual communications can be made to the commission, and the commission may decide to send cases to the court when the relevant state has ratified the convention, and submitted itself to the jurisdiction of the court. All OAS Member States are bound to respect the Declaration. Conversely, compliance with the American Convention is only an obligation to the States Parties to the Convention. However, the IACmHR has ruled that the American Declaration of the Rights and Duties of Man must be interpreted in light of developments in the *corpus juris gentium* of international human rights law, including the IAHRs and specifically, the American Convention and jurisprudence of the IACtHR. The IACmHR has described the American Convention as representing 'an authoritative expression of the fundamental principles set forth in the American Declaration'.<sup>57</sup>
- In Europe, the ECtHR monitors compliance with the ECHR. Under the ECHR, individuals or states are permitted, subject to certain conditions, to take individual cases to the enforcement mechanisms.

### Regional SPs

At regional level, SPs are tasked with monitoring and interpreting human rights obligations on specific thematic areas. The Special Rapporteur on HRDs of the ACHPR, the IACHR Special Rapporteur on HRDs and in Europe, the Commissioner for Human Rights of the CoE can undertake similar activities, such as:

- thematic reporting and advising on human rights systematic implementation;
- awareness-raising activities; and
- country visits and dialogue with national authorities and civil society.

### Strengths and limitations

<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Judicial or quasi-judicial authority attached to the decisions of the regional courts or commissions.</li> <li>• Accessibility of the special mechanisms to put pressure on states in case of emergency.</li> </ul>
<b>Limitations</b>	<ul style="list-style-type: none"> <li>• State delay in reporting (AfCmHPR).</li> <li>• Backlog in individual complaints: four to five years to obtain a decision.</li> <li>• Limited jurisdiction of the regional court in Africa.</li> </ul>

57 See IACmHR, Resolution No. 3/87, Case 9647, James Terry Roach and Jay Pinkerton (United States), *Annual Report 1986-1987*, September 22, 1987, paras. 46-49; IACmHR, Report No. 51/01, Case 9903, Rafael Ferrer-Mazorra (United States), *Annual Report 2000*, April 4, 2001; IACtHR, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89, July 14, 1989. Series A No. 10, paras. 35-45. See also Article 20 of the Statute of the IACmHR.

### Table 3. Human Rights Mechanisms' Recommendations and Decisions: their legal bearing and where to find them

While exercising three main functions – adjudicatory, interpretative and monitoring – the legal bearing of the human rights mechanisms' decisions or recommendations varies.

- TB decisions have quasi-judicial authority and are recognised by some countries but not others as legally binding. TBs' interpretation of treaties has authoritative force of interpretation. Their recommendations are not legally binding but regarded with high authority.
- Recommendations from SPs are expert recommendations. As such, they are provided with the authority attached to the 'teachings of the most highly qualified publicists of the various nations' and stand among the 'subsidiary means for the determination of the rules of law' in accordance with Art 38.1 of the Statute of the ICJ.
- The UPR recommendations equate to commitments taken by the Executive and are recognised political strength.

Human rights mechanism	Functions	Outputs	Available at:	
<b>Treaty bodies</b> <b>Quasi-judicial mechanism</b>	Treaty interpretation	General Comments or General Recommendations	TBs' website	Universal Human Rights Index <sup>58</sup> to search:  • TBs concluding observations • TBs views • SPs country mentions • UPR recommendations
	Country reviews	Concluding observations	TB jurisprudence database <sup>59</sup>	
	Individual complaints	Views (decisions)		
	Inquiry process	Reports of Inquiry		
<b>Special procedures</b> <b>Expert mechanism</b>	Annual report	Recommendations	Special Rapporteur's website	
	Country visits	Recommendations	<ul style="list-style-type: none"> <li>• Special Rapporteur's website</li> <li>• 'Country and other visits of special procedures'<sup>60</sup></li> <li>• OHCHR country webpage<sup>61</sup></li> </ul>	
	Communications (individual)	Recommendations/ legal analysis	<ul style="list-style-type: none"> <li>• Annual report of special procedures' communications<sup>62</sup></li> <li>• Communications search website<sup>63</sup></li> </ul>	
<b>Universal Periodic Review</b> <b>Political mechanism</b>	Country review	Recommendations	<ul style="list-style-type: none"> <li>• UPR Info database or search by country<sup>64</sup></li> <li>• UPR website</li> </ul>	
		See also: <ul style="list-style-type: none"> <li>• Country reports to the UPR</li> <li>• NGOs submissions</li> <li>• UN information report</li> </ul>		

