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# International Human Rights Monitoring Bodies & International Criminal Law: Using the Output of Committees, Commissions, Councils and Courts

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# About the Speaker

Dr. Joanna Harrington is a Professor of Law at the University of Alberta, where she specializes in matters of international law, constitutional law and public policy, including international human rights law. A lawyer since 1995, and a legal academic since 1999, she has also worked as a legal adviser with Canada's Department of Foreign Affairs and International Trade (now known as Global Affairs Canada), and as a part-time senior technical adviser with the United Nations Development Programme (UNDP). She has participated in the negotiation of new international instruments at the United Nations, the Organization of American States, and the Assembly of States Parties to the Rome Statute of the International Criminal Court.

This presentation was delivered in 2012. The website links are up-to-date as of July 2019, thanks to the efforts of Ms. Kira Davidson, a J.D. candidate and research assistant at the University of Alberta.

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# Aims and Overview

- Criminal law vs. human rights law – distinct but related aims
- Contributions from the UN human rights system
  - Charter-based bodies
  - Treaty-based bodies
- Contributions from the regional human rights regimes
  - European human rights regime
  - Inter-American human rights regime
  - African human rights regime
- Research tips

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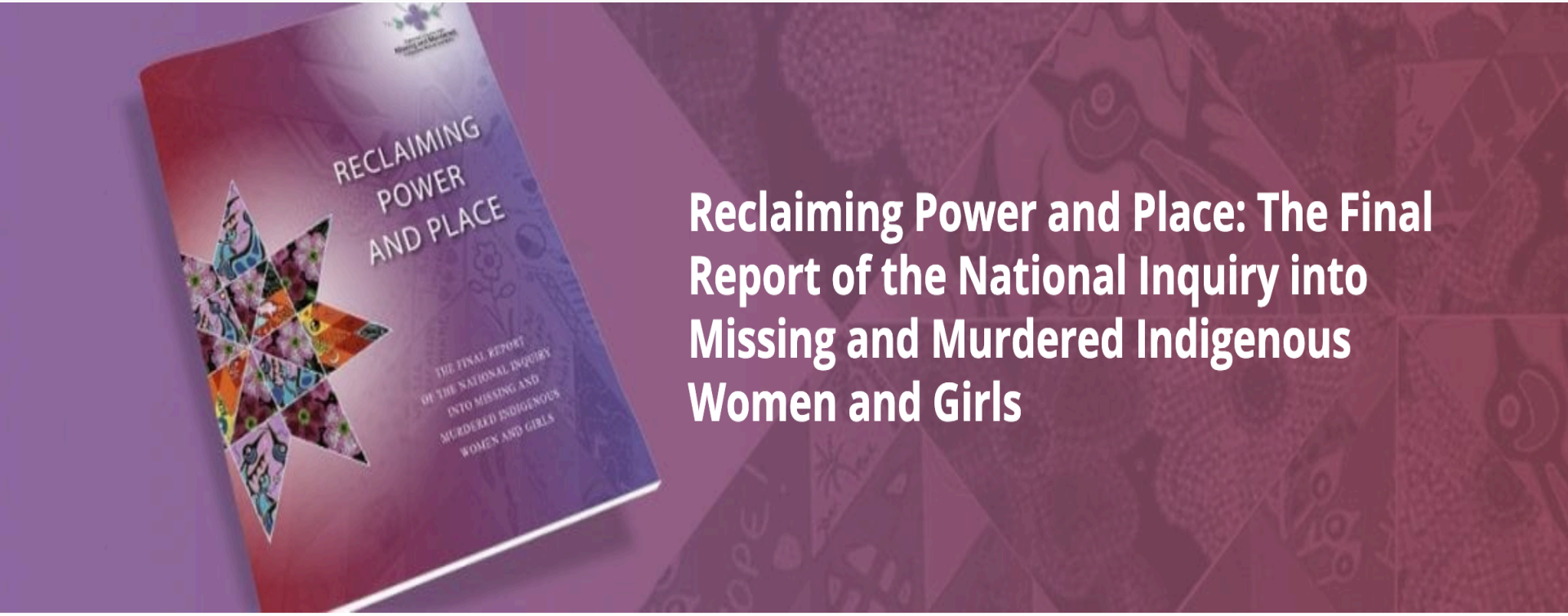
# ICL and IHRL

- International criminal law (ICL) looks at individual responsibility for such core international crimes as genocide, crimes against humanity, and war crimes.
- By contrast, international human rights law (IHRL) is focused on state responsibility to protect the human rights and fundamental freedoms of persons within a state's territory or jurisdiction.
- But while these aims may sound distinct in terms of their focus, the output from various IHRL bodies, from commissions to courts, can have relevance to matters arising within ICL.
- The fields are inter-connected; hence the inclusion of this topic in this workshop's offerings.

National Inquiry into
Missing and Murdered
Indigenous Women and Girls

FRANÇAIS

ABOUT TRUTH GATHERING DOCUMENTS MEDIA ROOM INTERACTIVE CONTACTS




For a recent example of the interaction between international human rights law and international criminal law, see https://www.mmiwg-ffada.ca/final-report/

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# The United Nations Human Rights System

- The UN human rights system derives support from the human rights obligations found in the Charter of the United Nations ("UN Charter"), 26 June 1945, Can. T.S. 1945 No. 7 (entered into force 24 October 1945, entry into force for Canada 9 November 1945).
- See especially UN Charter, articles 1(3), 13, 55 and 56.
- Institutionally, the UN human rights system consists of what are termed Charter-based bodies and treaty-based bodies.
- Charter-based bodies derive their existence from the key constitutive instrument of the UN, the UN Charter, while treaty-based bodies (also know as "treaty monitoring bodies") are those created expressly by the states parties to specific international human rights treaties, and staffed by independent experts.

