

TASMANIA
LAW REFORM
INSTITUTE

A Charter of Rights for Tasmania?

ISSUES PAPER NO 11

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Should Tasmania have a Charter of Rights? The Tasmanian Government has asked the Tasmanian Law Reform Institute to investigate whether human rights can be enhanced and better protected in Tasmania and, if so, how this could be done. The Institute has been asked to explore these issues with the Tasmanian community over the next three months. This paper aims to stimulate thinking and discussion about these matters and to encourage as many Tasmanians as possible to participate in the consultation. Those who make a contribution to the consultation will help determine what the law relating to human rights in Tasmania will be.

This project is the Colin Brown Human Rights Project. It has been partly funded by a special grant from the Tasmanian Government to the Tasmanian Law Reform Institute to commemorate the work of Colin Brown, former Legal Aid Commissioner for Tasmania, a long time supporter of and campaigner for human rights and good governance in Tasmania.

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Part 1

Introduction

1.1 Background to the Enquiry

1.1.1 The Tasmanian Government has asked the Tasmanian Law Reform Institute to investigate how human rights are currently protected in Tasmania and whether the protection of human rights can be enhanced or extended. In particular the Government has asked the Institute to determine whether Tasmania should have a Bill or Charter of Rights and if so, what model would best suit the needs of Tasmanians and what rights it should include. This project is part of the Government's commitment to progressing Tasmania Together Goal 2: "To have a community where people feel safe and are safe in all aspects of their lives." The Government's terms of reference for this investigation are set out at 1.3.

1.1.2 Bills and Charters of Rights set out the human rights that a community considers to be most important or essential to enabling people to live with dignity¹ and security. The terms, 'Bill of Rights' and 'Charter of Rights' do not have any set meaning in law and either or some other term, (for example, the terms used in International Law are 'Convention' and 'Declaration'), may be used to describe human rights instruments. In this Paper the terms are used interchangeably. The Tasmanian Law Reform Institute has no fixed views on which term should be preferred for any human rights instrument that might be enacted in Tasmania and welcomes submissions on this matter.

1.1.3 In determining how human rights can best be protected in Tasmania, the Tasmanian Government is committed to a process of discussion and consultation with the community. The Government recognises that community consultation is a cornerstone for developing workable human rights protections. Therefore, the aim of this paper is to encourage people to contribute to that consultation, to think about human rights, whether there are deficiencies in current human rights protections and what can be done to advance human rights protection in Tasmania and to advise the Institute of their views on these issues.

1.1.4 A number of key questions are asked throughout this paper. They are set out at 1.4. These questions focus on the main issues that the Government has asked the Institute to explore with the community. However, they do not confine the contributions that may be made to the consultation. The Institute wishes to learn the community's views not only on these questions but also on any other issues relating to human rights that people feel may have been omitted. Those who make a contribution to the consultation will help determine how the law relating to human rights in Tasmania develops. The Institute will advise the Government of the community's views and those views will influence the recommendations made to the Government by the Institute. It is therefore important that people let us know what they think and have their say about human rights in Tasmania.

¹ Johan Galtung (1994) Human Rights in Another Key.

1.2 How to Contribute to the Consultation

Contributions to the consultation may be made by writing to the Institute by mail or fax:

address: Tasmania Law Reform Institute
Private Bag 89,
Hobart, TAS 7001

fax: (03) 62267623

Alternatively responses can be sent by email to: law.reform@utas.edu.au.

This issues paper is also available on the Institute's web page at: www.law.utas.edu.au/reform or can be sent to you by mail or email. If you would like more copies of this paper please contact the Tasmanian Law Reform Institute on 6226 2069.

The submissions received will be notified on the Tasmanian Law Reform Institute website and included in the final report. Please advise us if you would like your submission to remain confidential.

Submissions should be provided to the Institute by the 30th November 2006.

A Human Rights Community Consultation Committee has been established to assist in the consultation process. It consists of Terese Henning, Senior Lecturer in Law, (Chair), Mat Rowell, Chief Executive Officer, Tasmanian Council of Social Services, Jamie Cox, former Captain of Tasmanian Tigers, Career Development Co-ordinator, Tasmanian Cricket Association and Tasmanian Institute of Sport, Lisa Hutton, Deputy Secretary, Department of Justice, Julian Eades, Advocate, Advocacy Tasmania and Alan Stevenson, former Managing Director, C6 quadriplegic and disability advisor to the project. The role of the Consultation Committee is to provide advice on the project to the Tasmanian Law Reform Institute and to assist with the community consultation. The Committee members also provide points of contact with the community. If you would like to speak to someone about the project or invite someone to speak to a group with which you are involved you can either contact the Tasmanian Law Reform Institute or a member of the Consultative Committee at:

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This issues paper was prepared by Terese Henning.