58 See <https://uhri.ohchr.org/en> accessed 30 December 2019.

59 See [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en) accessed 30 December 2019.

60 See [www.ohchr.org/EN/HRBodies/SP/Pages/CountryandothervisitsSP.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryandothervisitsSP.aspx) accessed 30 December 2019.

61 See [www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx) accessed 30 December 2019.

62 See [www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx) accessed 30 December 2019.

63 See <https://spcommreports.ohchr.org> accessed 30 December 2019.

64 See [www.upr-info.org/en](http://www.upr-info.org/en) accessed 30 December 2019.

Regional mechanism	Functions	Outputs	Available at:
<b>European Court of Human Rights</b>	Individual complaints (communications)	Judgments/decisions	HUDOC database <sup>65</sup>
	Treaty interpretation	Advisory opinions	
<b>African Commission on Human and Peoples' Rights</b>	Country visits	Mission reports/press releases	AfCmHPR website <sup>66</sup>
	Country reviews	Concluding observations	AfCmHPR website/State reports and concluding observations <sup>67</sup>
	Individual complaints (communications)	Decisions	AfCmHPR website <sup>68</sup> African Human Rights Case Law Analyser <sup>69</sup>
	Treaty interpretation/standard-setting	Protocols, General Comments, Guidelines, Principles and Declarations	AfCmHPR website <sup>70</sup>
<b>African Court on Human and Peoples' Rights</b>	Individual complaints	Judgments	African Human Rights Case Law Analyser <sup>71</sup>
	Treaty interpretation	Advisory opinions	AfCtHPR website <sup>72</sup>
<b>Inter-American Commission on Human Rights</b>	Individual complaints	Decisions	IAmCHR website <sup>73</sup>
	Country visits	Country reports	IAmCHR website/country reports <sup>74</sup>
	Thematic reporting	Thematic reports	IACmHR website/thematic reports <sup>75</sup>
<b>Inter-American Court on Human Rights</b>	Individual complaints	Judgments	IACtHR website/Decisions and judgments <sup>76</sup>
	Treaty interpretation	Advisory opinions	IACtHR website/Advisory opinions <sup>77</sup>

65 See [www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=](http://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=) accessed 16 January 2020.

66 See [www.achpr.org/documentationcenter](http://www.achpr.org/documentationcenter) accessed 16 January 2020.

67 See [www.achpr.org/statereportsandconcludingobservations](http://www.achpr.org/statereportsandconcludingobservations) accessed 16 January 2020.

68 See n 69 above.

69 See <http://caselaw.ihrda.org> accessed 16 January 2020.

70 See [www.achpr.org/resources](http://www.achpr.org/resources) accessed 16 January 2020.

71 See n 72 above.

72 See [www.african-court.org/en/index.php/cases/2016-10-17-16-19-35](http://www.african-court.org/en/index.php/cases/2016-10-17-16-19-35) accessed 16 January 2020.

73 See [www.oas.org/en/iachr/decisions/cases.asp](http://www.oas.org/en/iachr/decisions/cases.asp) accessed 16 January 2020.

74 See [www.cidh.oas.org/pais.eng.htm](http://www.cidh.oas.org/pais.eng.htm) accessed 16 January 2020.

75 *Ibid.*

76 See [www.corteidh.or.cr/cf/Jurisprudencia2/busqueda\\_casos\\_contenciosos.cfm?lang=en](http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=en) accessed 16 January 2020.

