

# The Covenant on civil and political rights

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## **Abstract**

*The civil and political rights as protected under the Covenant from the core of human rights protection on the international plane. This paper seeks to demonstrate how this goal may be achieved. The genesis of the Covenant will be discussed in the context of the evolution of human rights law. Starting from the normative framework and its development after the adoption of the Universal Declaration of Human Rights the scope of the Covenant rights as well as the duties of the State parties will be discussed. The monitoring role of the Human Rights Committee as major element in the implementation process will be closely examined. The paper will be focused on the status of the State parties and the Status of the Covenant in domestic law. Also will specifically focus on the State reporting system and the individual complaint procedure be carefully selected case studies. In conclusion, will be discussed the legal consequences of violations of rights protected by the Covenant.*

**Keywords:** Civil rights, political rights, human rights, Covenant on civil and political rights.

**JEL Classification:** K33

## **I. Origins and general description**

Human rights protection is always a stony way, requiring a long breath and protection. The rights of citizens to liberty and equality; sometimes referred to as first generation rights. Civil rights include freedom to worship, to think and express oneself, to vote, to take part in political life, and to have access to information<sup>2</sup>. The International Covenant on Civil and Political Rights (ICCPR) is the core of the legally binding human rights protection at the universal level. ICCPR is an international human rights treaty, providing a range of protections for civil and political rights. It is open for ratification to all states so it has universal relevance. The ICCPR, and its two Optional Protocols, is part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). The first Protocol establishes an individual complaints mechanism, and the second abolishes the death penalty.

The Covenant consists of a preamble, which links the full implementation of equal rights for all members of the human family<sup>3</sup> and 53 articles.

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<sup>2</sup> [http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6\\_glossary.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm)

<sup>3</sup> Preamble of International Covenant on Civil and Political Rights; Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976, in accordance with Article 49.

The preamble calls some equally fundamental general political requirements, necessary for the promotion of full equality between men and women in the exercise of their human rights. It also proclaims the ideal of free human beings enjoying civil and political freedom and everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

The catalogue of rights guaranteed contains almost all classical liberal human rights and freedoms that are particularly in danger of violation: protection for the right to life as a general prohibition of the death penalty (article 6); prohibition of torture or cruel, inhuman or degrading treatment or punishment (article 7); protection from arbitrary arrest or detention (article 9); etc.

The substantive articles of the ICCPR are analyzed in separate chapters; they can be categorized in five categories:

- Protection on individual's physical integrity.
- Procedural fairness in law.
- Protection based on gender, religious, racial or other forms of discrimination.
- Individual freedom of belief, speech, association, freedom of press, right to hold assembly.
- Right to political participation<sup>4</sup>.

The Covenant compels governments to take administrative, judicial and legislative measures in order to protect the rights enshrined in the treaty and provide an effective remedy<sup>5</sup>.

## II. Participation

The states parties of the Covenant on Civil and Political Rights are distinguish in several categories:

1. States which have become parties by ratification: 35 states that ratified the Covenant. For all states the relevant date is 23 March 1976<sup>6</sup>.
2. States which have become parties by accession: ratified the Covenant after that date and entered into force 3 months after their declaration of ratification or accession<sup>7</sup>.
3. States which have become parties by succession by states already bound by Covenant. The succession is the replacement of one state by another in the responsibility for the international relations of territory<sup>8</sup>. The state successor of a state which was already bound by the Covenant is automatically obligated by the Covenant from the date when the fact of

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<sup>4</sup> <http://www.gistprobono.org/id253.html>

<sup>5</sup> <https://www.aclu.org/human-rights/faq-covenant-civil-political-rights-iccpr>

<sup>6</sup> The Covenant was opened for signature at New York on 19 December 1966. ICCPR is created on 16 December 1966 and entered into force on 23 March 1976.

<sup>7</sup> Article 49, par. 2 of the Covenant on Civil and Political Rights.

<sup>8</sup> Conventions on the Succession of the states in Respect of Treaties, UN Doc. A/conf 80/31, 23 August 1978.

succession took place<sup>9</sup>. The lists of the states which have become parties by succession include: Croatia, Macedonia, Bosnia-Herzegovina, Estonia, Latvia, Lithuania, etc.