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# Charter-based bodies

- Article 7 of the UN Charter provides for “six principal organs of the United Nations” including:
  - a General Assembly (GA or UNGA)
  - a Security Council (SC or UNSC) and
  - an Economic and Social Council (ECOSOC)
- The UN Charter also provides for the establishment of “subsidiary organs” (leading to the establishment of various commissions and other bodies).
- Subsidiary organs report to the principal organs, and all report to UNGA; thus one can find the output of these bodies in the Official Records of the General Assembly (UN GAOR).

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# Research tips

- The text of the UN Charter can be found at: http://www.un.org/en/charter-united-nations/index.html
- A useful “org chart” or “System Chart” for the UN can be found at: https://www.un.org/en/pdfs/18-00159e_un_system_chart_17x11_4c_en_web.pdf
- The “Official Document System of the United Nations” (ODS) database can be found at: http://documents.un.org/
- The division between Charter-based bodies and treaty-based bodies is also reflected in the work of the Office of the UN High Commissioner for Human Rights: http://www.ohchr.org

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Go to www.ohchr.org

From the main menu running horizontally across the webpage, select “Human Rights Bodies”, and then “All Human Rights Bodies”

## Human Rights Bodies

The Office of the High Commissioner for Human Rights (OHCHR) works to offer the best expertise and support to the different human rights monitoring mechanisms in the United Nations system : UN Charter-based bodies, including the Human Rights Council, and bodies created under the international human rights treaties and made up of independent experts mandated to monitor State parties' compliance with their treaty obligations. Most of these bodies receive secretariat support from the Human Rights Council and Treaties Division of the Office of the High Commissioner for Human Rights (OHCHR).

**Charter-based bodies**

- Human Rights Council
- Universal Periodic Review
- Commission on Human Rights (replaced by the Human Rights Council)
- Special Procedures of the Human Rights Council
- Human Rights Council Complaint Procedure

**Treaty-based bodies**

There are ten human rights treaty bodies that monitor implementation of the core international human rights treaties:

- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Human Rights Committee (CCPR)
- Committee on the Elimination of Discrimination against Women (CEDAW)
- Committee against Torture (CAT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)
- Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of Persons with Disabilities (CRPD)
- Committee on Enforced Disappearances (CED)

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# UN General Assembly

- With the exception of the Security Council, given its Chapter VII powers, the various organs of the UN are not law-making bodies.
- Charter-based bodies are political bodies, comprised of states.
- The UN General Assembly (UNGA) is a prime example.
- UNGA is tasked by article 13 of the UN Charter to initiate studies and make recommendations to promote international co-operation and the codification of international law, and to assist “in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”
- UNGA resolutions are not legally-binding per se, but their provisions may reflect the content of existing (or emerging) rules of law.
- UNGA resolutions adopted by consensus may serve as evidence of world opinion, aspirations and future goals.

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# Research Tips

- The official website for the United Nations can be found at: http://www.un.org/
- Copies of UN General Assembly resolutions and information on voting records can be obtained by year at: http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html
- Copies of UN resolutions and other documents can also be obtained by their document symbol from the “Official Documents of the United Nations” database at: http://documents.un.org

# Examples of Output:

*Wide view of the General Assembly Hall. UN Photo/Manuel Elias*

- "Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal," GA Res. 95(I), adopted 11 December 1946. This resolution, adopted during the very first UNGA session, expressly affirms the foundational principles of international criminal law.
- "The Crime of Genocide," GA Res. 96(I), adopted 11 December 1946, affirms that genocide is a crime under international law and requests the Economic and Social Council (ECOSOC) to undertake the necessary studies with a view to drafting a convention.

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# Economic and Social Council

- ECOSOC is the principal organ responsible for coordinating the international economic, social, cultural, educational, health and related work of the UN and its specialized agencies.
- ECOSOC consists of 54 UN member-states elected by the General Assembly to serve for three-year terms.
- ECOSOC is a deliberative and consultative body, responsible for formulating policies, initiating studies and reports, and making recommendations to the GA: UN Charter, art. 62.
- ECOSOC may also prepare draft conventions for submission to the General Assembly: UN Charter, art. 62(3).
- Note that these conventions (aka treaties) do not bind states simply upon adoption by ECOSOC and/or UNGA.

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# Economic and Social Council

- ECOSOC may also establish commissions in various economic and social fields: UN Charter, art. 68.
- Examples include the Commission on the Status of Women, the Commission on Narcotic Drugs, and the Commission on Sustainable Development, as well as regional commissions.
- These are policy-making bodies, rather than law-making bodies.
- See, for example, Cory J. in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982 at para 108: "The Commission on Narcotic Drugs ("CND"), a commission of the Economic and Social Council established in 1946, is the central policy-making body within the UN on drug-related matters."

ECOSOC | UNITED NATIONS ECONOMIC and SOCIAL COUNCIL

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Management Segment


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More Events »

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"It is my ambition, while I serve as president, to make ECOSOC work optimally as an ecosystem"

More from the President »

https://www.un.org/ecosoc/en/

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# Commission on Human Rights

- The first commission created by ECOSOC was the Commission on Human Rights (CHR) in 1946.
- During its first two decades, the CHR focused its efforts on standard-setting activities, specifically the drafting of proposed texts for new international instruments.
- Over time, its mandate expanded to include the receipt of complaints of gross human rights violations, and the development of a system of independent experts, working groups and special rapporteurs reporting on thematic and country-specific human rights issues.
- The CHR was, however, abolished in 2006, as part of the UN's reform efforts, and replaced by a new Human Rights Council (HRC).

