Chapter 4: Other UN instruments and mechanisms relevant to the rights of migrant workers

Key questions

- Which international human rights treaties can be used to promote and protect the rights of migrant workers and members of their families?
- What are the roles and functions of the UN special procedures? Which special procedures are relevant to the rights of migrant workers?
- How can issues relevant to the rights of migrant workers be addressed through the Universal Periodic Review?

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1. Introduction

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families ("the Convention on Migrant Workers") is the most comprehensive human rights treaty on the rights of migrant workers.

However, as noted in previous chapters, other core international human rights treaties and mechanisms also promote and protect the rights of migrant workers and members of their families.

While the Convention on Migrant Workers is currently one of the least-ratified human rights treaties, especially among destination countries, most States have ratified one or more of the other core UN human rights instruments.

Therefore, even if a State has not ratified the Convention on Migrant Workers, it will be bound by one or more of the other treaties which impose obligations and responsibilities on Governments to promote and protect the rights of migrant workers.

This chapter provides information on the rights set out in these core UN instruments and the references they contain to migrants or non-nationals, as well as interpretations by treaty bodies about the application of specific human rights and human rights treaties to migrant workers.

The chapter also looks at the different mechanisms of the UN Human Rights Council that can be used to highlight and address human rights issues experienced by migrant workers, including the special procedures and the Universal Periodic Review.

2. Core human rights treaties

The international human rights framework consists of the Universal Declaration of Human Rights and nine core human rights treaties:

Treaty	Entered into force	Ratification[1]
International Covenant on Civil and Political Rights	23 March 1976, in accordance with article 49	167 States parties
International Covenant on Economic, Social and Cultural Rights	3 January 1976, in accordance with article 27	160 States parties
International Convention on the Elimination of All Forms of Racial Discrimination	4 January 1969, in accordance with article 19	174 States parties
Convention on the Elimination of All Forms of Discrimination against Women	3 September 1981, in accordance with article 27(1)	187 States parties
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	26 June 1987, in accordance with article 27(1)	149 States parties
Convention on the Rights of the Child	2 September 1990, in accordance with article 49(1)	193 States parties
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	1 July 2003, in accordance with article 87(1)	45 States parties
Convention on the Rights of Persons with Disabilities	3 May 2008, in accordance with article 45(1)	102 States parties
International Convention for the Protection of All Persons from Enforced Disappearance	23 December 2010, in accordance with article 39(1)	29 States

Many of the core human rights treaties extend protection to all persons under the State‟s territory and jurisdiction, including non-nationals. This is reflected in the language of the provisions[2] including:

- **non-discrimination clauses** that prohibit distinctions of any kind, including on grounds such as race, colour, language, national, ethnic or social origin: for example, articles 2(1) and 26 of the International Covenant on Civil and Political Rights; article 2(2) of the International Covenant on Economic, Social and Cultural Rights

- the **use of the terms "every human being"**, **"everyone"**, **"no one"**, **"all persons"** or **"all individuals within its territory"** in relation to various rights including the right to life; freedom of thought, conscience and religion; equality and equal protection before the law; and freedom of association: for example,

[1] As at 28 March 2012. For updated information, see "Status of Treaties"; Chapter IV: Human Rights; on the UN Treaty Collection website: http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.

[2] The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights provide a foundation for the principle of non-discrimination, which is reflected in and further developed by other core human rights treaties.

articles 6, 10, 14, 17,18, and 22 and 26 of the International Covenant on Civil and Political Rights

- the **use of the term the "right of everyone"** to, among others, social security and adequate standard of living; for example, articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights.

2.1 Treaty articles relevant to the rights of migrant workers

Following is an outline of treaty articles quoted by the relevant treaty bodies to highlight the obligations of States in relation to promoting and protecting the rights of migrant workers.[3]

Treaty	Treaty body	Relevant treaty articles
International Covenant on Civil and Political Rights	Human Rights Committee	• **Article 3**; equality of men and women before the law • **Article 8**; prohibition of slavery, forced labour and trafficking in persons • **Article 12**; right to freedom of movement; right to leave any country including one‟s own and to return • **Article 13**; restrictions on expulsion of aliens lawfully in the territory of the State • **Article 26**; non-discrimination, equality before the law • **Article 27**; right to culture, religion and language for minorities
International Covenant on Economic, Social and Cultural Rights	Committee on Economic Social and Cultural Rights	• **Article 2**; obligations of States • parties for the progressive realisation of the rights in the Covenant, exercised without discrimination • Article 3; equality of men and women before the law • Article 6; right to work • Article 7; right to the enjoyment of just and favourable conditions of work • Article 8; right to form and join trade unions
International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination	• Article 2; condemnation of racial discrimination and adoption of measures to protect certain racial groups • Article 4; condemnation of racist propaganda • Article 5; elimination of racial discrimination and the guarantee