### III. Reservation

Numerous countries have made reservations to the ICCPR limiting in this way their obligations, excluding the duty to provide and guarantee particular rights in the Covenant. The Covenant neither prohibits reservations nor mentions any type of permitted reservation. The reservation is a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State<sup>10</sup>. The State Party to the Covenant undertakes to respect and to ensure the rights recognized in the ICCPR<sup>11</sup>, but some country, using the general rules of international law, have made reservation upon ratification, accession or succession.

For example: one of the reservations of Romania is: *Article 10 "In relation to paragraph 2 (a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraph 2 (b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned"*.

Another state is U.S.A. Upon ratifying in 1992, the United States entered 5 reservations, 5 understandings, and 3 declarations. Reservations included:

1. Protection of free speech under the U.S. Constitution.
2. Right to impose capital punishment on any person (other than pregnant women), including juveniles.
3. Limiting the prohibition against cruel, inhuman or degrading treatment or punishment to the constitutional prohibition under 5th, 8th, and 14th Amendments.
4. Limits on the treatment of juveniles as adults in the criminal justice system.

The reservations made for the ICCPR, because it's a human rights treaty, have put into doubt the applicability of the general regime of reservation. The number of reservations, their content and their scope may undermine the effective implementation of the Covenant and tend to weaken respect for the obligations of States Parties. All reservations incompatible with object and purpose are without legal effect<sup>12</sup>.

<sup>9</sup> 49<sup>th</sup> Session of the General Assembly.

<sup>10</sup> Vienna Convention on the Law of Treaties, UNTS Vol.1155, No 18232.

<sup>11</sup> Article 2, par.1 of the Covenant on Civil and Political Rights.

<sup>12</sup> Human Rights Committee, General Comment 24 (52), General comment on issues relating to reservations made upon ratification... U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994)

#### IV. The obligations created by the Covenant

The purpose of Covenant is the creation of conditions whereby everyone may enjoy his civil and political rights. To establish and retain an order where human beings can live as their inherent dignity requires, and to supplement the existing domestic means for the observance of the rights by making them enforceable by the other states parties and by monitoring bodies which the treaty may have established<sup>13</sup>. The nature of state obligations imposed by the Convention is defined in Part II of ICCPR, Art. 2: *“Each State Party ... undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant ....”*

From this article derives the principal obligations under ICCPR:

1. Implementation is absolute and immediate.
2. The basic role of the State is noninterference.

But the full implementation of Covenant cannot be achieved alone by obliging state to abstain from encroachments upon the rights. Something more is required. The obligations accepted by states parties are in order to respect and ensure the rights recognized in the Covenant. The duty to respect<sup>14</sup> is of a negative nature because it orders states to refrain from restricting the enjoyment of a right where limitations are not provided for. State Party undertakes to “respect and ensure” all of the Covenant rights to “all individuals within its territory and subject to its jurisdiction.” This obligation is that States Parties should act with “due diligence” to take appropriate steps to prevent, punish, investigate and redress harm by private entities. The duty to protect applies to all rights “so far as they are amenable to application between private persons or entities.

The Human Rights Committee, while not expressly using the language of the tripartite typology, has also remarked that states parties have more than a mere obligation to ‘respect’ the right to life guaranteed in the ICCPR<sup>15</sup>: *“the Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life...The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics”*.

Under Art. 2(3) States Parties undertake to ensure that a person whose rights are violated has an effective remedy and that a person claiming such a remedy has his/her right determined by competent authorities provided by the

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<sup>13</sup> Eckart Klein, *Menschenrechte, Stille Revolution des Völkerrechts und Austrwirkungen auf die innestaatliche Rechtsanwendung*. 1997.

<sup>14</sup> Article 2, par. 1 of the Covenant on Civil and Political Rights.

<sup>15</sup> Human Rights Committee, *General Comment 6: The right to life*. <http://www.ohchr.org/english/bodies/hrc/comments.htm>.