77 See [www.corteidh.or.cr/cf/Jurisprudencia2/busqueda\\_opiniones\\_consultivas.cfm?lang=en](http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_opiniones_consultivas.cfm?lang=en) accessed 16 January 2020.

## PRACTICE: ENGAGING WITH THE INTERNATIONAL HUMAN RIGHTS SYSTEM IN SUPPORT OF YOUR LEGAL PRACTICE

### LEARNING OBJECTIVES

By the end of this chapter, you will be able to:

- identify international legal resources in support for your work;
- describe how to engage in the international law-making process in order to strengthen international standards of protection; and
- identify which human rights mechanism to contact in support of the protection of a client or denunciation of human rights violations in a country.



### KEY MESSAGES

- Referring to international norms and recommendations will allow you to strengthen your work and find support for progressive and protective interpretation of human rights.
- You can inform the international human rights standard-setting in order to advocate internally for greater protection. In that respect, you can:
  - inform the development of a general comment, general recommendations or advisory opinion by a TB or regional human rights mechanism;
  - respond to the call for information or comments issued by an SP in preparation for an upcoming thematic report; and
  - inform the development of a resolution or respond to a call for information in preparation for an upcoming resolution or report to be presented to the HRC/GA.
- In support of the denunciation of human rights violations, you can:
  - request a communication by a SP;
  - submit information in preparation for the next country review by a human rights mechanism; and
  - submit an individual complaint before the TBs or regional human rights mechanisms, the competence of which has been recognised by the state.



## SECTION 1. APPLYING INTERNATIONAL NORMS, DECISIONS AND RECOMMENDATIONS IN DOMESTIC LAW

### SECTION 1.1. INTEGRATION OF INTERNATIONAL NORMS, RECOMMENDATIONS AND DECISIONS AT DOMESTIC LEVEL

#### Monist versus dualist countries

Depending on whether you practise law in a monist or dualist country, reference to international norms and decisions can be direct (monist) or require incorporation in domestic law or recognition by a domestic court (dualist).

The terms monism and dualism are used to describe two different theories of the relationship between international law and national law. Many states, perhaps most, are partly monist and partly dualist in their actual application of international law in their national system.

**Monists** accept that the internal and international legal systems form a unity. Both national legal rules and international rules that a state has accepted, for example, by way of a treaty, determine whether actions are legal or illegal. In a pure monist state, international law does not need to be translated into national law. It is simply incorporated and has effect automatically in national or domestic laws. The act of ratifying an international treaty immediately incorporates the law into national law; and customary international law is treated as part of national law as well. International law can be directly applied by a national judge, and can be directly invoked by individuals, just as if it were national law. A judge can declare a national rule invalid if it contradicts international rules because, in some states, international rules have priority. In other states, as in Germany, treaties have the same effect as legislation, and by the principle of *lex posterior derogat priori* ('later law removes the earlier'), only take precedence over national legislation enacted prior to their ratification.

**Dualists** emphasise the difference between national and international law, and require the translation of the latter into the former. Without this translation, international law does not exist as law. International law has to be national law as well, or it is no law at all. If a state accepts a treaty but does not adapt its national law in order to conform to the treaty or does not create a national law explicitly incorporating the treaty, then it violates international law. But one cannot claim that the treaty has become part of national law. Citizens cannot rely on it and judges cannot apply it. National laws that contradict it remain in force. According to dualists, national judges never apply international law, only international law that has been translated into national law.

## **IMPLEMENTING INTERNATIONAL NORMS AND DECISIONS IN DOMESTIC PRACTICE**

With regard to UN and regional human rights mechanisms' decisions, you can:

- integrate the decision within the national legal proceedings – include it in their legal strategy before the court and in your pleadings;
- use the decision as a legal precedent in similar cases as part of international jurisprudence; and
- submit the case and the decision to a national human rights commission or similar national institution (if it exists).