[3] This section is drawn mainly from *The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat*; December 18; updated July 2007; pp. 15-16.

		of enjoyment of rights • Article 6; provision of effective protection and remedies against any acts of racial discrimination • Article 7; measures to combat prejudice
Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women	• Article 4; special measures to accelerate equality between men and women • Article 6; adoption of measures to suppress all forms of trafficking • Article 9; right to acquire a nationality • Article 11; non-discrimination in employment • Article 16; non-discrimination in all matters relating to marriage and family relations
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture	• Article 3; non-refoulement • Article 11; review of interrogation rules, instructions, methods and practices for custody and treatment of persons arrested or detained • Article 12; prompt and impartial investigation of acts of torture • Article 16; prevention of other acts of cruel, inhuman or degrading treatment or punishment
Convention on the Rights of the Child	Committee on the Rights of the Child	• Article 2; obligations of States parties to respect and ensure the rights in the Convention to each child without discrimination • **Article 3**; the best interests of the child to be a primary consideration • **Article 7**; registration of birth and right to acquire a nationality • **Article 22**; Refugee and irregular immigrant children) • **Article 30**; right to culture, religion and language for children belonging to a minority • **Article 34**; protection against all forms of sexual exploitation and sexual abuse • **Article 35**; prevention of trafficking

3. Treaty bodies and migrant workers

Each of the nine core human rights treaties has its own treaty body that promotes and monitors the performance of treaty obligations by States parties. In addition, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has its own treaty committee – the Subcommittee on the

Prevention of Torture – that carries out the responsibilities given to it under the Optional Protocol.

In all cases but one, the treaty itself establishes the treaty monitoring body. The exception is the Committee on Economic, Social and Cultural Rights, which was established by a decision of the United Nations Economic, Social and Cultural Council.[4]

Treaty Body	Treaty	Examination of reports	Individual complaints
Human Rights Committee	International Covenant on Civil and Political Rights (1966)	Yes	First Optional Protocol (1966)
Committee on Economic, Social and Cultural Rights	International Covenant on Economic, Social and Cultural Rights (1966)	Yes	Optional Protocol (2008)[5]
Committee on the Elimination of Racial Discrimination	International Convention on the Elimination of All Forms of Racial Discrimination (1965)	Yes	Article 14
Committee on the Elimination of Discrimination against Women	Convention on the Elimination of All Forms of Discrimination against Women (1979)	Yes	Optional Protocol (1999)
Committee against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)	Yes	Article 22
Committee on the Rights of the Child	Convention on the Rights of the Child (1989)	Yes[6]	No
Committee on Migrant Workers	International Convention on the Rights of All Migrant Workers and	Yes[7]	Article 77

[4] The Committee was established under the United Nations Economic and Social Council (ECOSOC) Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to ECOSOC in Part IV of the International Covenant on Economic, Social and Cultural Rights.

[5] This protocol is not yet in force (May 2012).

[6] On 19 December 2011, the General Assembly adopted a new Optional Protocol to the Convention on the Rights of the Child to give this Committee a complaint function similar to that of other treaty bodies. The Optional Protocol can be expected to come into effect within two or three years.

[7] The individual complaints procedure has not yet been accepted by a sufficient number of States parties to make it operational (May 2012).

	Members of Their Families (1990)		
Subcommittee on Prevention of Torture	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (2002)	No	No
Committee on the Rights of Persons with Disabilities	Convention on the Rights of Persons with Disabilities (2006)	Yes	Optional Protocol
Committee on Enforced Disappearances	International Convention for the Protection of All Persons from Enforced Disappearances (2006)	Yes	Article

3.1 Concluding observations related to the rights of migrant workers

An important function of the treaty bodies is to monitor the compliance of States parties with their obligations under the respective human rights treaties. Each treaty establishes a reporting procedure which requires States parties to regularly present a report on their compliance with, and implementation of, their treaty obligations.

At the conclusion of the reporting process, which includes an interactive dialogue with the State party under review, the treaty body issues concluding observations (also known as concluding comments), which usually include recommendations for further action by the State to meet its obligations under the treaty. Concluding observations are meant to be concrete, focused and able to be implemented. There is also increasing attention on measures to ensure effective follow-up of the recommendations made.