State's legal system. States Parties also undertake to develop the possibility of judicial remedies and to ensure remedies are enforced. The duty to ensure, as a positive dimension, means that the creation of conditions whereby everyone may enjoy his civil and political rights required something more than the obligation of states to abstain from encroachments upon the rights.

A different question is whether States Parties have any duties under the Covenant to regulate corporate activities which affect individuals who are both outside their national territory and effective control. Unlike the Convention against Torture, the Covenant does not expressly ask States to exercise jurisdiction over their nationals, and the Committee does not appear to have given significant guidance on this issue. It has said that States Parties should assist other States to bring perpetrators of certain violations to justice, but has not specified whether such "assistance" should include extraterritorial regulation, or whether such regulation should extend to corporate acts<sup>16</sup>.

## V. Access to the Judicial System

It has often been argued that the right to legal assistance is the cornerstone for civil and political rights. Even though there is no explicit provision in human rights treaties discussing access to courts as a principle of international human rights law, the concept has been found to be implicit in the statement that "all persons shall be equal before the courts and tribunals", found in all major human rights treaties<sup>17</sup>. The ICCPR, Article 14 par. 3 (d) of the ICCPR establish that all persons have the right: *"to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him, in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it"*.

In addition to the treaties and the international criminal tribunals, the Committee has been active in adopting detailed standards in the criminal area, primarily through the work of the United Nations Crime Prevention and Criminal Justice Program.

Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources.

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<sup>16</sup> State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties; Individual report on the International Covenant on Civil and Political Rights, Report No. III

<sup>17</sup> <http://www.un.org/esa/socdev/enable/comp401.htm>

## VI. The human rights Committee and the implementation of ICCPR

The “Human Rights Committee” was established by Article 28 of the ICCPR. Its functions are outlined in Part IV of the Covenant. It has the role of monitoring and supervising the implementation by States Parties of their obligations under the ICCPR. The Human Rights Committee is the principal actor at the international level mandated to enforce the rights enunciated in the ICCPR<sup>18</sup>.

The List of Issues covers by human rights Committee include: the right to life, the right to freedom from torture, the right to liberty and security, the right to a fair trial, the right to freedom of association and assembly, the right to freedom of expression, the right to an effective remedy, the right to privacy and the right to freedom from discrimination. States are required to submit at regular intervals reports and the Committee summarizes its assessment of the prevailing human rights situation by noting its concerns in open and straightforward language without any diplomatic inhibitions. But these concluding observations are not legally binding.

Formally, all human rights are ‘indivisible and interdependent and interrelated<sup>19</sup>, but in practice a distinction is often drawn between civil and political rights on the one hand, and economic, social and cultural rights on the other.

The most adequate form of the protection of human rights is to accord to the victims the possibility to complain for violations of human rights. Under the First Optional Protocol, the Committee can receive Individual Communications from any individual under the jurisdiction of a State that is party to the First Optional Protocol who claims that his or her rights under the Covenant have been violated by the State Party. Only the person who is a victim of a violation of articles 2-27 of the ICCPR or their representative can submit a complaint. The representative must show that they have a close connection with the victim, for example a close relative<sup>20</sup>.

If a complaint is declared admissible the Committee examines the communication and decides whether a violation of Covenant rights has occurred. If there is a violation the Committee requests the state to provide reparation to the victim such as release from detention, etc<sup>21</sup>. From the beginning the Committee, under the First Optional Protocol, has delivered its views on violations and has drawn conclusion from finding and asked the state for redress<sup>22</sup>. But the Committee cannot take a legally binding decision, it can only provide its opinion and the state should notify for the measure or the reason if they do not want to comply this opinion.

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<sup>18</sup> Christian Tomuschat; International Covenant on Civil and Political Rights; Professor emeritus at Humboldt University, Berlin.