With respect to UN and regional recommendations and interpretation, you can:

- if possible (not too dangerous), plan some public outreach around the TB's decision in order to add pressure to the state (you don't have to wait for the decision to be rendered to use it; the state will have received the communication within six months of the submission and it is possible to do some outreach then, adding pressure to the state to take action); and
- use some of the arguments/interpretation developed by the human rights mechanism to interpret/extend the application of domestic law and, for instance, the definition of violations (eg, rape as a form of torture, close family members of a victim of torture can also be considered victims and large definition of reparation).

### **Useful resources**

- Table 3 above (pp 33–34).
- The NGO HURIDOC online course 'Researching human rights law for advocacy' provides a useful introduction to the search of international human rights norms and recommendations: [https://advocacyassembly.org/en/courses/50/?fbclid=IwAR0a4s828RX2coO0BJX3fBz-zec\\_H7PsBpa-fDnMV3xlcV393B8djTnRU-Q#/chapter/1/lesson/1](https://advocacyassembly.org/en/courses/50/?fbclid=IwAR0a4s828RX2coO0BJX3fBz-zec_H7PsBpa-fDnMV3xlcV393B8djTnRU-Q#/chapter/1/lesson/1).

## SECTION 2. ENGAGING IN THE INTERNATIONAL LAW-MAKING PROCESS

### SECTION 2.1. TBS' GENERAL COMMENTS

#### Why contribute to a General Comment?

Each TB is in charge of interpreting the treaty that creates it. TBs play a central role in providing an evolving interpretation of human rights in light of the current reality and practice on the ground. They periodically issue 'General Comments' or 'General Recommendations' in the case of the CEDAW, which constitute an authoritative interpretation of the provisions of the treaty they are in charge of monitoring. General Comments/Recommendations then guide the implementation of the treaty at country level.

While the General Comments/Recommendations themselves are not legally binding, the treaty they interpret do impose legally binding obligations on States Parties to the covenant. Accordingly, General Comments are an important source of information about what obligations and duties States Parties bear.

**Example:** Although not expressly stated within Art 14 of the ICCPR, the HRCtee established in its General Comment No 32, in the context of criminal proceedings, the principle of confidentiality in the lawyer–client relationship: '*[c]ounsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications*' (para 34).

Legal professionals are well placed to influence the development or revision of General Comments/Recommendations based on the domestic legal practice. They can provide recommendations to TBs based on the analysis of the domestic and current implementation of human rights treaties and recommendations.

#### How to contribute to a General Comment

TBs usually have a list of General Comments they are planning to develop. There is no clear timeline for the development of a General Comment and some may take a few years to be adopted.

It is only when a committee starts its work on a General Comment and issues a call for submission or comment that the issuance of a General Comment becomes public.

#### Useful resources

By closely monitoring the OHCHR Civil Society weekly newsletter,<sup>78</sup> you will be able to identify General Comments in preparation relevant to your work and submit information in response to the call issued by the TB.

### SECTION 2.2. SPS' THEMATIC REPORTS

Each SP submits one or two thematic reports a year to the HRC and/or UNGA. Thematic reports are available on the website of each SP.

A thematic report constitutes an interpretation of international legal norms on a specific issue, in light of current practice. It has a specific interpretative authority attached to the position of the UN SP. The topic of a report can be broad.

SPs may also develop guidelines aimed at assisting in the implementation of international human rights obligations. For instance, the Working Group on Arbitrary Detention has developed the Basic Principles and Guidelines on the right to individuals to challenge the arbitrariness of their detention.

<sup>78</sup> Sign up here: [https://visitor.constantcontact.com/manage/optin?v=0015de0J6wWFFJ5woeZbEcmRY9w-0zZjN0\\_6](https://visitor.constantcontact.com/manage/optin?v=0015de0J6wWFFJ5woeZbEcmRY9w-0zZjN0_6).

## Why contribute to the drafting of a thematic report?

Although thematic reports may point to generic types of violations, they may provide country-specific information and point at specific violations taking place in a country. They can provide the opportunity to raise awareness about severe human rights violations, or on the contrary, good practices, at country level.