1.3 Terms of Reference

1. Identify current protections for human rights in Tasmania and any need to enhance or extend human rights protections in Tasmania.
2. Research models that protect and enhance human rights in other jurisdictions (in Australia and overseas).
3. In consultation with key stakeholders identify appropriate models for Tasmania and develop a discussion paper setting out options and their advantages and disadvantages.
4. Conduct community consultation on how human rights and obligations can best be promoted and protected in Tasmania.
5. Provide a recommendation as to an appropriate model for Tasmania to protect and enhance human rights.

There is one limitation on the scope of the terms of reference. The Law Reform Institute has been asked to identify how human right obligations can best be promoted and protected in Tasmania while still preserving the sovereignty of Parliament and the Tasmanian constitutional framework.

1.4 Key Questions

1. Are human rights adequately protected in Tasmania?
2. Is change needed to better protect human rights?
3. If change is needed to better protect human rights in Tasmania, how should the law be changed to achieve this?
4. Would a Charter of Human Rights enhance human rights protection in Tasmania?

A Charter of Rights for Tasmania?

5. If a Charter of Human Rights were to be enacted in Tasmania, what rights should it include?
6. Which of the rights in the International Covenants annexed to this issues paper are most relevant to Tasmania? Do they need to be adapted to the Tasmanian situation? Should any be excluded? Are there any other rights that should be included?
7. Should some rights be included at first with other rights being considered for inclusion subsequently after review of the Charter?
8. Should explicit provision be made for the protection of the rights of particular vulnerable groups?
9. What role is there for responsibilities in the Charter?
10. If Tasmania were to enact a Charter of Human Rights, whose rights should it protect?
11. If Tasmania were to enact a Charter of Human Rights, should the rights it contains be limited in some way?
12. How should any limitation be provided?
13. What should be the role of Parliament in relation to human rights? Should there be a Parliamentary Committee with responsibility for scrutinising draft legislation for compliance with human rights standards?
14. Where Parliament proposes to enact legislation that explicitly overrides human rights, should the Member of Parliament proposing the legislation be required to explain the necessity for its non-compliance with human rights standards?
15. Should Members of Parliament who propose new legislation be required to provide a compatibility statement to Parliament concerning its compliance with human rights standards?
16. What should be the role of the courts in protecting human rights? Should courts be able to declare legislation to be inconsistent with a Charter of Human Rights? Should courts, as far as possible, interpret laws to be consistent with the rights contained in any Charter of Human Rights?
17. If the courts have power to make declarations of inconsistency, should the Government be required to respond to such declarations?
18. What should be the role of the Executive in protecting human rights? Should government departments be required to report their compliance with and implementation of human rights in their Annual Reports?
19. Should a special body be created with responsibility for reviewing legislation, advising the Government on human rights policy and conducting education programs on human rights? Should such a body have any other functions?
20. If there were to be a Charter of Human Rights in Tasmania, should individual citizens be able to enforce their rights under the Charter directly in the courts?
21. Should the Charter contain an express remedies clause? Should it confine the availability of compensation in any way?
22. What other steps should be taken to enhance the protection of human rights in Tasmania?
23. If a Tasmanian Charter of Human Rights is enacted should it be reviewed at fixed intervals to see if any amendment is necessary?
24. Are there any other matters relating to the protection of human rights in Tasmania that you would like to draw to the attention of the Tasmanian Law Reform Institute?

Part 2

What are Human Rights?

2.1.1 The notion of human rights is not new. The idea that human beings have inalienable rights that set limits on the powers of Governments and that prescribe standards of behaviour between individuals and groups has deep historical roots.² Human rights are generally recognised as being ‘the conditions necessary for people to live lives of dignity and value.’³ Human rights attach to all human beings. Some of the best known examples of human rights are the right to life, the right to vote, freedom from arbitrary arrest and detention, freedom from being held in slavery, the right to liberty and security of the person, freedom from torture, the right to a fair trial, equal treatment before the law, freedom from discrimination, freedom of conscience and belief, freedom of association, the right to education and to the promotion of health and the right to privacy and to family life. Human rights embody elements of the rule of law and restrain governments in their exercise of power. They have significance in protecting the interests of individuals and groups that might otherwise be sacrificed to short-term political expediency or populism. They provide recognised standards for government conduct in relation to the community. Respect for human rights provides the foundation for peace, harmony, security and liberty in communities.

