

2.2 KEY SOURCES

This section provides an overview of relevant legal instruments, including UN treaties and mechanisms available for monitoring state compliance with each. It also provides examples of non-legally binding instruments issued by the UN and other bodies. It is worth noting that, in this section, the Universal Declaration of Human Rights¹ is treated separately from other instruments due to its unique and ambiguous—yet important—legal nature.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

While not a treaty, the Universal Declaration of Human Rights (UDHR)² has been highly influential. It was adopted by the UN General Assembly in 1948 and has served as the foundation for modern human rights law. Many of its provisions have been effectively reproduced in human rights treaties and domestic law, and some argue³ that it has achieved the status of customary international law—meaning that its provisions are established state practice and accepted by states as obligations, making them universal standards and legally binding on states.⁴

Unlike the UN treaties discussed below, the UDHR itself is not enforceable through any specific body that monitors state compliance.

UNTREATIES AND TREATY-MONITORING BODIES

There are currently eight core international human rights treaties that contain guarantees related to the protection of human rights in patient care. Many of these treaties have additional optional protocols that are referenced in this guide but are not explored in detail. While these treaties are only binding on those states that have ratified them, their standards have strong moral and political force even for non-ratifying countries. Each of these treaties has a committee in charge of monitoring state compliance with the treaty. These are referred to as “treaty-monitoring bodies” or “treaty bodies.”

UN treaty-monitoring bodies monitor state compliance with their respective treaties using a combination of three types of mechanisms. First, they issue documents that interpret the content of the treaties. While not legally binding, these interpretative documents guide states on how to interpret and implement the content of the rights contained in the relevant treaty. These interpretative documents are known as “General Comments,” with the exception of those issued by the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination, which are referred to as “General Recommendations.” Second, treaty-monitoring bodies evaluate state compliance with the relevant treaty based on reports that member states are required to submit on a regular basis. As part of this process, they issue what are known as “Concluding Observations.” Finally, eight⁵ of the ten core treaty-monitoring bodies currently receive and

¹ United Nations General Assembly. United Nations General Assembly Resolution 217A (III): Universal Declaration of Human Rights (UDHR). UN Doc. A/810 at 71. December 12, 1948.

² United Nations General Assembly. United Nations General Assembly Resolution 217A (III): Universal Declaration of Human Rights (UDHR). UN Doc. A/810 at 71. December 12, 1948.

³ See Louis Henkin, *The Age of Rights*. New York: Columbia Press, 1990. p. 19; Christina M. Cerna. *Universality of human rights and cultural diversity: implementation of human rights in different socio-cultural contexts.* 16 *Hum.Rts. Q.* 740. 1994. p. 745.

⁴ Hurst Hannum. “The Status of the Universal Declaration of Human Rights in National and International Law.” 25 *Ga. J. Int'l & Comp. L.* 287.1995-1996. p. 319.

⁵ Human Rights Committee [CCPR], Committee on the Elimination of Racial Discrimination [CERD], Committee Against Torture [CAT Committee], Committee on Elimination of Discrimination against Women [CEDAW Committee], Committee on the Rights

consider individual communications. Through these communications, individuals and groups of individuals can bring allegations of human rights violations by states that have ratified the instrument (e.g., optional protocols to treaties) creating the individual complaint mechanism. Following the examination of the communication, treaty-monitoring bodies issue recommendations to the state being challenged. These recommendations are non-legally binding, but may be influential.

Treaty-monitoring bodies also offer different avenues for civil society participation. Each of the bodies' specific functions, contact information, and ways through which civil society can participate are discussed in Chapter 4.