This section summarizes the key issues raised by the different treaty bodies in relation to the treatment of migrant workers in their concluding observations. These have varied on a regional basis, reflecting the different issues raised and the level of protection generally given to migrants.[8] The main areas of concern raised by treaty bodies include trafficking; discrimination; deportation and detention; irregular migrants; working conditions; migrant women; and national security and anti-terrorism measures.[9]

The two main areas of concern raised by the **Human Rights Committee** have been the detention and deportation of aliens.[10] The Committee has also addressed issues of trafficking; ill-treatment by law enforcement officials; the impact of anti-terrorism laws;

[8] *The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat*; December 18; updated July 2007; p. 19.
[9] bid; pp. 22-27.
[10] "Migrants" rights in UN human rights conventions"; Isabelle Slinckx; in *Migration and Human Rights: The United Nations Convention on Migrant Worker Rights;* Ryszard Cholewinski, Paul de Guchteneire and Antoine Pécoud (ed), United Nations Educational, Scientific and Cultural Organization / Cambridge University Press; 2009; p. 130.

freedom of expression; freedom of association (especially regarding trade unions); and freedom of movement of migrants.[11]

The main focus of the **Committee on Economic Social and Cultural Rights** has been issues relating to the terms of employment, which includes minimum wages; health and maternity benefits; pension benefits; unemployment benefits; safe working conditions; and access to trade unions.[12] The Committee has also addressed discrimination in the enjoyment of economic, social and cultural rights by migrant workers, including in housing; access to social security schemes; education; and access to work.[13]

The **Committee on the Elimination of Discrimination against Women** has addressed the issue of trafficking and sexual exploitation of women migrant workers.[14] Migrant women can be particularly vulnerable to experiencing multiple forms of discrimination. The Committee‟s recommendations to State parties address the obligations of States of origin and States of destination.[15]

The **Committee on the Rights of the Child** has a strong interest in, and has raised the issue of, trafficking, including trafficking of migrant children and their situation once they return to their country of origin.[16] The Committee has also raised the issue of discrimination in access to adequate social services, in particular health and education facilities for migrant children, including irregular migrant children.[17]

The **Committee on the Elimination of Racial Discrimination** commonly addresses the issue of negative racial attitudes of host populations towards migrants and, in particular, asylum seekers. It has drawn attention to political speech, ill-treatment and violence, expressions of prejudice in the media and violent attacks against ethnic minorities.[18] Discrimination against migrants is noted in the areas of education, housing, access to public services, social security benefits and discrimination in the type of work that migrants perform.[19] The Committee also puts a strong focus on the regularization of undocumented workers[20] and, since 2011, has stated that anti-terrorism measures should not discriminate in purpose or effect on the grounds of race, colour, descent or national or ethnic origin.[21]

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[11] *The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat;* December 18; updated July 2007; p. 19.
[12] "Migrants‟ rights in UN human rights conventions"; Isabelle Slinckx; in *Migration and Human Rights: The United Nations Convention on Migrant Worker Rights;* Ryszard Cholewinski, Paul de Guchteneire and Antoine Pécoud (ed), United Nations Educational, Scientific and Cultural Organization / Cambridge University Press; 2009; p. 132.
[13] Ibid; p. 132.
[14] Ibid; p.133.
[15] Ibid; pp. 134-135.
[16] *The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat*; December 18; updated July 2007; p. 21.
[17] Ibid; p. 21.
[18] "Migrants‟ rights in UN human rights conventions"; Isabelle Slinckx; in *Migration and Human Rights: The United Nations Convention on Migrant Worker Rights;* Ryszard Cholewinski, Paul de Guchteneire and Antoine Pécoud (ed), United Nations Educational, Scientific and Cultural Organization / Cambridge University Press; 2009; p.128.
[19] Ibid; p. 129.
[20] Ibid; p. 129; and *The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat*; December 18; updated July 2007; p. 20.
[21] "Migrants‟ rights in UN human rights conventions"; Isabelle Slinckx; in *Migration and Human Rights: The United Nations Convention on Migrant Worker Rights;* Ryszard Cholewinski, Paul de Guchteneire and Antoine Pécoud (ed), United Nations Educational, Scientific and Cultural Organization / Cambridge University Press; 2009; p. 130.

The main concern raised by the **Committee against Torture** regarding migrant workers is the excessive use of force and discriminatory practices by police when dealing with foreigners.[22] The Committee has also addressed issues of detention prior to removal, including the excessive length of detention, the principle of "non-refoulement" (i.e. the prohibition on the deportation for individuals who risk being subjected to torture if returned to their own country) and trafficking.[23]

Information on the ways in which NHRIs can engage with the treaty bodies, and how they can participate in the treaty reporting process, is included in Chapter 11.

3.2 Selected general comments relevant to migrant workers

Each treaty body also issues "general comments" (also called "general recommendations" for the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination) which provide an interpretation of the human rights content of a treaty, thematic issues or the methods of work of the treaty body.

Over the years, the treaty bodies have issued general comments that address the rights of migrant workers and have developed jurisprudence concerning the application of the respective treaties with regards to migrant workers.