**Example:** The recommendations of the Special Rapporteur on torture to limit solitary confinement have been integrated to the Standard Minimum Rules for the Treatment of Prisoners. Likewise the Special Rapporteur has recognised rape and long-term imprisonment for children as forms of torture.

## How to contribute to a thematic report

If the SP organises a consultation (online and/or on-site) in preparation for his/her report, you can provide first-hand information in order to support the development of the report. This consultative process is not systematic; however, it is becoming increasingly frequent.

For example, in 2016, the SRIJL held an online consultation and two on-site consultations – in Belgrade and Geneva – on lawyers under threat in preparation for her report on lawyers at risk submitted to the September 2016 session at the UNGA.

Current consultations are available on the SP database. They are advertised in the OHCHR Civil Society Weekly Newsletters<sup>79</sup> update. In this regard, we invite you to subscribe to email updates on the Civil Society Section.

Some SPs mention on their websites or in newsletters the theme of their next report. Information on the next report can also come from informal contact with the OHCHR secretariat of each mandate.

## SECTION 2.3. UNHRC AND UNGA RESOLUTIONS

### Why contribute to a resolution?

The UNGA and HRC regularly adopt (see the annex) recommendations on the 'independence of judges and lawyers', the 'administration of justice', 'HRDs' and other topics that may overlap with lawyers' protection and role. Through these resolutions, the UNGA and HRC adopt new standards or reaffirm standards in the area. Though not legally binding, they provide political traction and contribute to the consolidation of customary norms.

### How to contribute to a resolution

Each resolution must go through a consultation process with states, and NGOs with ECOSOC status can participate orally to a lesser or greater extent during the consultation depending on the states leading on the negotiations. NGOs can also approach sponsor states with their drafting recommendations.

79 [https://visitor.constantcontact.com/manage/optin?v=0015de0J6wWFJ5woeZbEcmRY9w-0zZjNO\\_6](https://visitor.constantcontact.com/manage/optin?v=0015de0J6wWFJ5woeZbEcmRY9w-0zZjNO_6)

## SECTION 3. REQUESTING INDIVIDUAL DECISIONS AND ADVOCATING FOR COUNTRY RECOMMENDATIONS FROM UN AND REGIONAL HUMAN RIGHTS MECHANISMS

In support of your legal work, you can look for international support and engage with the UN human rights mechanisms in three main cases, which are fully developed in Module 3:

- ➔ You are looking for a rapid response mechanism at the international level in case of the individual violation of human rights in your country:
  - *UN SPs issue individual communications*: the communication process with the SPs is available in any circumstance for all countries, notwithstanding whether they have ratified an international or regional human rights treaty, or that the alleged victim has exhausted domestic remedies prior to a communication being sent.
  - *Regional and UN TBs' precautionary measures*: regional and UN human rights mechanisms issue precautionary measures, either in the context of an individual complaint and/or outside.
  - In the case of a degrading human rights situation in the country, you can also use the inquiry procedure and early warning or urgent action procedures existing for some of the TBs on the condition that your country has ratified the relevant treaty.
- ➔ You want to bring an individual complaint at the international level:
  - *Regional and UN TBs' complaint mechanism*: you can bring a complaint before a regional or international TB. This mechanism is only possible against countries that have accepted the procedure and after exhausting local remedies.
  - *HRC*: In the case of gross human rights violations, you can also use the complaint mechanism of the HRC (please note that due to the confidentiality of the mechanism, little is known regarding its actual impact).
- ➔ You want to channel information to human rights mechanisms in order to support evidence-based recommendations on human rights violations:
  - *HRC*: you can organise advocacy activities during HRC sessions (ie, oral or written statement and a parallel event).
  - *UPR*: you can submit information in preparation for the upcoming country's UPR (every 4.5 years).
  - *UN SP*: you can inform the country visit of an SP (at any time).
  - *Regional and international TBs*: you can submit information in preparation for the country review by a regional human rights mechanism or a UN TB (when the country review has been planned, which depends on when the country submits its monitoring report or when the mechanisms decides to review the country, in the absence of initial state reporting).