For the user's quick reference, below are the abbreviations for treaties and UN treaty-monitoring bodies that will be used throughout this chapter:

Treaties

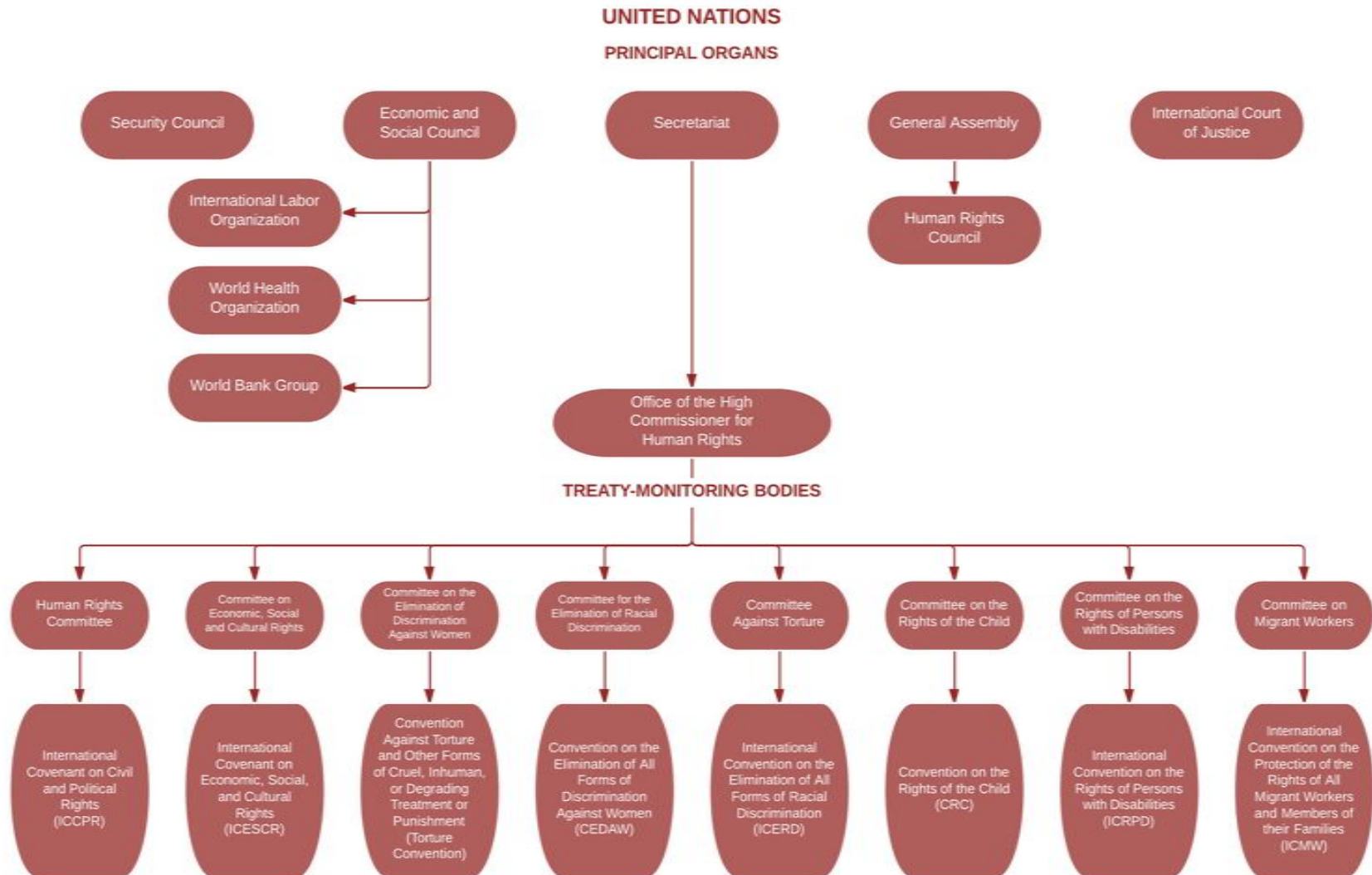
- ▶ ICCPR - International Covenant on Civil and Political Rights
- ▶ ICESCR - International Covenant on Economic, Social, and Cultural Rights
- ▶ CAT/Torture Convention - Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment
- ▶ CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women
- ▶ ICERD –International Convention on the Elimination of All Forms of Racial Discrimination
- ▶ CRC - Convention on the Rights of the Child
- ▶ ICRPD –International Convention on the Rights of Persons with Disabilities
- ▶ ICMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