However, there is no uniformity in the use of terminology when referring to migrants and migrant workers. The general comments and concluding observations issued by the different treaty bodies can use a range of terms, such as "alien", "foreigner", "immigrant" and "non-citizens". Often these terms are also linked to the legal status of the migration. For example, terms such as "illegal", "irregular" and "undocumented" are often used.[24]

The general comments listed below address the views of treaty bodies in relation to the obligation of States parties in respect of non-nationals, including migrants.[25]

Human Rights Committee	
General Comment No. 15 on the position of aliens under the Covenant (1986)	"Each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (article 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness" and "must be guaranteed without discrimination between citizens and aliens."
General Comment No. 23 on the rights of minorities (1994)	"Migrant workers or even visitors in a State party constituting such minorities should not be denied the exercise of those rights. As any other individual in the territory of the State

[22] Ibid; p. 135.
[23] Ibid; p.136 and 137.
[24] *The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat*; December 18; updated July 2007; pp. 14-15.
[25] This section is drawn mainly from *The UN Treaty Monitoring Bodies and Migrant Workers: A Samizdat*; December 18 (updated July 2007; pp. 9-10) but has also been updated to reflect later general comments. The general comments for each treaty body are available on that treaty body"s section of the OHCHR website.

	Party, they would, also for this purpose, enjoy general rights, for example, to freedom of association, of assembly, and of expression."
General Comment No. 31 on the nature of the general legal obligation imposed on States parties (2004)	"The enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State party."
General Comment No. 32 on the right to equality before courts and tribunals and to a fair trial (2007)	"The right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status, whether asylum seekers, refugees, migrant workers, unaccompanied children or other persons, who may find themselves in the territory or subject to the jurisdiction of the State party."
Committee on Economic Social and Cultural Rights	
General Comment No. 13 on the right to education (article 13) (1999)	"The right to TVE (technical and vocational education) ... consists, in the context of the Covenant‟s non-discrimination and equality provisions, of programmes which promote the TVE of women, girls, out-of-school youth, unemployed youth, the children of migrant workers, refugees, persons with disabilities and other disadvantaged groups.
General Comment No. 14 on the right to the highest attainable standard of health (2000)	"States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services."
General Comment No. 15 on the right to water (articles 11 and 12) (2002)	"Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees."

General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights (2005)	"The principle of non- discrimination is the corollary of the principle of equality. Subject to … temporary special measures, it prohibits differential treatment of a person or group of persons based on his/her or their particular status or situation, such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status."
General Comment No. 18 on the right to work (2005)	"The principle of non discrimination as set out in article 2.2 of the Covenant … should apply in relation to employment opportunities for migrant workers and their families. In this regard the Committee underlines the need for national plans of action to be devised to respect and promote such principles by all appropriate measures, legislative or otherwise."
General Comment No. 19 on the right to social security (2008)	"… the Committee notes that the Covenant contains no express jurisdictional limitation. Where non-nationals, including migrant workers, have contributed to a social security scheme, they should be able to benefit from that contribution or retrieve their contributions if they leave the country … Non-nationals should be able to access non-contributory schemes for income support, affordable access to health care and family support … Refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups, should enjoy equal treatment in access to non-contributory social security schemes."
General Comment No. 20 on non-discrimination in economic, social and cultural rights (2009)	"The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation."
General Comment No. 21 (2009) on the right of everyone to take part in cultural life	"States parties should pay particular attention to the protection of the cultural identities of migrants, as well as their language, religion and folklore, and of their right to hold cultural, artistic and intercultural events. States parties should not prevent migrants from maintaining their cultural links with their countries of origin."
Committee on the Elimination of Discrimination against Women	
General Recommendation No. 21 on equality in marriage and family relations	"Migrant women who live and work temporarily in another country should be

(1994)	permitted the same rights as men to have their spouses, partners and children join them.”
General Recommendation No. 24 on women and health (1999)	“Special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.”
General Recommendation No. 26 (2008) on women migrant workers	Clarifies the obligation of State parties vis-à-vis sex- and gender-based discrimination against migrant women and the application of CEDAW to both documented and undocumented migrant women. It deals with the application of the Convention in countries of origin, transit, and destination; the lifting of discriminatory bans or restrictions on migration; providing education, awareness-raising and training to migrant workers; regulations and monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers; access to services including health services and legal and administrative assistance; travel documents; safeguarding remittances of income; facilitating the right to return and services upon return; diplomatic and consular protection; legal protection for the rights of women migrant workers; access to remedies; legal protection for the freedom of movement; non-discriminatory family reunification schemes; non-discriminatory residency regulations; and rights of women migrant workers in detention.
General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010)	“ … the obligations of States parties apply without discrimination both to citizens and non-citizens, including refugees, asylum-seekers, migrant workers and stateless persons, within their territory or effective control, even if not situated within the territory.”
Committee on the Rights of the Child	
General Comment No. 3 on HIV/AIDS and the rights of the child (2003)	“Vulnerability to HIV/AIDS is more acute for a number of children, including migrant children, and underlines their need for special protection.”

