

# **United Nations Human Rights Mechanisms**

## **WHAT DO THEY DO?**

## **What Can We Expect?**



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# The Mandate

## What they can do

## and Can't do



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# The Permanent Forum On Indigenous Issues

The Permanent Forum on Indigenous Issues shall serve as an advisory body to the Council [ECOSOC] with a mandate **to discuss** indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights; in so doing the Permanent Forum shall:

- (a) **Provide expert advice and recommendations** on indigenous issues **to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council**;
- (b) Raise awareness and **promote the integration and coordination** of activities relating to indigenous issues **within the United Nations system**;
- (c) Prepare and disseminate information on indigenous issues;



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# Special Procedures

## Country and Thematic Rapporteurs and Working Groups



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# Special Rapporteur on the Human Rights Of Indigenous Peoples

(a) **To examine ways and means of overcoming existing obstacles** to the full and effective protection of the human rights and fundamental freedoms of indigenous people, in conformity with his/her mandate, and to identify, exchange and promote best practices;

(b) **To gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous people and their communities and organizations**, on alleged violations of their human rights and fundamental freedoms;

(c) **To formulate recommendations and proposals** on appropriate measures and activities **to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people**;

(d) **To work in close cooperation**, while avoiding unnecessary duplication, **with other special procedures** and subsidiary organs of the Human Rights Council, relevant United Nations bodies, the treaty bodies, and human rights regional organizations;



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# Other Thematic Mandates

- The Working Group on Arbitrary Detentions
- The Special Rapporteur on Health
- The Secretary General's Special Representative on Human Rights Defenders



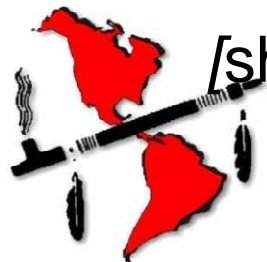
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# Expert Mechanism on the Rights of Indigenous Peoples

*Decides, in order to assist the Human Rights Council in the implementation of its mandate, to establish a subsidiary expert mechanism to provide the Council with thematic expertise on the rights of indigenous peoples in the manner and form requested by the Council:*

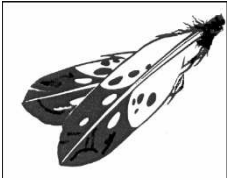
- (a) The thematic expertise will **focus mainly on studies and research-based advice;**
- (b) The mechanism may suggest proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council.



[shall not adopt resolutions or decisions]

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# UNIVERSAL PERIODIC REVIEW



The objectives of the review are:

- (a) The improvement of the human rights situation on the ground;
- (b) The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State;
- (c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;



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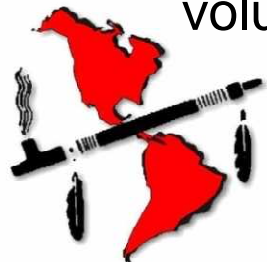
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# [UPR Cont.]

- (d) The sharing of best practice among States and other stakeholders;
- (e) Support for cooperation in the promotion and protection of human rights;
- (f) The encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights.

Outcome: The format of the outcome of the review will be a report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned.



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# HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

The function of the Advisory Committee is to **provide expertise** to the Council in **the manner and form requested by the Council**, focusing mainly on studies and research-based advice. Further, such expertise shall be rendered **only upon the latter's request**, in compliance with its resolutions and under its guidance.

The Advisory Committee should be implementation-oriented and the scope of its advice should be **limited to thematic issues** pertaining to the mandate of the Council; namely promotion and protection of all human rights.

The Advisory Committee **shall not adopt resolutions or decisions**. The Advisory Committee may propose within the scope of the work set out by the Council, for the latter's consideration and approval, suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council.

The Council shall issue **specific guidelines** for the Advisory Committee when it requests a substantive contribution from the latter and shall review all or any portion of those guidelines if it deems necessary in the future.



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# Human Rights Council Complaints Procedure

Working Group on Communications (5 experts from the Human Rights Council Advisory Committee)

The members of the Working Group on Communications shall decide on the admissibility of a communication and assess the merits of the allegations of violations, including whether the communication alone or in combination with other communications appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.



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## [HRC Complaint Procedure cont.]

Working Group on Situations (5 members appointed by the Regional Groups)

On the basis of the information and recommendations provided by the Working Group on Communications, presents the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and makes recommendations to the Council on the course of action to take, normally in the form of a draft resolution or decision with respect to the situations referred to it..



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# ***Conventional Mechanisms***

Based upon Human Rights Covenants and Conventions

Covenants and Conventions are international agreements between States that are legally binding.

A State has to agree, by signing and ratifying the Covenant or Convention that it will be bound to its terms.

Special Procedures apply to all States and do not need the agreement of the State



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1. Individual complaints procedures: Most Covenants and Conventions establish processes under which individuals can complain of violations of rights or freedoms by the State. But the States have to allow the Treaty Monitoring body to accept complaints against them separately, apart from merely adopting the Covenant or Convention:

The Member State of the Convention must also sign and ratify a separate Protocol or make a declaration, depending on the terms of the Covenant or Convention recognizing the competence of the Treaty Monitoring Body to receive individual complaints.