2.1.2 Internationally, recognised human rights are now well established. They are set down in the ‘International Bill of Rights’ which consists of the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. The *Universal Declaration of Human Rights* was adopted by the General Assembly of the United Nations in 1948. It contains general, basic rights such as the right to life, liberty, freedom from torture and slavery, the right to own property and to enjoy equality before the law, the right to a fair trial and to be presumed innocent until proven guilty and the right to freedom of thought, opinion, conscience and religion (see Appendix A and view on the Internet at <http://www.unhchr.ch/udhr/lang/eng.htm>).

2.1.3 The rights in the *Universal Declaration of Human Rights* were expanded and given greater specificity in the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic Social and Cultural Rights*. The rights in the *International Covenant on Civil and Political Rights* include the right to vote, to freedom from arbitrary arrest, to liberty of movement, to privacy, to freedom of association and lawful assembly and the right to hold opinions without interference and to freedom of expression (see Appendix B and view on the Internet at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm). This covenant was adopted by the United Nations in 1966 and ratified by Australia in 1980.

² For an overview of the history of human rights see N O’Neill, S Rice and R Douglas (2004) *Retreat from Injustice: Human Rights Law in Australia*, The Federation Press and Rhona KM Smith (2005) *Textbook on International Human Rights*, 2d ed Oxford University Press.

³ Johan Galtung (1994) *Human Rights in Another Key*. This definition was adopted by the ACT Consultative Committee in its inquiry into the desirability of a Bill of Rights for the ACT: *Towards an ACT Human Rights ACT* (2003), 17 and is also part of the description of human rights given in the Report of the Victorian Human Rights Consultative Committee (2005) *Rights, Responsibilities and Respect*, 3.

2.1.4 The *International Covenant on Economic Social and Cultural Rights* recognises the right to work and to just, favourable, safe and healthy working conditions, the right to form and join trade unions, the right to adequate food, clothing and housing, the right to the highest attainable standard of physical and mental health, the right to education, the right to social security and that the widest possible protection and assistance should be accorded to the family (see Appendix C or view on the Internet at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm). This Covenant was adopted by the United Nations in 1966 and ratified by Australia in 1976.

2.1.5 Other international instruments that deal with particular areas of human rights are the *Genocide Convention*, the *Convention on the Elimination of all Forms of Racial Discrimination*, the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, the *Standard of Minimum Treatment of Prisoners*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Rights of the Child*, the *Convention Relating to the Status of Refugees* and the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

Part 3

How are Human Rights Protected in Tasmania?

3.1.1 Tasmanians are not protected by any State or Federal Charter or Bill of Rights. Australia is now the only common law country that does not have a national Bill of Rights. The United Kingdom, New Zealand, Canada, Ireland, the United States and South Africa all have Charters or Bills of Rights. Two jurisdictions in Australia, Victoria and the Australian Capital Territory, have enacted human rights instruments, but these do not form part of Tasmanian law. A patchwork of sources provides protection for human rights in Tasmania: the Tasmanian and Australian Constitutions, State and Federal legislation, the common law and international law. However, the protections offered by these sources are fragmented and incomplete. Even for those with legal expertise, working out what rights are protected in Tasmania, when and how, is a complex task.

3.2 International law

3.2.1 While Australia has ratified the major international human rights treaties they do not form part of Australian law. The High Court has held that unless an international instrument is incorporated by Parliament into Australian law it does not affect Australian law.⁴ The Commonwealth Government has enacted legislation to give effect only to some of the international treaties to which it is a party – the *Racial Discrimination Act 1975* (Cth), which implements many of the provisions in the *Convention on the Elimination of All Forms of Racial Discrimination*, the *Sex Discrimination Act 1984* (Cth), which implements some of the provisions in the *Convention on the Elimination of All Forms of Discrimination Against Women*, though it contains a number of significant exemptions, and the *Crimes (Torture) Act 1988* (Cth), which implements, though only in a very limited way, the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Other federal and State laws enact some aspects of other international treaties.⁵ However, in reality, legislative implementation of international treaties in Australia has been scant and many international treaty obligations remain unincorporated into Australian law, including, the rights set out in the *International Convention on Economic, Social and Cultural Rights* and a number of the rights in the *International Convention on Civil and Political Rights*.