You will learn under Module 3 how to engage with the different mechanisms for these different purposes.



## ANNEX: KEY RESOURCES

### 1. MAIN INTERNATIONAL INSTRUMENTS ON THE INDEPENDENCE OF LAWYERS

Nature of the instrument	Name of the instrument
<b>International human rights law instruments</b>	<ul style="list-style-type: none"> <li>• Universal Declaration of Human Rights<sup>80</sup></li> <li>• International Covenant on Civil and Political Rights<sup>81</sup></li> <li>• International Covenant on Economic, Social and Cultural Rights<sup>82</sup></li> <li>• International Convention on the Elimination of All Forms of Racial Discrimination<sup>83</sup></li> <li>• Convention on the Elimination of All Forms of Discrimination against Women<sup>84</sup></li> <li>• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>85</sup></li> <li>• Convention on the Rights of the Child<sup>86</sup></li> <li>• International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>87</sup></li> <li>• International Convention for the Protection of All Persons from Enforced Disappearance<sup>88</sup></li> <li>• Convention on the Rights of Persons with Disabilities<sup>89</sup></li> <li>• Convention relating to the Status of Refugees<sup>90</sup></li> <li>• Convention relating to the Status of Stateless Persons<sup>91</sup></li> </ul>

80 See [www.ohchr.org/EN/UDHR/Pages/Introduction.aspx](http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx) accessed 16 January 2020.

81 See [www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx) accessed 16 January 2020.

82 See [www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx) accessed 16 January 2020.

83 See [www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx) accessed 16 January 2020.

84 See [www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx) accessed 16 January 2020.

85 See [www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx) accessed 16 January 2020.

86 See [www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx) accessed 16 January 2020.

87 See [www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx) accessed 16 January 2020.

88 See [www.ohchr.org/en/hrbodies/ced/pages/cedindex.aspx](http://www.ohchr.org/en/hrbodies/ced/pages/cedindex.aspx) accessed 20 January 2020.

89 See [www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx) accessed 20 January 2020.

90 See [www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx) accessed 16 January 2020.

91 See [www.ohchr.org/EN/ProfessionalInterest/Pages/StatelessPersons.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatelessPersons.aspx) accessed 16 January 2020.

<b>International standards adopted by the UN</b>	<ul style="list-style-type: none"> <li>• Basic Principles on the Independence of the Judiciary<sup>92</sup></li> <li>• Basic Principles on the Role of Lawyers<sup>93</sup></li> <li>• Guidelines on the Role of Prosecutors<sup>94</sup></li> <li>• Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>95</sup></li> <li>• UN Standard Minimum Rules for Non-custodial Measures (the 'Tokyo Rules')<sup>96</sup></li> <li>• Guidelines for Action on Children in the Criminal Justice System<sup>97</sup></li> <li>• UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules')<sup>98</sup></li> <li>• Basic Principles and Guidelines on the Right to a Remedy and Reparation<sup>99</sup></li> <li>• UN Principle and Guidelines on Access to Legal Aid in Criminal Justice Systems<sup>100</sup></li> </ul>
<b>International standards adopted by professional organisations</b>	<ul style="list-style-type: none"> <li>• IBA, Standards for the Independence of the Legal Profession (1990)<sup>101</sup></li> <li>• IBA, Guide for Establishing and Maintaining Complaints and Discipline Procedures (2007)<sup>102</sup></li> <li>• IBA, International Principles on Conduct for the Legal Profession (2011)<sup>103</sup></li> </ul>

## 2. SELECTION OF UN REPORTS AND RESOLUTIONS ON THE ADMINISTRATION OF JUSTICE, AND THE INDEPENDENCE OF JUDGES AND LAWYERS