General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin (2005)	Clarifies the scope of article 2, according to which: "State obligations under the Convention apply to each child within the State‟s territory and to all children subject to its jurisdiction. Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness."
Committee on the Elimination of Racial Discrimination	
General Recommendation No. 30 on discrimination against non-citizens (2004)	Clarifies general principles for responsibilities of States parties to the Convention vis-à-vis non-citizens and deals in particular with issues of protection against hate speech and racial violence; access to citizenship; administration of justice; expulsion and deportation of non-citizens; economic, social and cultural rights. It recommends that States parties adopt a set of measures including that they "ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping."
Committee against Torture	
General Comment No. 1 on refoulement and communications (implementation of article 3 in the context of article 22) (1997)	Concerns the principle of "non-refoulement", where a State party must not extradite a person to another State where there are substantial grounds for believing that s/he would be in danger of being subjected to torture. While the text does not mention migrant workers, it has been argued that it applies to undocumented migrants that are to be deported.[26]
General Comment No. 2 on the implementation of article 2 by States parties (2007)	States that the term "any territory under its jurisdiction," applies to "any person, citizen or non-citizen without discrimination subject to the de jure or de facto control of a State party."

[26] Migrants‟ rights in UN human rights conventions"; Isabelle Slinckx; in *Migration and Human Rights: The United Nations Convention on Migrant Worker Rights;* Ryszard Cholewinski, Paul de Guchteneire and Antoine Pécoud (ed), United Nations Educational, Scientific and Cultural Organization / Cambridge University Press; 2009; p. 128.

4. Special procedures

Special procedures are mechanisms established by the Human Rights Council to address thematic issues or country specific situations worldwide.[27] Special procedures can either be individuals or working groups.

Individual special procedures can be called a “Special Rapporteur”, a “Special Representative of the Secretary-General” or an “Independent Expert”. Working groups are generally comprised of five members.

Special procedures are given mandates to examine, monitor, advise and publicly report on human rights situations in specific countries or territories (known as “country mandates”) or on major global human rights issues (known as “thematic mandates”). Currently, there are 35 thematic mandates and ten country mandates.

The mandates of the special procedures are established and defined by the resolution creating them.

Although their mandates vary, most special procedures:

- undertake studies, through which they contribute to the development of international human rights law
- investigate situations of human rights violation arising under the mandate
- undertake country visits
- receive and consider complaints from victims of human rights violations and intervene with States on their behalf
- issue urgent action requests
- promote the mandate
- report to the Human Rights Council and to other intergovernmental bodies on their findings, conclusions and recommendations.

The strength of the special procedures lies in their independence; mandate holders are human rights experts appointed in an individual capacity.

Information on the ways in which NHRIs can engage with the special procedures is provided in Chapter 11.

[27] Detailed information about the special procedures is available at: http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

4.1 The Special Rapporteur on the human rights of migrants

The mandate of the Special Rapporteur on the human rights of migrants was established in 1999 by the former United Nations Commission on Human Rights (resolution 1999/44) to "examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of [migrants], including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation".[28]

The OHCHR states that the main functions of the Special Rapporteur are to:

- examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation

- request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families

- formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur

- promote the effective application of relevant international norms and standards on the issue

- recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants

- take into account a gender perspective when requesting and analysing information, and to give special attention to the occurrence of multiple discrimination and violence against migrant women

- give particular emphasis to recommendations on practical solutions with regard to the implementation of the rights relevant to the mandate, including by identifying best practices and concrete areas and means for international cooperation

- report regularly to the Council, according to its annual programme of work, and to the General Assembly, at the request of the Council or the Assembly.[29]

The Special Rapporteur‟s mandate extends to all countries, irrespective of whether a State has ratified the Convention on Migrant Workers.

The mandate is implemented through a range of activities, including receiving and responding to communications, undertaking country visits, awareness raising activities and regular reporting to the Human Rights Council and the General Assembly.

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[28] United Nations Commission on Human Rights resolution 1999/44; para. 3.

[29] "Special Rapporteur on the human rights of migrants"; OHCHR; see: http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx.

4.1.1 Communications

The Special Rapporteur is able to "to request, receive and exchange information on violations of the human rights of migrants [wherever they may occur] from Governments, treaty bodies, specialized agencies, Special Rapporteurs for various human rights questions and from intergovernmental organizations, other competent organizations of the United Nations system and non-governmental organizations, including migrants' organizations, and to respond effectively to such information".[30]

The Special Rapporteur receives and responds to communications that fall into two main categories:

- information regarding individual cases of alleged violations of the human rights of migrants

- information regarding general situations concerning the human rights of migrants in a specific country.[31]

Based on these communications, the Special Rapporteur establishes a dialogue with the Government concerned, "with a view to clarifying the allegations raised and to preventing or, as necessary, investigating alleged violations of the human rights of migrants".[32]

This can involve "letters of allegation", which include requests for information and cooperation from the Government, and "urgent appeals", which raise serious and time-sensitive matters.