Treaty-Monitoring Bodies

- ▶ CCPR - Human Rights Committee
- ▶ CESCR - Committee on Economic, Social and Cultural Rights
- ▶ CAT Committee - Committee Against Torture
- ▶ CEDAW Committee- Committee on Elimination of Discrimination against Women
- ▶ CERD - Committee on the Elimination of Racial Discrimination
- ▶ CRC Committee - Committee on the Rights of the Child
- ▶ CRPD- Committee on the Rights of Persons with Disabilities
- ▶ CMW - Committee on Migrant Workers

of the Child [CRC Committee], Committee on the Rights of Persons with Disabilities [CRPD], Committee on Enforced Disappearances [CED], and Committee on Economic, Social and Cultural Rights [CESCR].

UNITED NATIONS SYSTEM AND PATIENT CARE: RELEVANT CORE TREATIES AND TREATY-MONITORING BODIES



RELEVANT UN CORE TREATIES AND TREATY-MONITORING BODIES AND THEIR STATE REPORTING AND INDIVIDUAL COMMUNICATIONS SYSTEMS

TREATY	MONITORING BODY	STATE REPORTING	INDIVIDUAL COMMUNICATIONS
International Covenant on Civil and Political Rights (ICCPR)⁶	Human Rights Committee (CCPR)	Every 4 years	For states having ratified the First Optional Protocol under the ICCPR
International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁷	Committee on Economic, Social, and Cultural Rights (CESCR)	Every 5 years	For states having ratified the Optional Protocol
Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (CAT/Torture Convention)⁸	Committee Against Torture (CAT Committee)	Every 4 years	For states declaring recognition of the competence of the CAT Committee under Article 21 of the CAT
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁹	Committee on the Elimination of Discrimination Against Women (CEDAW Committee)	As needed, but at least every 4 years	For states having ratified the Optional Protocol
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹⁰	Committee on the Elimination of Racial Discrimination (CERD)	Every 2 years	For states declaring recognition of the competence of the CERD Committee under Article 14 of the CERD
Convention on the Rights of the Child (CRC)¹¹	Committee on the Rights of the Child (CRC Committee)	Every 5 years	For states having ratified the Optional Protocol

⁶ United Nations General Assembly. United Nations General Assembly Resolution 2200A [XXI]: International Covenant on Civil and Political Rights (ICCPR). UN Doc. A/6316. December 16, 1966.

⁷ United Nations General Assembly. United Nations General Assembly Resolution 2200A [XXI]: International Covenant on Economic, Social and Cultural Rights (ICESCR). UN Doc. A/6316. December 16, 1966.

⁸ United Nations General Assembly. United Nations General Assembly Resolution 39/46: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). UN Doc. A/39/51. December 10, 1984.

⁹ United Nations General Assembly. United Nations General Assembly Resolution 34/180: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). UN Doc. A/34/46. December 18, 1979.

¹⁰ United Nations General Assembly. United Nations General Assembly Resolution 2106 [XX]: International Convention for the Elimination of all Forms of Racial Discrimination (ICERD). UN Doc. A/6014. December 21, 1965.

¹¹ United Nations General Assembly. United Nations General Assembly Resolution 44/25: Convention on the Rights of the Child (CRC). UN Doc. A/44/49. November 20, 1989.

TREATY	MONITORING BODY	STATE REPORTING	INDIVIDUAL COMMUNICATIONS
International Convention on the Rights of Persons with Disabilities (ICRPD)¹²	Committee on the Rights of Persons with Disabilities (CRPD)	Every 4 years	For states having ratified the Optional Protocol
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)¹³	Committee on Migrant Workers (CMW)	Every 5 years	Article 77 of the CMW will create this mechanism once 10 states have made the necessary declarations.