3.2.2 Four international instruments contain mechanisms to allow individuals to take a complaint concerning a human rights breach to the relevant United Nations treaty committee: the *International Convention on Civil and Political Rights*, the *Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *Convention on the Elimination of All Forms of Discrimination Against Women*. Australia has adopted the individual communications procedure in relation only to the first three of these conventions. This means that Australians cannot make a complaint to an international committee in relation to breaches of rights contained in the *Convention on the Elimination of All Forms of Discrimination Against Women*. Similarly Australians cannot make a complaint to an international

⁴ *Kioa v West* (1985) 159 CLR 550 at 570

⁵ For a comprehensive consideration of these laws see N O'Neill, S Rice and R Douglas above n 3, ch 7.

committee for breaches of other conventions such as *the International Convention on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child*. In any event, even where the complaints procedure is available it only applies after all domestic remedies have been exhausted and any findings and recommendations by an international committee in relation to a complaint are not binding on federal or State governments. The reality is that his process can take years and in the end achieve no practical benefit for complainants.

3.2.3 Australian judges have sometimes referred to international human rights instruments in interpreting Australian law. However, to date this has occurred on a largely piecemeal and ad hoc basis. There is as yet no developed body of jurisprudence in this regard that can be reliably resorted to in order to achieve protection of human rights.⁶

3.2.4 Clearly international law offers minimal and inadequate protection for human rights in Australia.

3.3 Constitutional Protection of Human Rights

3.3.1 The Australian Constitution is not and was not intended by its authors to be a document that broadly embodies or guarantees human rights. Nevertheless, it does contain a number of express although limited rights:

3.3.2 *The right to vote* – ss 24 and 41. Both these provisions have been interpreted narrowly by the High Court. For example, they provide neither for ‘one vote one value’ nor for the equality of electorates throughout Australia.⁷ Further, the right to vote in s 41 has been interpreted to guarantee the right to vote only of those who could already vote in State elections in 1902.⁸ This section is thus redundant today. It has also been held that the Commonwealth Constitution does not provide a guarantee of universal adult suffrage.⁹

3.3.3 *The acquisition of property on just terms* – s 51(xxxi). Section 51(xxxi) requires that laws of the Commonwealth Government providing for the acquisition of property must also provide for payment on just terms for such acquisition. There is no legislative equivalent of this section applicable to acquisitions of property by the Tasmanian Government.

3.3.4 *The right to trial by jury* – s 80. This provision provides for the right to trial by jury for Commonwealth indictable offences. This right is of limited value because it only applies to Commonwealth indictable offences. It does not apply to crimes constituted by State laws. Further, Federal Parliament may at any time prescribe that an offence or offences need not be tried upon indictment¹⁰ and in respect of such offences the right to trial by jury disappears. Similarly under Tasmanian criminal law, the entitlement to trial by jury applies only to indictable and not summary (minor) offences¹¹ and it is up to the Tasmanian Parliament to determine which offences will be tried

⁶ For discussion of this see *ibid*, ch 2.

⁷ *AG (Cth) (Ex rel McKinlay v Commonwealth)* (1975) 135 CLR 1; *McGinty v Western Australia* (1996) 186 CLR 140.

⁸ *R v Pearson; R v Sipka* (1983) 152 CLR 254.

⁹ *AG (Cth) (Ex rel McKinlay v Commonwealth)* (1975) 135 CLR 1.

¹⁰ The document used to commence proceedings for indictable offences.

¹¹ See s 361 *Criminal Code 1924* (Tas).

on indictment. Further, the right to trial by jury for Tasmanian indictable offences is not a constitutionally entrenched right. It is contained in an Act of Parliament and so may be amended or even repealed by Parliament.

3.3.5 Freedom of religion – s 116. This section prohibits the Commonwealth Government from establishing any religion, imposing any religious observance or prohibiting the free exercise of any religion. Further, no religious test can be prescribed by the Commonwealth as a qualification for any office or public trust. The Tasmanian Constitution also contains a reference to freedom of religion – s 46 of the *Constitution Act 1934* (Tas). This section is similar to s 116.

3.3.6 Freedom from discrimination on the basis of State residence – s 117. Section 117 prevents States from placing restrictions on people who reside in other States that they do not place on their own residents. For example, the Tasmanian Government cannot legislate to preclude residents of other States from pursuing actions in Tasmanian courts, which Tasmanians would be entitled to pursue. Similarly the Government cannot legislate to reserve employment opportunities in Tasmania to Tasmanian residents.