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# Reform of the UN and the Creation of the Human Rights Council

- The creation of a new Human Rights Council was part of the wider UN reform project underway in 2005.
- The High Level Panel on Threats, Challenges and Change (December 2004) argued for a "council" to give human rights the same standing as other councils within the UN system.
- Then UN Secretary-General Kofi Annan added his voice in his *In Larger Freedom* report (March 2005, with a supplement focused on the HRC in May 2005).
- At the World Summit in September 2005, UN member states agreed to create a "Human Rights Council" but there was little agreement on the details: *2005 World Summit Outcome*, GA Res. 60/1; UN GAOR, 60th Sess., Supp. No. 49 (vol. I) at 3-25; UN Doc. A/RES/60/1 (2005) at paras. 157 & 158.

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# Creation of the new Council

- Heralded as a turning point for human rights, with a commitment to address the politicization that plagued the former Commission in recent years, the actual creation of the Human Rights Council occurred in March 2006, with the adoption of UN General Assembly resolution 60/251, UN GAOR, 60th Sess., Supp. No. 49 (Vol. III) at 2-5; UN Doc. A/RES/60/251 (2006).
- This resolution was adopted by a recorded vote, with 170 states in favour (including Canada), 4 states against (Israel, Marshall Islands, Palau, United States), and 3 abstentions, with then US Ambassador John Bolton expressing dissatisfaction about the selection criteria for Council members and the limited nature of the reform.
- “Institutionally the creation of the Council is the first time a UN body has been dismantled and replaced in order to achieve greater effectiveness”: Nico Schrijver in (2007) 20 Leiden J Intl L 809 at 822.

UNITED NATIONS
HUMAN RIGHTS COUNCIL




## United Nations Human Rights Council

The Human Rights Council is an inter-governmental body within the United Nations system made up of 47 States responsible for the promotion and protection of all human rights around the globe.

## Announcements

Human Rights Council Task Force on accessibility for persons with disabilities: accessibility plan

2018 annual report of the Human Rights Council to the General Assembly

Selection of special procedures and EMRIP mandate holders to be appointed by the Human Rights Council

https://www.ohchr.org/en/hrbodies/hrc/pages/home.aspx

# Mandate of the Council

- The Council remains an intergovernmental body responsible for standard-setting and policy-formulation activities, but it has been restructured and now operates as if a standing body.
- Its membership consists of 47 states, with Canada serving from 2006-2009, but the geographic allocation of seats gives a greater proportional weight to Asian and African states.
- The Council's general mandate is virtually identical to that of the former Commission as it had developed over time.
- However, the General Assembly has also insisted that the Council to be guided in its work by the "principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and co-operation …": GA Res. 60/251, UN Doc. A/RES/60/251 (2006) at para. 4.

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# Human Rights Council: Specific Tasks

- Due to disagreement, the specific tasks of the Council are not found in the 2006 GA resolution. They are found in the "Institution-building package" adopted by the Council in June 2007, after a year of further negotiations: HRC Resolution 5/1.
- Canada was critical of the terms of this package, backed by the US, Israel and Australia when the package was forwarded to the UN General Assembly for its endorsement.
- Nevertheless, the Council's activities include the adoption of resolutions, decisions and statements on a variety of human rights issues; the consideration of complaints of gross and reliably attested violations of human rights; and the appointment of various "special procedures", continuing the former Commission's use of independent experts, Special Rapporteurs, SRSGs, and working groups.

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# Universal Periodic Review

- The new Council is also mandated to carry out a new form of performance review known as “Universal Periodic Review” (UPR).
- Under UPR, all 193 UN member states must have their record of activities in the field of human rights reviewed by other states within the Council on a four-year periodic cycle.
- The process is intended to be a state-oriented, state-controlled process, operated on a “co-operative” basis, although inevitably some countries receive more attention than others.
- Various documents are produced as part of this process, including a compilation of the past recommendations made by the UN human rights treaty bodies and special rapporteurs for each country.
- Canada underwent its first review in February 2009, its second review in April 2013, and its third review in May 2018.

Universal Periodic Review
About the UPR
UPR cycles
Sessions
Documentation by country
UPR Mid-term information
UPR Trust Funds
Civil Society Engagement
Parliaments
Regional workshops
Media Outreach
Accreditation
UPR Extranet
Advisory Committee
Special Procedures (Human Rights Experts)
WG on OP to CRC
IGWG on draft UN declaration on HR education and training
IGWG on private military and security companies
IGWG on private military and security companies (new)
IGWG on draft UN declaration on right to peace

# Universal Periodic Review - Canada

*Only contributions submitted in one of the United Nations official languages are admissible and posted on this webpage*

## Third Cycle

**Letter by the High Commissioner to the Foreign Minister :** English | French

**Matrice of recommendations:** English

**Infographic:** English

**Date of consideration: Friday 11 May 2018 - 9:00 - 12:30**

### Reports and information

**National report [1] :** العربية | 中文 | English | Français | русский | Español

Annex 1: English | Français

Annex 2: English | Français

**Compilation of UN information [2] :** العربية | 中文 | English | Français | русский | Español

Annex: 1

**Summary of stakeholders' information [3]:** العربية | 中文 | English | Français | русский | Español

### Questions submitted in advance

**Questions submitted in advance :** English

Addendum 1 : English

Addendum 2 : English

https://www.ohchr.org/EN/HRBodies/UPR/Pages/CAIndex.aspx

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# Utility of Universal Periodic Review

- Although in 2012, it is early days in terms of drawing a final assessment, the initial rounds of the UPR mechanism suggested it lacks focus and there is no room for independent evaluation. Light questioning by “friends” can turn the review into a “mutual praise society” for some states.
- However, the first round of the UPR cycle (2008-2011) has served as a baseline for future accountability actions, providing a basis for follow-up queries in the subsequent review cycles.
- There are those, however, who fear that the UPR process will become a mere mask for accountability, with many states ratifying treaties in the lead-up to their UPR review.
- Alternatively, the mechanism may simply fall into disuse as occurred with a similar practice followed by the former Commission where the reports produced were ultimately found to be of limited utility.