4.1.2 Reports

The Special Rapporteur reports annually to the Human Rights Council about the global state of protection of the human rights of migrants, as well as areas of concern and examples of good practice.

In this report, the Special Rapporteur informs the Council of all the communications sent and the replies received from States. The report may also examine key thematic issues and propose specific recommendations to better promote and protect the human rights of migrants.

Upon the request of the Human Rights Council, the Special Rapporteur may also present reports to the General Assembly.

Some of the important issues addressed through reports prepared by the Special Rapporteur include:

- irregular migration and criminalization of migrants (A/HRC/17/33 in 2011)

- the situation of women migrant workers and violence against them (E/CN.4/2002/94 in 2002 and E/CN.4/2005/85 in 2005)

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[30] United Nations Commission on Human Rights resolution 1999/44; para. 5.
[31] "Communications/Submitting information to the Special Rapporteur"; OHCHR; see: http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Communications.aspx.
[32] Ibid.

- protection of children in the migration process (A/HRC/17/33 in 2011 and A/HRC/11/7 in 2009)

- enjoyment of the right to health and adequate housing by migrants (A/HRC/17/33 and A/HRC/14/30 in 2011)

- racism and discrimination against migrants (E/CN.4/2005/85 in 2005)

- the human rights of migrant domestic workers (E/CN.4/2004/76 in 2004)

- the deprivation of liberty in the context of migration management (E/CN.4/2003/85 in 2003).[33]

4.1.3 Country visits

- One of the most important functions of the special procedures is to conduct country visits (also known as a fact-finding visit).
- A country visit cannot be carried out without the approval of the particular State. However, "the Special Rapporteur may solicit an invitation, based on factors such as the number, credibility and gravity of the allegations received, and the potential impact that the mission may have on the overall human rights situation".[34]
- During the fact-finding visit, the Special Rapporteur will have contact with a wide range of stakeholders, such as Government officials, NHRIs, NGOs and other civil society organizations. The report of the country visit includes conclusions on the country situation and makes recommendations to the Government.
- Between 2000 and the end of 2011, the Special Rapporteur on the human rights of migrants undertook 22 country visits, including visits to the Asia Pacific countries of the Philippines (2002), Indonesia (2006), South Korea (2006) and Japan (2010).

4.2 Other special procedures relevant to the rights of migrants

In addition to the Special Rapporteur on the human rights of migrants, there are a number of other special procedures with mandates particularly relevant to the protection of the rights of migrants and migrant workers.
They include, among others, the:

- Working Group on **Arbitrary Detention**

- Special Rapporteur on **trafficking in persons**, especially in women and children

- Special Rapporteur on **contemporary forms of racism**, racial discrimination, xenophobia and related intolerance

- Independent Expert on **minority issues**

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[33] "Annual Reports"; OHCHR; see: http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx.
[34] "Country Visits"; OHCHR; see: http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/CountryVisits.aspx.

- Special Rapporteur on **contemporary forms of slavery**, including its causes and consequences

- Special Rapporteur on **torture** and other cruel, inhuman or degrading treatment or punishment

- Special Rapporteur on the rights to **freedom of peaceful assembly and of association**

- Special Rapporteur on **freedom of religion or belief**

- Special Rapporteur on **adequate housing** as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

- Special Rapporteur on the **right to education**

- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of **physical and mental health**

- Independent Expert in the field of **cultural rights**

- Special Rapporteur on **violence against women**, its causes and consequences

- Working Group on the issue of **discrimination against women** in law and in practice

- Working Group on **transnational corporations and other business enterprises**.[35]

5. The Universal Periodic Review

The Universal Periodic Review (UPR) is a unique process which reviews the human rights records of all UN Member States.

When the General Assembly established the Human Rights Council, the newly-formed Council was mandated to "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States".[36]

The aim of the UPR is to improve the human rights situation in all countries and address human rights violations wherever they occur.

The UPR has six objectives:

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[35] Information about the mandates of these special procedures is available at: http://www2.ohchr.org/english/bodies/chr/special/index.htm.

[36] General Assembly Resolution 60/251; para. 5(e).

- the improvement of the human rights situation on the ground
- the fulfilment of the State‟s human rights obligations and commitments and assessment of positive developments and challenges faced by the State
- the enhancement of the State‟s capacity and of technical assistance, in consultation with, and with the consent of, the State concerned
- the sharing of best practice among States and other stakeholders
- support for cooperation in the promotion and protection of human rights
- the encouragement of full cooperation and engagement with the Council, other human rights bodies and OHCHR.[37]

The review provides an opportunity for all States to highlight the steps they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights.