<sup>19</sup> Vienna Declaration and Programme of Action: Report of the World Conference on Human Rights, UN Doc A/CONF.157/23 (1993)

<sup>20</sup> [http://www.frontlinedefenders.org/manual/en/hrc\\_m.htm](http://www.frontlinedefenders.org/manual/en/hrc_m.htm)

<sup>21</sup> Art. 2 (3) of Covenant on Civil and Political Rights.(Effective remedy)

<sup>22</sup> HCR, General Comment No.3, 28.07.1981, UN Doc. A/36/40.

## VII. Conclusion

The most important feature of the Covenant is that it is a universal instrument containing binding legal obligations for States parties that protects stateless persons as well as nationals. The high number of States parties to the Covenant and the fact that many of its provisions are now part of customary international law point to its huge significance in international law.

Undoubtedly, reservations and derogations weaken the implementation of the ICCPR but these are tempered, not only by the quite stringent requirements under article 4, but also by the deliverance of general comments by the HRC on both of these contentious issues. Furthermore, the number of communications to the Committee has grown steadily over the years, ensuring that individuals have a forum at which to hold States parties accountable for non-implementation of the rights guaranteed in the ICCPR.

Traditionally the guarantee of human rights had been responsibility of the states in accordance with their national legal system. There is no generally recognized international authority to which an individual could address him claiming to be a victim of a human rights violation, and which could decide a complaint.

I can say that the individual communication procedure established by Optional Protocol is a major achievement in the protection of human rights at the international level. But the main deficiency is still the lack of binding jurisdiction of the Human Rights Committee. The main success is the recognition of individuals as holders of international claims to respect the Covenant rights and for the reparation if they are victims of a violation of these rights.

Human rights law has changed rediscovering the international status of the individual.

## Bibliography

1. UN human rights Committee participation in the reporting process; Guidelines for non- governmental organizations (NGOS)
2. McGoldrick; Eckart Klein; The reporting system under the ICCPR, in Eckart Klein, *The monitoring System of Human Rights Treaty Obligation*, 1998.
3. Jamil Dakwar; *Implementing the ICCPR: The Human Rights Committee's 2013 Review of the U.S. Opportunities For Social Justice & Civil Rights Advocates*; June 11, 2013.
4. Edel Hughes; EU-China Working Paper: *Implementation of the ICCPR: Restrictions and Derogations*; Irish Centre for Human Rights, National University of Ireland, Galway
5. Cf. McGoldrick, Dominic, *The Human Rights Committee: Its role in the development of the International Covenant on Civil and Political Rights*, Oxford, 1996.
6. Joseph, Sarah; Schultz, Jenny; Castan, Melissa: *International Covenant on Civil and Political Rights: CASES, MATERIALS, AND COMMENTARY*, Oxford, 2000.
7. Christian Tomuschat; *International Covenant on Civil and Political Rights*; Professor emeritus at Humboldt University, Berlin.

8. T. Buergenthal, "The U.N. Human Rights Committee", Max Planck Yearbook of United Nations Law, vol. 5, 2001.
9. S. Joseph, J. Schultz and M. Castan, The International Covenant on Civil and Political Rights. Cases, Materials, and Commentary, 2nd edition, Oxford University Press, Oxford, 2005.
10. D. McGoldrick, The Human Rights Committee. It's Role in the Development of the International Covenant on Civil and Political Rights, 2nd edition, Clarendon Press, Oxford 1994.
11. M. Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, 2nd edition, N.P. Engel, Kehl, 2005.
12. Dianne Otto and David Wiseman, 'In Search of "Effective Remedies": Applying the International Covenant on Economic, Social and Cultural Rights to Australia' (2001) 7 Australian Journal of Human Rights 5.
13. John Squire, Malcolm Langford and Bret Thiele, The Road to a Remedy: Current Issues in the Litigation of Economic, Social and Cultural Rights (2005); especially Matthew Craven's 'Assessment of the Progress on Adjudication of Economic, Social and Cultural Rights', at 27-42.
14. Henry Steiner and Philip Alston, International Human Rights in Context: Law, Politics, Morals (2nd edition 2000).
15. G J van Hoof, 'The Legal Nature of Economic, Social and Cultural Rights: A Rebuttal of Some Traditional Views' in Philip Alston and Katarina Tomasevski, The Right to Food (1984) 97.