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# Research Tips

- The official website for the Human Rights Council is found at: http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx
- All documentation relating to the Universal Periodic Review mechanism can be found at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx
- The reports generated by the various special rapporteurs of the Council can be found organized under the label “Special Procedures of the Human Rights Council” found at: http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx

Universal Periodic Review
Advisory Committee
Special Procedures (Human Rights Experts)
HRC Consultative Group
WG on OP to CRC
IGWG on draft UN declaration on HR education and training
IGWG on private military and security companies
IGWG on private military and security companies (new)
IGWG on draft UN declaration on right to peace
IGWG on UN declaration on rights of peasants
IGWG on TNCs

# Special Procedures

The Human Rights Council's Special Procedures mandate holders are made up of special rapporteurs, independent experts or working groups composed of five members who are appointed by the Council and who serve in their personal capacity. Special procedures undertake country visits; act on individual cases and concerns of a broader, structural nature by sending communications to States and other actors bringing alleged violations or abuses to their attention; conduct thematic studies and convene expert consultations; contribute to the development of international human rights standards; engage in advocacy; raise public awareness; and provide advice for technical cooperation.

These independent experts report at least once a year to the Council on their findings and recommendations, as well as to the UN General Assembly. At times they are the only mechanism alerting the international community to certain human rights issues.

There are two types of Special Procedures mandates: the **thematic mandates**, such as water and sanitation, arbitrary detention, the rights of migrants, violence against women, torture and human trafficking, and the **country-specific mandates**.

More on the **Special Procedures' Homepage**

## Related Links

→ **Nomination, Selection and Appointment of Mandate Holders**
(UN Consultative Group)
→ **Mandate Holders Appointment Table**

https://www.ohchr.org/EN/HRBodies/HRC/Pages/SpecialProcedures.aspx

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# The Council's Substantive Activities

- The new Council has faced just as many confrontations and allegations of politicization as its discredited predecessor.
- Notable examples include resolutions concerning the human rights situation in the Palestinian occupied territories and the Goldstone report concerning the Gaza conflict.
- Other examples include the "defamation of religions" resolutions and the Durban Review Conference preparations, as well as resolutions reflecting long-standing divisions between "The West and the Rest."
- Examples include resolutions on the human rights impact of foreign debt repayment, the recognition of collective human rights, such as a right to peace and a right to international solidarity, the desire among developing countries for a more equitable socio-economic order, the effects of unilateral coercive measures, and the implementation of the right to development.

# The Council's Substantive Activities

- But the Council has been able to add to the corpus of international human rights treaties, adopting (for example) an International Convention for the Protection of All Persons from Enforced Disappearances during its first session.
- This treaty was subsequently adopted by the General Assembly and then made available for signature and ratification by states.
- It entered into force on 23 December 2010.

| | |
|---|---|
| Registration Number | 48088 |
| Title | International Convention for the Protection of All Persons from Enforced Disappearance |
| Participant(s) | |
| Submitter | ex officio |
| Places/dates of conclusion | Place: New York; Date: 20/12/2006 |
| EIF information | 23 December 2010 , in accordance with article 39(1) |
| Authentic texts | Spanish<br>Russian<br>French<br>English<br>Chinese<br>Arabic |
| Attachments | |
| ICJ information | |
| Depositary | Secretary-General of the United Nations |
| Registration Date | ex officio 23 December 2010 |
| Subject terms | Human rights |
| Agreement type | Multilateral |
| UNTS Volume Number | 2716 (p.3) |
| Publication format | Full |
| Certificate Of Registration | |
| Text document(s) | volume-2716-I-48088.pdf |
| Volume In PDF | v2716.pdf |
| Map(s) | |
| Corrigendum/Addendum | |

UNTS Volume

https://treaties.un.org/

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# The Treaty-based Bodies

- Moving from commissions and councils to committees:
- For each of the human rights treaties adopted by states under the auspices of the UN, there is a treaty-monitoring committee established by the states parties to keep an eye on state performance and, in some cases, receive complaints and initiate inquiries into gross and systemic violations.
- These committees are part-time bodies, consisting of independent experts selected by the states parties.
- The committees are serviced by the Office of the High Commissioner for Human Rights (OHCHR) in Geneva.
- There are ten human rights treaty bodies in existence, although Canada is not a participant with respect to all ten. See further: http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx

**Treaty-based bodies**

There are ten human rights treaty bodies that monitor implementation of the core international human rights treaties:

- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Human Rights Committee (CCPR)
- Committee on the Elimination of Discrimination against Women (CEDAW)
- Committee against Torture (CAT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)
- Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of Persons with Disabilities (CRPD)
- Committee on Enforced Disappearances (CED)

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# Human Rights Committee

- The International Covenant on Civil and Political Rights, adopted 16 December 1966, 999 UNTS 171, Can. T.S. 1976 No. 47 (in force 23 March 1976, entry into force for Canada 19 August 1976) is the leading human rights treaty of intended universal application.
- Under the terms of the Covenant (ICCPR), and its first Optional Protocol (OP1), an 18-member “Human Rights Committee” has been created to receive and consider state reports, make general comments, and provide its “views” on individual complaints.
- Canada is a party to the ICCPR and as a result, Canada has reporting obligations to the Human Rights Committee, leading to a public record of “concluding observations" by the Committee on Canada’s record.
- Canada has also accepted the right of individual petition under OP1, and there have been cases brought by individuals against Canada before the Human Rights Committee involving equality rights, language rights, fair trial rights, and death penalty challenges to extradition and deportation.