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## 7 Major Conventions

- 1) **The International Covenant on Civil and Political Rights**, and two Optional Protocols. Optional Protocol One allows individual complaints procedures but must be **signed and ratified separately**.
- 2) **International Covenant on Social, Economic and Cultural Rights**. Canada has signed and ratified the ICESCR. Recently an individual complaint procedure was adopted by the Human Rights Council and sent on to the General Assembly. It is not yet operative.
- 3) **The Convention Against Torture**. Under Article 22 of the CAT a State may make a declaration under Article 22 of the CAT recognizing the competence of the Treaty Monitoring Body to receive individual complaints.



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- Major Human Rights Conventions cont.

4. Convention on the Elimination of all Forms of Racial Discrimination. Under Article 14 of the CERD a State party may make a declaration recognizing the competence of the Treaty Monitoring Body to receive individual complaints.

The CERD Committee has also established an Urgent Action/Early Warning procedure that does allow for communications regarding a State's violations of the rights contained in the Convention, tied to the State's reporting responsibility.

5) Convention on the Rights of the Child. There is no individual complaint mechanism under the CRC.

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## [major conventions cont.]

6) Convention on the Elimination of All Forms of Discrimination Against Women. Canada is a State Party to this Convention. **The CEDAW has an Optional Protocol on communications and individual complaints that must also be ratified.**

7) Convention on the Rights Migratory Workers and their Families. There is an individual complaints procedure. Canada is not a State Party to this convention.



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## 2. Complaints by other States Parties:

The second process, normally is included under human rights conventions allows complaints by other States parties. But the States parties have never liked to denounce their sister states and to our knowledge, this process has not been used under any Covenant or Convention.



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# Periodic Reports by State Parties and Shadow or Parallel Reports from NGOs

Parallel reports: Individuals, Non-Governmental Organizations and communities can also inform the Treaty Body on the way in which the state has not complied with their human rights obligations in "Parallel" or "Shadow" reports. These parallel reports can contradict the State's report and present the real situation of human rights in that country. The Committees use these reports of the NGOs to question the State. Various experts of Treaty Monitoring Bodies have told us that the parallel reports of civil society are extremely important in their examination of the States, as is the only information that they receive apart from the State. If we don't tell them they don't know.



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# ***The CERD Urgent Action/ Early Warning Process***

**Early warning** measures are to be directed at **preventing existing problems from escalating into conflicts** or, particularly to prevent a resumption of conflict where it has previously occurred. Criteria for early warning measures could, for example, include the following situations: inadequate implementation of enforcement mechanisms, including **the lack of recourse procedures**; a significant pattern of racial discrimination evidenced in social and economic indicators, or **encroachment on the lands of minority communities**.

**Urgent procedures** are to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. Criteria for initiating an urgent procedure could include, for example, the presence of a **serious, massive or persistent pattern of racial discrimination**; or a situation that is serious where there is a **risk of further racial discrimination**.



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# Organization of American States (OAS) Processes

As with the UN, the OAS also has human rights instruments including the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man. It also has an Inter-American Human Rights Commission (IACHR) and an Inter American Court of human Rights.

Unlike the UN, the IACHR may receive complaints against any member State of the OAS, including Canada without the requirement that the State agree to recognize the competence of the IACHR. These complaints must be based upon the American Declaration. The IACHR takes a great many years to decide cases, and the results are only recommendations to the State, as are the Conclusions and Recommendations or decisions of the UN Treaty Monitoring Bodies. (See, the Shoshone CERD Decision)

For those States that have signed and ratified the American Convention on Human Rights, the Inter American Court has jurisdiction. Canada is not a State party to the American Convention.



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# Requirements Applicable to All Human Rights Complaints Including CERD UA/EW

## **Exhaustion of domestic remedies/Application to other international procedures**

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation – detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes

If you have not exhausted these remedies on the basis that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail:

Rio Yaqui, May 2006



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**When and Where.** Date, time and precise location of the incident (Country, region, municipality, area).

**Victim(s).** Name, number and full details on the location of the individual(s), people or community that has been or will be affected or at risk as result of alleged fact.

**What happened. Detailed circumstances of the alleged violation.** If an initial event leads to others, please describe them chronologically. In case of general measures such as national legislation or policies, indicate their stage of development and how indigenous peoples have or will be affected by them.

**Perpetrator(s).** Information on who allegedly committed the violation. If known, an explanation of the reasons why they are suspected of being responsible and whether they have any relation with national authorities.

**Actions taken by national authorities:** Has the matter been reported to the national administrative or judicial authorities? If applicable, what actions have been taken by the relevant authorities to remedy the situation?

**Actions taken before international bodies:** Has any legal action been initiated before international or regional human rights mechanisms? What is the state of development of these actions?



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