Between late 2007 and 2011, the Human Rights Council reviewed the human rights performance of all the then 192 Member States. In 2010 and 2011, towards the end of the first cycle of State reviews, the Council reviewed the UPR process and, with minor amendments, decided to commence the second cycle in June 2012.[38]

All 193 Member States[39] will have their human rights compliance reviewed under the UPR between June 2012 and the end of 2016. The second and subsequent cycles will be four and a half years in length.[40]

Information about the contribution and participation opportunities for NHRIs at each stage of the UPR process is included in Chapter 11.

5.1 Basis of the review

The UPR is to review the "fulfilment by each State of its human rights obligations and commitments based on human rights treaties and other instruments that they have ratified".[41]

It is based on obligations arising from:

- the United Nations Charter
- the Universal Declaration of Human Rights

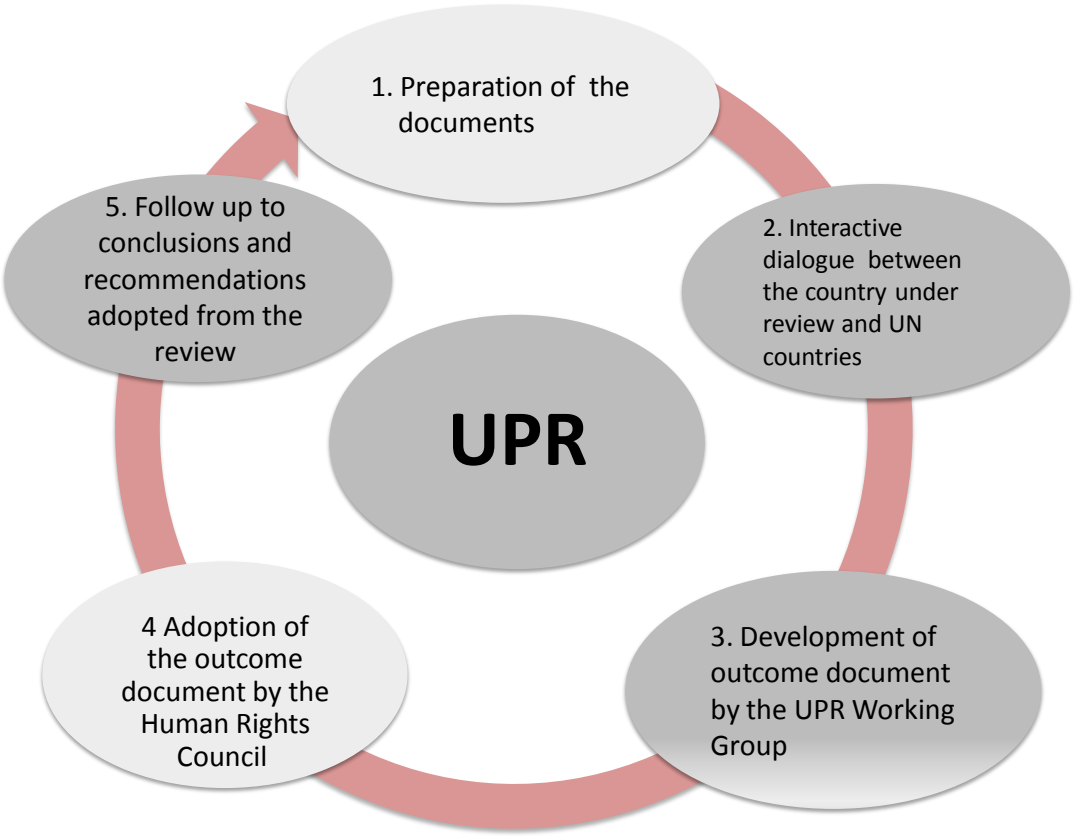
[37] Human Rights Council (HRC) resolution 5/1; part I.B.2; para. 4.
[38] HRC resolution 16/21, as supplemented by HRC resolution 17/119.
[39] On 14 July 2011, the General Assembly admitted the Republic of South Sudan as the 193rd Member State of the UN.
[40] The calendar for the 2012-2016 UPR cycle can be found at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx.
[41] General Assembly Resolution 60/251; para. 5(e).

- the human rights treaties to which the State is a party

- voluntary pledges and commitments made by the State, including those undertaken when presenting its candidatures for election to the Human Rights Council[42]

- applicable international humanitarian law.[43]

The second and subsequent cycles of the UPR will also examine the implementation of recommendations accepted by the State under previous reviews, as well as developments in the human rights situation in the State.[44]



5.3 Documentation for the review process

The review of a State is based upon three documents:

- information prepared by the State concerned, not exceeding 20 pages

- a compilation prepared by OHCHR of the information contained in the reports and official documents of relevant UN bodies and agencies, including treaty bodies and special rapporteurs, not exceeding ten pages

[42] HRC resolution 5/1; Part I.A; para. 1.
[43] HRC resolution 5/1; Part I.A; para. 2.
[44] HRC resolution 16/21; para. 6.