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# Other Treaty Monitoring Bodies

- A similar body exists for the International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, 993 UNTS 3, Can. T.S. 1976 No. 46 (in force 3 January 1976, entry into force for Canada 19 August 1976), called the Committee on Economic, Social and Cultural Rights (CESCR), with a 2008 Optional Protocol providing for the right of individual and group petition to the CESCR. (Canada is unlikely to ratify.)
- A Committee on the Elimination of Racial Discrimination (CERD) exists under the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, but Canada has not made the necessary declaration to permit complaints to CERD.
- A Committee on the Elimination of Discrimination against Women (CEDAW) exists under the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and Canada is a party to the 1999 Optional Protocol for complaints.

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# Other Treaty Monitoring Bodies

- A Committee on the Rights of the Child (CRC) exists under the 1989 Convention on the Rights of the Child, with additional responsibilities arising for states parties to the 2000 Optional Protocol concerning children in armed conflict (as well as an OP on the sale of children).
- An Optional Protocol permitting individual complaints to the CRC entered into force in 2014. Canada is not a party.
- There is also a Committee on Migrant Workers and a Committee on Enforced Disappearances, but Canada is not a party to the treaties establishing these bodies.
- And there is a Committee on the Rights of Persons with Disabilities, as provided for by the 2006 Convention on the Rights of Persons with Disabilities (CRPD). Canada became a party to the CRPD in 2010 and a party to the CRPD Optional Protocol in 2019.

**The Committee**

Introduction

Membership

Meetings of State parties/Elections

Upcoming elections for all treaty bodies

**Basic documents**

Convention

Optional Protocol

Rules of procedure

Working methods

Annual reports

**The work of the Committee**

**Key documents related to reporting cycles**

States parties reports

Lists of issues (LOIs & LOIPR)

Replies to LOIs

Concluding observations

**Reporting to the Committee**

Initial report

Periodic reports

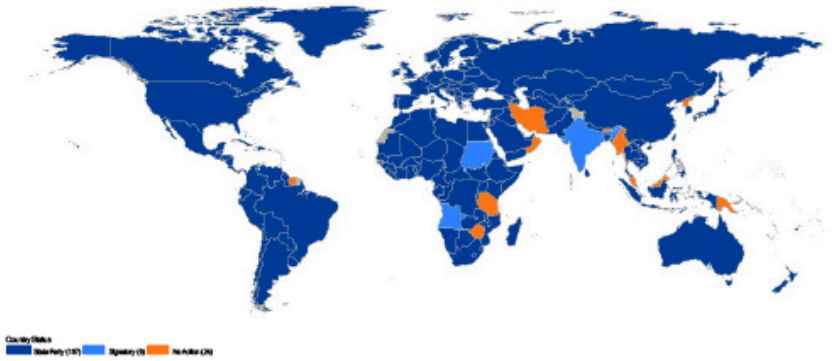
Simplified reporting

# COMMITTEE AGAINST TORTURE

The Committee Against Torture (CAT) is the body of 10 independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties.

More about the Committee against Torture...

**Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**



Click on the image to access the interactive map
See the maps on ratifications (PDF) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment or its Optional Protocol

## Upcoming Events

67th CAT session (22 July-9 August 2019)

Accreditation for the 67th session (To register, please make sure to use: Google Chrome, Mozilla, Firefox, Safari, Edge or Opera)

## Recent Events and Developments

66th CAT session in Geneva (23 April-17 May 2019)

Statement of the CAT Chairperson to the UNGA 73rd session

Latest CAT Annual Report (A/73/44)

**Country-specific information**

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Deadlines for the submission of documentation

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Treaty body database

Universal human rights index

**Publications**

Fact Sheet No.17

Compilation of CAT concluding observations for Latin American and Caribbean countries

**Useful links**

Sub-Committee on the Prevention of Torture

UN Voluntary Fund for Victims of Torture

Special Rapporteur on Torture

**External links**

Treaty Body Webcast

Amnesty International Article 5 initiative

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# Committee Against Torture

- There is also a Committee against Torture (CAT), established under the 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- A 2002 Optional Protocol also provides for a mechanism for preventative visits and a Subcommittee on Prevention of Torture. Canada is not a party (but an announcement was made in 2016 that Canada was intending to become a party).
- Canada does permit individual complaints to be made against Canada to CAT, with most cases arising within the context of denied refugee claims and the obligation of non-refoulement.

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# Examples of Output

- In addition to non-binding "views" in individual communications (petitions), the treaty-monitoring bodies also provide "Concluding Observations" on a state party's human rights record. For example, the Committee Against Torture in a 2012 report concerning Canada observed:

  > 15. The Committee remains concerned at the lack of effective measures to provide redress, including compensation, through civil jurisdiction to all victims of torture, mainly due to the restrictions under provisions of the State Immunity Act … [Canada] should ensure that all victims of torture are able to access remedy and obtain redress, wherever acts of torture occurred and regardless of the nationality of the perpetrator or victim. In this regard, it should consider amending the State Immunity Act to remove obstacles to redress for all victims of torture.

- See "Concluding Observations of the Committee against Torture: Canada," 25 June 2012, UN Doc. CAT/C/CAN/CO/6, para. 15.
- For criticism of these views concerning Canada, see *Jones v. Ministry of Interior for the Kingdom of Saudi Arabia and others*, [2006] UKHL 26, [2007] 1 AC 270 at paras 23, 57 & 58.

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# Adjudication under the UN System

- To summarize, Canada is subject to reporting obligations to the HRC (CCPR), CESCR, CERD, CEDAW, CAT and CRC, in addition to the new Universal Periodic Review mechanism's reporting requirements within the Human Rights Council.
- And complaints can be made by individuals with respect to the alleged denial of rights by Canada to the HRC (CCPR), CEDAW, CAT and CRPD, resulting in a body or corpus of non-binding but possibly persuasive views, which exist alongside the reports and recommendations made by the special procedures established by the Human Rights Council.
- Access to the official reports, general comments, and "jurisprudence" of the treaty-monitoring bodies is made available through the UN Treaty Body Database at: http://tbinternet.ohchr.org/SitePages/Home.aspx

## UN Treaty Body Database

There are nine core international human rights treaties, the most recent one – on enforced disappearance – entered into force on 23 December 2010. Since the adoption of the Universal Declaration of Human Rights in 1948, all UN Member States have ratified at least one core international human rights treaty, and 80 percent have ratified four or more.