In addition to state reporting and individual communications, other monitoring mechanisms have been established:

- ▶ **Inter-State Complaints Procedures.** This allows the treaty body to examine complaints brought by a state alleging human rights violations in another state. To date, this procedure has never been used.
 - Treaty-monitoring bodies with this competence: CCPR, CESCR, CERD, CAT Committee, CRC Committee, CMW, CRPD
- ▶ **Inquiries.** This allows the treaty body to initiate inquiries into systemic or grave human rights violations in a country.
 - Treaty-monitoring bodies with this competence: CESCR, CEDAW Committee, CAT Committee, CRC Committee, CRPD
- ▶ **Early Warning Procedure.** This allows the treaty body to adopt measures to prevent certain situations from escalating into conflicts or matters requiring urgent attention.
 - Treaty-monitoring body with this competence: CERD

These procedures may require additional declarations and ratifications by countries before entering into force and will not be discussed in detail here. For more information on these procedures, see Chapter 4 (International and Regional Procedures).

NON-LEGALLY

BINDING INSTRUMENTS

There are a number of other instruments that, even though do not have the legally binding force of treaties, have received international consensus and assist in interpreting the content of patients' rights. In fact, some of these have been adopted by civil society groups, such as professional associations and non-governmental organizations. Below are a few examples.

UNITED NATIONS

¹² United Nations General Assembly. United Nations General Assembly Resolution 61/106: International Convention on the Rights of Persons with Disabilities (ICRPD). UN Doc. A/61/49. December 13, 2006.

¹³ United Nations General Assembly. United Nations General Assembly Resolution 45/158: International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families. UN Doc. A/45/49. December 18, 1990.

- ▶ **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment¹⁴**
These principles provide guidance on the treatment and rights of all persons who are under any form of detention or imprisonment, including the right to not be subjected to medical or scientific experimentation that is detrimental to his/her the individual's health, even with her/his consent.
- ▶ **Declaration of Alma-Ata¹⁵**
This declaration "reaffirms that health is a state of complete physical, mental, and social well-being, not merely the absence of disease or infirmity, and is a fundamental human right" (Article 1). It focuses on the importance of primary health care.
- ▶ **Declaration on the Elimination of Violence against Women¹⁶**
This declaration affirms states' commitment to preventing violence against women and protecting their rights, including their rights to life, to liberty and security of person, to be free from all forms of discrimination, to the highest standard attainable of physical and mental health and freedom from torture, or other cruel, inhuman or degrading treatment or punishment.
- ▶ **Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights¹⁷**
Developed by a group of international law experts, these principles delineate the scope and nature of obligations of states that have ratified the ICESCR. They have been issued as an official UN document and recognized in the work of the CESCR in interpreting state obligations under the Covenant.
- ▶ **Maastricht Guidelines on Violations of Economic, Social and Cultural Rights¹⁸**
Developed by international law experts, these guidelines seek to outline the meaning and scope of economic, social and cultural rights violations. They consider that a state's failure to provide primary care may constitute a violation, and they call on international bodies to adopt new standards on a number of rights, including the right to health. They have been issued as an official UN document.
- ▶ **Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁹**
These principles outline the duties of health care providers to prisoners and detainees, including protecting their mental and physical health in the same way that they would protect the health of a person who is not a prisoner or detained. They must also refrain from inciting or attempting to commit torture or other cruel, inhuman or degrading treatment or punishment.
- ▶ **Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care²⁰**
These principles define the rights of persons with mental disabilities within the context of health care. They address issues of informed consent, confidentiality, standard of care, and treatment. They also address the rights of those in mental disability institutions.
- ▶ **Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights²¹**

¹⁴ United Nations General Assembly. United Nations General Assembly Resolution 43/173: Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. UN Doc. A/RES/43/173. December 9, 1998.