- a summary prepared by OHCHR of "[a]dditional, credible and reliable information provided by other relevant stakeholders", including NHRIs and NGOs, not exceeding ten pages.[45]

5.4 Review of the State

Based on the documentation provided, the human rights situation of the State is reviewed during a three-hour session of a UPR Working Group of the Human Rights Council, consisting of all 47 member States.

Each State review is facilitated by three rapporteurs, known as the „troika", chosen by lot, from the member States and representing different regional groups. A different troika is chosen for each State under review. The troika prepares the review, including oversight of the documentation, gathering questions from States in advance of the interactive dialogue and preparing the report.

The review takes the form of an "interactive dialogue" with the State delegation and participation is only open to member and observer States of the Human Rights Council. The State can seek to pre-empt criticism and anticipate recommendations by offering voluntary commitments in its opening statement. These are promises of actions it will take to increase its compliance with international human rights law.

Following the interactive dialogue, a report is prepared by the troika and discussed in a half-hour session of the UPR Working Group. The Working Group report on each State under review includes a summary of the proceedings; conclusions; recommendations made by individual States in the dialogue; and voluntary commitments made by the State under review.[46]

5.5 Adoption of the report and implementation

The UPR Working Group report on each State under review is considered and adopted at a regular session of the Human Rights Council soon after the completion of the UPR Working Group session.

The State under review speaks first during the one-hour plenary meeting. It is expected to respond to the recommendations in the Working Group report either before or during the plenary debate. It can also reply to questions and issues that were not sufficiently addressed during the Working Group session.

The "A status" NHRI of the State under review has special status. It is "entitled to intervene immediately after the State under review during the adoption of the outcome of the review by the Council plenary".[47]

5.6 Implementation of recommendations

Implementation of recommendations is the principal objective of the UPR process. States are expected to act on the recommendations they accept and to consider further those that they have not accepted.

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[45] HRC resolution 5/1; Part I.D; para. 15.
[46] HRC resolution 5/1; Part I.E; para. 26.
[47] HRC resolution 16/21; para. 13.

In the second cycle of the UPR, States are required to report on their follow-up and implementation of recommendations accepted from the first cycle.[48] In subsequent cycles, they will be required to report on follow-up and implementation of recommendations in all past review reports. In addition, they are encouraged to provide the Human Rights Council with a mid-cycle report on implementation.[49]

The Voluntary Fund for Financial and Technical Assistance[50] has been set up to assist countries implement UPR recommendations and support follow-up activities at the country level.

Information about the role that NHRIs can play in following up on recommendations made to the State is available in Chapter 11.

5.7 Migrant workers and the UPR

The rights of migrants generally, and the rights of migrant workers specifically, were the subject of regular discussion during the first UPR cycle. These issues were also addressed in recommendations made to States by the UPR Working Group.

In many instances, States undertook to take positive action to improve the living and working conditions of migrant workers through, for example, the ratification of human rights treaties and ILO conventions, making amendments to domestic laws and policies, issuing standing invitations to the special procedures and undertaking measures to combat human trafficking.

A compiled list of recommendations that each State has accepted or rejected is available at http://www.upr-info.org.

Key points: Chapter 3

- Even if a State has not ratified the Convention on Migrant Workers, it will be bound by one or more of the other core international human rights treaties it has ratified, which include obligations relevant to the rights of migrant workers.
- The general comments developed by the UN treaty bodies provide States with guidance to interpret and apply particular provisions of the human rights treaties, many of which are relevant to the rights of migrant workers.
- The activities of the UN special procedures – which include receiving and responding to communications, issuing urgent appeals, undertaking country visits and preparing regular reports – can provide practical assistance to promote and protect the rights of migrant workers.
- The mandate of the Special Rapporteur on the human rights of migrants extends to all countries, irrespective of whether a State has ratified the Convention on Migrant Workers.

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[48] HRC resolution 16/21; para. 6.
[49] HRC resolution 16/21; para. 18.
[50] For more information about the Voluntary Fund, see: http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRVoluntaryFundFinancialAndTechnicalAssistance.aspx

- Through their participation in the UPR process, States can agree to implement recommendations that improve the living and working conditions of migrant workers and members of their families.

Further reading

Migration and Human Rights: The United Nations Convention on Migrant Worker Rights; Ryszard Cholewinski, Paul de Guchteneire and Antoine Pecoud, United Nations Educational, Scientific and Cultural Organization / Cambridge University Press; 2009
Strengthening Protection of Migrant Workers and their Families with International Human Rights Treaties: A Do-it-yourself Kit; Mariette Grange, International Catholic Migration Commission; 2006
The UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat (updated); December 18; 2007
Working with the United Nations Human Rights Programme: A Handbook for Civil Society; OHCHR; 2008