There are currently ten human rights treaty bodies, which are committees of independent experts. Nine of these treaty bodies monitor implementation of the core international human rights treaties while the tenth treaty body, the Subcommittee on Prevention of Torture, established under the Optional Protocol to the Convention against Torture, monitors places of detention in States parties to the Optional Protocol.

The treaty bodies are created in accordance with the provisions of the treaty that they monitor. OHCHR supports the work of treaty bodies and assists them in harmonizing their working methods and reporting requirements through their secretariats.

There are other United Nations bodies and entities involved in the promotion and protection of human rights

You will find below some useful links related to the TreatyBody database:

- Documents search
- List of sessions
- Ratification, reporting and documentation by countries
- Ratification status by country or by treaty
- Document's master calendar
- Session's master calendar
- Document's calendar
- Session's calendar
- Visits of the optional protocol of the convention against torture
- Follow-up procedure
- List of issues prior to reporting
- Core documents
- Inquiries
- Late Reporting
- Monthly report

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# Research Tips

- The OHCHR also maintains a jurisprudence database at: http://juris.ohchr.org/
- Country-specific human rights information can be searched for using the Universal Human Rights Index at: http://uhri.ohchr.org/
- Access to the reports, observations, general comments and views of the various treaty-monitoring bodies can also be gained through the University of Minnesota's Human Rights Library at: http://www1.umn.edu/humanrts/
- Some also find the organization of material through Professor Anne Bayefsky's site to be useful: http://www.bayefsky.com/

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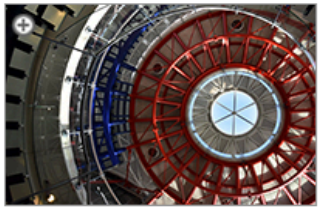
# The Regional Human Rights Systems

- In addition to the UN human rights regime, additional international human rights regimes have developed within Europe, the Americas and Africa, with a new regional regime emerging within Asia.
- The most successful human rights regime is the European human rights regime, established in the 1950s under the auspices of the Council of Europe (not the European Union).
- The European regime is based on the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, adopted 4 November 1950, 213 UNTS 221, ETS No 5 (entered into force 3 September 1953).
- Previously a two-tier system, with a part-time commission and court, since 1998, litigation of cases now takes place before a full-time European Court of Human Rights, based in Strasbourg, France.

## Quick Links

- Recent judgments
- Recent decisions
- Recent press releases
- Multimedia
- Applicants
- Superior Courts Network
- Other languages
- Factsheets & Country profiles
- Case-Law Information Notes
- Information visits

## Chamber judgment concerning the Russian Federation



16/07/2019

In the case of **Zhdanov and Others v. Russia** the Court has declared inadmissible the application by one of the 4 applicants, Nikolay Alekseyev, an LGBT activist who is known for his insulting and threatening comments on social media about the ECHR and its judges.

With regard to the other applicants, the Court has found a violation of the right to freedom of association and of the ban on discrimination, in view of the Russian authorities' refusal to register organisations set up to promote and protect the rights of lesbian, gay, bisexual and transgender persons (LGBT) in Russia.

Press release
Factsheet: Sexual Orientation

## Chamber

**Judgment concerning Poland**

25/07/2019
In the case of **Brzeziński v. Poland** the Court found a violation of freedom of expression on account of the conviction of the applicant, who had been running for electi...

**Judgment concening Romania**

23/07/2019
In the case of **Cîrstea v. Romania** the Court found a violation of the right to liberty and security.
The case concerned the pre-trial detention of the applicant, ...

## Decision

**Inadmissibility decision**

25/07/2019
The Court has found the application in the case of **Shala v. Switzerland** to be manifestly unfounded, and declared it inadmissible. ...

## Delivered Judgments & Decisions

30/07/2019
2 Judgments
25/07/2019
20 Judgments & 6 Decisions
Jafarov and Others v. Azerbaijan
Rook v. Germany
Miller v. the United Kingdom

## Forthcoming Judgments & Decisions

Forthcoming judgments: 27 August 2018

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# The European Human Rights Regime

- As an international court operated by 47 European states, the European Court of Human Rights rules on individual or State applications alleging violations of the (predominantly) civil and political rights set out in the European Convention on Human Rights.
- The Court's judgments are binding and its body of work consists of more than 10,000 judgments, some of which have been cited in Canadian courts for comparative law assistance.
- The Court's jurisprudence has contributed to understandings of civil liberties, fair trial rights, the right to life, and the prohibition on torture, and since the first judgment in *Lawless v. Ireland*, the Court has addressed matters of national security and terrorism.
- The output of the Court can also be used for providing a sense of a country's human rights record.

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# Examples

- *Soering v United Kingdom* (1989): Instruments for the protection of human rights must be interpreted and applied so as to make its safeguards practical and effective, not illusory.
- Also from *Soering v United Kingdom* (1989): State responsibility can be engaged if a state surrenders a person to another state where there is a real risk of ill-treatment.
- *Othman (Abu Qatada) v United Kingdom* (2012): Diplomatic assurances are sufficient to protect an individual from ill-treatment, but it is a violation of the right to a fair trial to send a person to face a real risk of admission of evidence obtained by torture.
- *Babar Ahmad v United Kingdom* (2012): No violation regarding real risk of being held in high security “supermax” prison.