¹⁵ International Conference on Primary Health Care. Declaration of Alma-Ata. September 6, 1978.

¹⁶ United Nations General Assembly. United Nations General Assembly Resolution 48/104: Declaration on the Elimination of Violence against Women. UN Doc. A/48/49. December 20, 1993.

¹⁷ United Nations Commission on Human Rights. The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights. UN Doc. E/CN.4/1987/17. January 8, 1987.

¹⁸ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. January 22-26, 1997.

¹⁹ United Nations General Assembly. UN General Assembly Resolution 37/194: Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UN Doc. A/37/51. December 18, 1982.

²⁰ United Nations General Assembly. UN General Assembly Resolution 46/119: Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care. December 17, 1991.

These principles have played an important role in evaluating measures that restrict human rights guaranteed under the ICCPR. They require that any measure that the government takes that would restrict the human rights under the ICCPR is: 1) provided by and in accordance with the law, (2) in the interest of a legitimate objective, (3) strictly necessary in a democratic society to achieve the objective, (4) the least restrictive and intrusive means available, and (5) not arbitrary, unreasonable, or discriminatory.

▶ **Standard Minimum Rules for the Treatment of Prisoners²²**

This instrument outlines a model system of penal institutions in terms of what is generally accepted as good principle and practice in the treatment of prisoners and the management of institutions.

▶ **(UN General Assembly's) Social, Humanitarian Cultural Committee (Third Committee) Draft Resolutions**

The Third Committee is tasked with advancing the General Assembly's social, humanitarian, and human rights agenda through a variety of ways, including the discussion and drafting of resolutions to be considered during the General Assembly's plenary meeting.

▶ **UN Human Rights Council Resolutions**

As the General Assembly's subsidiary organ responsible for the protection and promotion of all human rights, the Human Rights Council issues recommendations to UN member states in the form of resolutions.

CIVIL SOCIETY

▶ **Declaration of Lisbon on the Rights of the Patients (WMA)²³**

This declaration outlines patients' rights that physicians should recognize and uphold, addressing issues such as the rights to confidentiality, information, and informed consent.

▶ **Declaration on Patient-Centred Healthcare (International Alliance of Patients' Organizations (IAPO))²⁴**

This declaration promotes the involvement of patients in their care through self-management, adherence to treatment, and behavioral changes to make the system more cost-effective and improve health outcomes for patients.

▶ **Jakarta Declaration on Leading Health Promotion into the 21st Century²⁵**

This declaration is the final outcome document of the Fourth International Conference on Health Promotion. It lays down a series of priorities for health promotion in the twenty-first century, including social responsibility, increased investment and secured infrastructure, and empowerment of the individual.

▶ **Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights²⁶**

These principles focus on states' extraterritorial obligations to ensure the enjoyment of economic, social and cultural rights, including the right to health.

▶ **Position Statement: Nurses and Human Rights 1998, International Council of Nurses (ICN)²⁷**

The ICN adopted this document recognizing health care as the right of all individuals—including the right to choose or decline care, which encompasses the rights to acceptance or refusal of treatment or nourishment; informed consent; confidentiality; and dignity, including the right to die with dignity. The

²¹United Nations Commission on Human Rights. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. UN Doc. E/CN.4/1985/4. September 28, 1984.

²²United Nations. Economic and Social Council Resolution 663 C (XXIV): Standard Minimum Rules for the Treatment of Prisoners. August 30, 1955.

²³WMA. Declaration on the Rights of the Patient. September/October 1981.

²⁴International Alliance of Patients' Organizations [IAPO]. Declaration on Patient-Centred Healthcare. February 2006.

²⁵WHO. Jakarta Declaration on Leading Health Promotion into the 21st Century. July 21–25, 1997.

²⁶Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights. September 28, 2011.

²⁷International Council of Nurses. Position Statement: Nurses and Human Rights. 1998.

ICN addresses both patients' and providers' rights and outlines nurses' obligations to protect the patients' rights.