### UN Secretary-General reports on human rights in the administration of justice

- UNGA, 'Report of the Secretary-General on human rights in the administration of justice' (2018) UN Doc A/73/210, <https://undocs.org/A/73/210>
- UNGA, 'Report of the Secretary-General on human rights in the administration of justice' (2016) UN Doc A/71/405, [www.un.org/ga/search/view\\_doc.asp?symbol=A/71/405](http://www.un.org/ga/search/view_doc.asp?symbol=A/71/405)
- UNHRC, 'Report of the Secretary-General on human rights in the administration of justice: analysis of the international legal and institutional framework for the protection of all persons deprived of their liberty' (2013) UN Doc A/HRC/24/28, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/162/11/pdf/G1316211.pdf?OpenElement>
- UNGA, 'Report of the Secretary-General on human rights in the administration of justice: analysis of the international legal and institutional framework for the protection of all persons deprived of their liberty' (2013) UN Doc A/68/261, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/417/98/pdf/N1341798.pdf?OpenElement>
- UNGA, 'Report of the Secretary-General on human rights in the administration of justice' (2012) UN Doc A/67/260, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/454/20/pdf/N1245420.pdf?OpenElement> and addendum (A/67/260/Add.1)

92 See [www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx) accessed 16 January 2020.

93 See [www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx) accessed 16 January 2020.

94 See [www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx) accessed 16 January 2020.

95 See [www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx) accessed 16 January 2020.

96 See [www.ohchr.org/EN/ProfessionalInterest/Pages/TokyoRules.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/TokyoRules.aspx) accessed 16 January 2020.

97 See [www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx) accessed 16 January 2020.

98 See [www.ohchr.org/EN/ProfessionalInterest/Pages/BeijingRules.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/BeijingRules.aspx) accessed 16 January 2020.

99 See [www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx) accessed 16 January 2020.

100 See [www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf) accessed 16 January 2020.

101 See [www.teachinglegalethics.org/iba-standards-independence-legal-profession-adopted-1990](http://www.teachinglegalethics.org/iba-standards-independence-legal-profession-adopted-1990) accessed 16 January 2020.

102 See [www.ibanet.org/Document/Default.aspx?DocumentUid=2A17AA40-79A9-4B99-90A6-D0A7825FD76F](http://www.ibanet.org/Document/Default.aspx?DocumentUid=2A17AA40-79A9-4B99-90A6-D0A7825FD76F) accessed 16 January 2020.

103 See [www.icj.org/wp-content/uploads/2014/10/IBA\\_International\\_Principles\\_on\\_Conduct\\_for\\_the\\_legal\\_prof.pdf](http://www.icj.org/wp-content/uploads/2014/10/IBA_International_Principles_on_Conduct_for_the_legal_prof.pdf) accessed 16 January 2020.

- UNGA 'Strengthening and coordinating United Nations rule of law activities' (2015) UN doc A/70/206, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/231/99/pdf/N1523199.pdf?OpenElement>
- UNGA, 'Report of the Secretary-General to the General Assembly: Strengthening and coordinating United Nations rule of law activities' (2014) UN Doc A/69/181, [www.un.org/ruleoflaw/files/A\\_69\\_181.pdf](http://www.un.org/ruleoflaw/files/A_69_181.pdf)
- UNGA, 'Strengthening and coordinating United Nations rule of law activities' (2013) UN Doc A/68/213, [www.un.org/ruleoflaw/files/10471\\_SG%20Report%20-%20Rule%20of%20Law%20Activities%202013%20-%20A\\_68\\_213.pdf](http://www.un.org/ruleoflaw/files/10471_SG%20Report%20-%20Rule%20of%20Law%20Activities%202013%20-%20A_68_213.pdf)
- UNGA, 'Strengthening and coordinating United Nations rule of law activities' (2012) UN Doc A/67/290, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/459/63/pdf/N1245963.pdf?OpenElement>
- UNGA, 'Strengthening and coordinating United Nations rule of law activities' (2011) A/66/133, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/413/55/pdf/N1141355.pdf?OpenElement>
- OHCHR, 'Report of the Secretary-General on human rights in the administration of justice, in particular of children and juveniles in detention' (as of 2002) UN Doc E/CN.4/2002/63, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/107/46/PDF/G0210746.pdf?OpenElement>