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# Other examples

- *N v Sweden* (2010): Recognition of the risk of domestic violence for Afghani women by the Court.
- *Jabari v Turkey* (2000): Turkey barred from deporting an Iranian national who feared death by stoning or flogging for adultery.
- *Harkins and Edwards v United Kingdom* (2012): No violation to surrender persons to face life sentences without parole.
- *Kononov v Latvia* (2010): Grand Chamber decision rejecting argument that conduct did not constitute a war crime at time of commission. Article 7 of the European Convention on Human Rights held to embrace the *nullem crimen* principle.

# More examples

- *Ireland v United Kingdom* (1978): An inter-state case concerning the legality of the “five techniques” used for interrogation during detention, with the Court finding that the techniques caused intense physical and mental suffering.
- *McCann and Others v United Kingdom* (1998): Violation found of the right to life because a security operation could have been planned and controlled without the need to kill the suspects.

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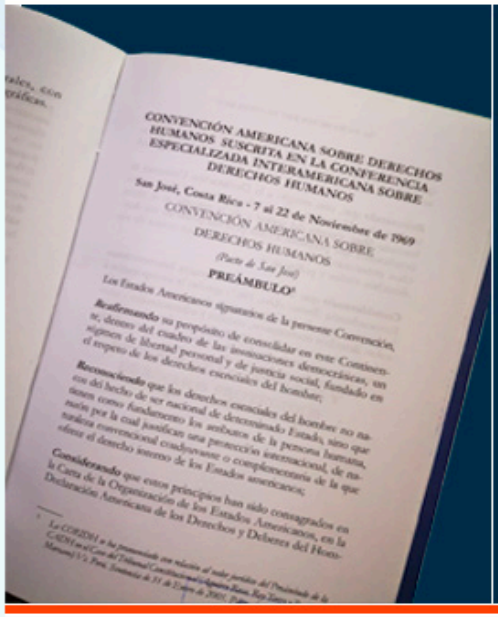
# Research Tips

- The official website of the European Court of Human Rights is at: http://www.echr.coe.int/ECHR/Homepage_EN
- The HUDOC database provides free access to decisions and judgments of the Court and former Commission, as well as press releases containing summaries: http://hudoc.echr.coe.int/
- Useful “Factsheets” on the jurisprudence of the Court, organized by theme (e.g. Terrorism) can be found at: http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets
- Ratification records and explanatory reports concerning Council of Europe treaties can be found at: http://conventions.coe.int/




## Request for an Advisory Opinion

On May 6, 2019, the State of Colombia submitted a request for an advisory opinion to the Secretariat of the Inter-American Court of Human Rights asking that the Court interpret and determine the "obligations in matters of Human Rights of a State that has denounced the American Convention on Human Rights, and attempts to withdraw from the Organization of American States (OAS)".

### IACHR
### Request for an Advisory Opinion

President of the Court has established September 10, 2019 as the deadline to submit written observations on said request.

View invitation

In order to download the text of the request:

Spanish
English
Portuguese
French

### How to access the inter-American system

- Reports and consultations
- Frequent questions
- Information required to lodge a petition
- Procedure before the Inter-American Court

### Cases at the Monitoring Stage

List of cases before the Inter-American Court that are at the stage of monitoring compliance with judgment

### Cases Filed by Compliance

List of Cases in Stage of Filed by Compliance

### Cases at the Merits Stage (Pending the delivery of judgment)

- Case of Rojas Marín et al. v. Peru
- Case of Noguera et al. v. Paraguay
- Case of Flores Bedregal et al. v. Bolivia
- Case of the Members and Officials of the Patriotic Union v. Colombia
- Case of Guzmán Albarracín et al. v. Ecuador
- Case of Urrutia Laubreaux v. Chile
- Case of Fernández Prieto et al. v. Argentina

### Interactive Map

Get to know the rulings made by the Inter-American Court, arranged by country.

SEE MORE »

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# The Inter-American Human Rights Regime

- The inter-American human rights regime was developed by states under the auspices of the Organization of American States (OAS).
- It bears many similarities to the European regime, but the inter-American human rights regime is based on two instruments and two institutions.
- The two foundational inter-American human rights instruments are the American Declaration on the Rights and Duties of Man, adopted in 1948, and the American Convention on Human Rights (ACHR), adopted 22 November 1969, 1144 UNTS 144, OASTS No 36 (entered into force 18 July 1978) (aka “the Pact of San José”).
- There are also additional treaties on specific matters, including a 1985 Inter-American Convention to Prevent and Punish Torture.

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# The Inter-American Human Rights Regime

- The two institutions are the Inter-American Commission on Human Rights (IACHR), based in Washington D.C., and the Inter-American Court of Human Rights, based in San Jose, Costa Rica, handling petitions and cases.
- Unlike the European regime, but similar to the UN human rights regime, the inter-American regime also reports on state situations and (since 1990) has its own system of special rapporteurs, including a Rapporteurship on Human Rights Defenders and a Rapporteurship on the Rights of Persons Deprived of Liberty.
- See: http://www.oas.org/en/iachr/mandate/rapporteurships.asp

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# The Contributions of the Inter-American Human Rights Regime

- In addition to its thematic and country-specific reports, including a special report in 2000 on the refugee determination process in Canada, and its on-site visits, the inter-American human rights regime has made important jurisprudential contributions, notably in relation to the recognition of the rights of indigenous peoples, including land and mineral rights.
- The Commission and Court have also addressed the situations of enforced disappearances in Central and South America, and shown creativity with respect to the crafting of remedies and reparations for serious human rights violations.

# Other Examples

- *Abella v Argentina* (aka La Tablada Case), Case No. 11.137, Report No. 55/97, Inter-American Commission on Human Rights (1997): Case concerned an attack by civilians against military barracks in Argentina. Commission applies international humanitarian law to a non-international armed conflict.
- *Coard v United States*, Case 10.951, Report 109/99, Inter-American Commission on Human Rights (1999): Case concerned individuals detained during the military action led by US armed forces in Grenada where detention conditions and treatment did not meet the standards of the American Declaration. Case also discusses internment of civilians as an exceptional security measure.

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# Canada and the Inter-American Human Rights Regime

- Canada joined the OAS in 1990, and in doing so, became a party to the OAS Charter and its human rights obligations.
- Canada is not a party to the ACHR.
- As a result, individuals can lodge petitions against Canada alleging violations of the human rights obligations of the OAS Charter, as amplified by the 1948 American Declaration, to the Inter-American Commission on Human Rights, but cases cannot be brought against Canada before the Inter-American Court.
- The Commission's output is recommendatory in nature.
- By contrast, the Court's judgments are binding on the parties to the case. The Court also has the ability to issue advisory opinions, akin to the International Court of Justice.

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# Research Tips

- The OAS Secretariat for Legal Affairs serves as the depositary for all inter-American treaties: http://www.oas.org/dil/treaties_and_agreements.htm
- The official website of the Inter-American Commission on Human Rights can be found at: http://www.oas.org/en/iachr/
- The official website of the Inter-American Court of Human Rights can be found at: http://www.corteidh.or.cr/


http://www.african-court.org/en/

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# The African human rights regime

- The African human rights regime was first created under the auspices of the Organization for African Unity (OAU) and then continued as part of the African Union (AU).
- The regime combines both civil and political rights, with economic, social and cultural rights, as well as so-called “third generation” rights (or peoples’ rights).
- The African approach also combines rights with duties.
- The key instrument is the 1981 African Charter on Human and Peoples’ Rights, which came into force in 1986.
- The key institution is the African Commission on Human and Peoples’ Rights located in Banjul, The Gambia, which has both promotion and protection functions, and the African Court on Human and Peoples’ Rights.

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# The African human rights regime

- The Commission receives state reports, uses special rapporteurs to conduct studies of a regional nature or focus, and receives and considers complaints from individuals, groups, NGOs, and states.
- The institutional framework of the African human rights regime was later bolstered by the long-awaited establishment of an African Court on Human and Peoples' Rights, based in Arusha, Tanzania.
- The 1998 Protocol establishing the Court entered into force in 2004, with the first judges chosen in 2006.
- The Court released its first decision in December 2009, concerning the alleged violation of the legal rights of former Chadian dictator Hissène Habré, who was then under house arrest in Senegal awaiting trial for alleged crimes against humanity. (He was convicted in 2016.)

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# *Michelet Yogogombaye v. Republic of Senegal* (2009)

- In this case, the Court faced a request to prevent the government of Senegal from trying the former Chadian head of state, Hissène Habré, for "crimes against humanity, war crimes and acts of torture in the exercise of his duties as Head of State."
- Yogogombaye alleged that the proceedings would violate both the principle against non-retroactivity of laws and the principle of universal jurisdiction.
- The Court, relying on Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights concluded that it had jurisdiction to review applications against states that made a declaration accepting individual applications, but because Senegal had not made the necessary declaration required by Article 34(6), the Court lacked jurisdiction to hear this case.

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# Research Tips

- The website of the African Commission on Human and Peoples' Rights can be found at: http://www.achpr.org/
- The website of the African Court on Human and Peoples' Rights can be found at: http://www.african-court.org/en/
- The website of the African Union can be found at: http://www.au.int/en/

# Canada and the United Nations human rights system

Learn how Canada reports to the UN on the treaties we have ratified, to account for actions within our country and pinpoint areas for improvement.

Follow:

## Services and information

**About Canada and the United Nations human rights system**
An overview of how Canada works with the United Nations to ensure the human rights of all individuals within Canada and around the world.

**Canada's performance and reporting to the United Nations**
How Canada is assessed on the fulfillment of its human rights obligations and commitments.

**Reports on United Nations human rights treaties**
Periodic reports on how Canada implements seven principal human rights treaties.

**Universal Periodic Review**
The important role of this global human rights mechanism that examines the human rights situation of all United Nations member states.

**Human rights treaties**
An outline of the seven principal UN human rights treaties that Canada has ratified.

## Contributors

- Canadian Heritage
- Department of Justice Canada
- Global Affairs Canada

https://www.canada.ca/en/canadian-heritage/services/canada-united-nations-system.html

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# National Links

- International law does not require Canada to enact specific legislation to transform expressly each of its treaty obligations into domestic law obligations.
- In many cases, Canada's international human rights obligations can be met through the *Canadian Charter of Rights and Freedoms* and existing federal, provincial and territorial legislation.
- Implementation can thus take place through existing laws, with some of Canada's international human rights treaty obligations also met through policies, administrative action, and educational programs.
- The lead department is Canadian Heritage, working with Justice Canada and Global Affairs Canada. See further: https://www.canada.ca/en/canadian-heritage/services/canada-united-nations-system.html

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# Final research tips

- The official UNTS citations for treaty texts, as well as signature and ratification records, and the texts of any reservations, can be obtained from the United Nations Treaty Collection at: https://treaties.un.org
- For Canadian treaty ratification records, and the official Can. T.S. citation, see the “Canada Treaty Information” website at: https://www.treaty-accord.gc.ca/index.aspx
- A useful general source is the “Electronic Information System for International Law” website maintained by the American Society for International Law (ASIL) at: http://www.eisil.org/

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# EISIL

An ASIL Research Tool

Electronic Information System for International Law

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**International Air, Space & Water**
Air & Aviation, Space, Antarctica & the Arctic ...

**International Criminal Law**
Basic Sources, War Crimes & Crimes Against Humanity, Including Genocide, Terrorism ...

**International Human Rights**
Basic Sources, Self-Determination, Prevention of Discrimination ...

**International Humanitarian Law**
Basic Sources, Protection of Environment, Protection of Cultural Property ...

**Use of Force**
Basic Sources, Collective Security, Law of Armed Conflict ...

American Society of International Law

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