### **UNGA resolution on human rights in the administration of justice**

- UNGA, 'Human rights in the administration of justice' (2018) UN Doc A/RES/73/177, [www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/73/177](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/177)
- UNGA, 'Human rights in the administration of justice' (2016) UN Doc A/71/164, <https://undocs.org/en/A/RES/71/164>
- UNGA, 'Human rights in the administration of justice' (2014) UN Doc A/RES/69/172, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/707/45/pdf/N1470745.pdf?OpenElement>
- UNGA, 'Human rights in the administration of justice' (2013) UN Doc A/RES/67/166, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/488/56/pdf/N1248856.pdf?OpenElement>
- UNGA, 'Human rights in the administration of justice' (2011) UN Doc A/RES/65/213 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/525/32/pdf/N1052532.pdf?OpenElement>

### **UNGA resolutions on the rule of law**

- Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (A/RES/67/1)
- UNGA 'Resolution on the rule of law at the national and international levels'
  - (2014) UN Doc A/RES/69/123, <https://undocs.org/en/A/RES/69/123>
  - (2013) UN Doc A/RES/68/116, <https://undocs.org/en/A/RES/68/116>
  - (2012) UN Doc A/RES/67/97, <https://undocs.org/en/A/RES/67/97>
  - (2011) UN Doc A/RES/66/102, <https://undocs.org/en/A/RES/66/102>
  - (2010) UN Doc A/RES/65/32, <https://undocs.org/en/A/RES/65/32>
  - (2009) UN Doc A/RES/64/116, <https://undocs.org/en/A/RES/64/116>
  - (2008) UN Doc A/RES/63/128, <https://undocs.org/en/A/RES/63/128>
  - (2007) UN Doc A/RES/62/70, <https://undocs.org/en/A/RES/62/70>
  - (2006) UN Doc A/RES/61/39, <https://undocs.org/en/A/RES/61/39>

**UNGA resolution on HRDs:**

- UNGA 'Implementing 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 through providing a safe and enabling environment for human rights defenders and ensuring their protection' (2019) UN Doc A/C.3/74/L.31/Rev.1, <https://undocs.org/en/A/C.3/74/L.31/Rev.1>
- UNGA, 'Human rights defenders in the context of 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 (2016) UN Doc A/RES/70/161, [www.refworld.org/docid/56dd31954.html](http://www.refworld.org/docid/56dd31954.html)
- UNGA, 'Promotion of 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 (2012) UN Doc A/RES/66/164 [www.refworld.org/docid/55f287394.html](http://www.refworld.org/docid/55f287394.html)

**HRC resolutions on HRDs:**

- (2019) UN Doc A/HRC/RES/40/11, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/088/48/PDF/G1908848.pdf?OpenElement>
- (2016) UN Doc A/HRC/RES/31/32, [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/31/32](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/31/32)
- (2013) UN Doc A/HRC/22/06, <https://documents-dds-ny.un.org/doc/RESOLUTION/LTD/G13/120/26/PDF/G1312026.pdf?OpenElement>
- (2010) UN Doc A/HRC/13/13, [https://ap.ohchr.org/documents/sdpage\\_e.aspx?si=A/HRC/RES/13/13](https://ap.ohchr.org/documents/sdpage_e.aspx?si=A/HRC/RES/13/13)

**HRC resolutions on the 'Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers':**

- (2017) UN Doc A/HRC/RES/35/12, [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/35/12](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/35/12)
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All resolutions from the UN HRC and UNGA Third Committee can be searched on the Universal Rights Group portal: [www.universal-rights.org/human-rights/human-rights-resolutions-portal](http://www.universal-rights.org/human-rights/human-rights-resolutions-portal)