3.3.7 Freedom of movement between States – s 92. This section has been applied to strike down legislation that places limits on interstate movement.¹²

3.3.8 Implied rights in the Australian Constitution. The High Court has found that some rights, while not expressly contained in the Constitution, can be implied. These include freedom of political communication¹³ and the inability of Parliament to legislate to bypass the courts in imposing punishment for breaches of the law.¹⁴ However, the existence of these implied rights remains controversial and the extent of the protection they offer, unclear.

3.3.9 The Tasmanian Constitution (The Constitution Act 1934 (Tas)). The Tasmanian Constitution is the foundation of the democratic institutions of the State Government. However, it contains explicit reference to only two specific human rights – freedom of religion in s 46 and the right to vote in State elections in s 28. The Tasmanian Constitution is an Act of Parliament and consequently, the right to freedom of religion it contains is not an entrenched right as is the right to freedom of religion in s 116 of the Australian Constitution. It is therefore susceptible to legislative amendment far more easily than s 116. Protection of other human rights under Tasmanian law is contained in widely diverse and dispersed legislation.

3.3.10 In summary neither the Australian nor the Tasmanian Constitutions represent a comprehensive source of human rights protection for Tasmanians. In fact, they contain few such protections and those protections have generally been narrowly interpreted by the courts. Many basic rights, such as freedom of speech, the right to a fair trial, the right to life, to liberty and security of the person and the right privacy and to protection of the family find no mention in our Constitutions.

¹² *R v Smithers* (1912) 16 CLR 99; *Gratwick v Johnson* (1945) 70 CLR 1;

¹³ *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.

¹⁴ *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1.

3.4 Commonwealth legislation

3.4.1 A general mechanism for the protection of human rights is provided under the *Human Rights and Equal Opportunities Act 1986* (Cth). By virtue of this Act, the Human Rights and Equal Opportunity Commission (HREOC) has the power to scrutinise Commonwealth legislation to determine its consistency with certain international human rights instruments including the *International Covenant on Civil and Political Rights*. However, while the Commission must report its findings to the federal Attorney General who, in turn, must table its reports in Parliament, the federal Government is under no obligation to reform any legislation considered to conflict with international human rights norms.

3.4.2 The most significant raft of legislation enacted by the Commonwealth Government to protect rights is the Anti-Discrimination legislation: the *Racial Discrimination Act 1975* (Cth), the *Sex Discrimination Act 1984* (Cth), the *Disability Discrimination Act 1992* (Cth) and the *Age Discrimination Act 2004* (Cth). These Acts proscribe direct and indirect discrimination in certain areas and establish a system for the resolution of complaints. Commissioners appointed under the *Human Rights and Equal Opportunities Act 1986* (Cth) have responsibility for inquiring into and conciliating complaints made under these Acts but they have no power to impose enforceable remedies for their breach. If conciliation fails, the complaint may be taken to the federal courts, which do have the power to impose enforceable remedies. While these Acts manifest a clear commitment to equality of treatment in Australia, they do not provide comprehensive guarantees in this regard. For example, the *Sex Discrimination Act* contains significant exemptions for charities and religious, voluntary and sporting bodies, for acts performed under statutory authority and for orders of industrial tribunals. Further, the mechanisms they create for obtaining resolution of complaints and remedies are far from satisfactory.

3.4.3 Other federal legislation that is relevant to the protection of human rights includes the *Privacy Act 1988* (Cth), which sets down the principles relating to and places limits on the collection, storage, use and release of information by Government agencies and credit reporting agencies, the *Freedom of Information Act 1982* (Cth), which enacts certain rights to obtain prescribed information from federal agencies and the *Criminal Code Act 1995* (Cth), which outlaws slavery, torture, genocide and other crimes against humanity.

3.5 Tasmanian legislation

3.5.1 Various pieces of Tasmanian legislation deal with aspects of human rights. However, there is no single, comprehensive and easily accessible legislative statement of human rights that sets a standard for other enactments impacting on human rights or that provides a guideline for government in enacting, implementing and interpreting legislation.

3.5.2 The primary statute dealing with human rights is the *Anti-Discrimination Act 1988* (Tas). This Act makes unlawful both direct and indirect discrimination on the grounds of race, age, sexual orientation, gender, lawful sexual activity, marital and relationship status, pregnancy, breastfeeding, parental status, family responsibilities, disability, industrial activity, political belief and affiliation, political activity, religious belief or affiliation, religious activity, irrelevant criminal record, irrelevant medical record and association with a person who has any of these attributes. The Act makes discrimination in certain areas only unlawful: employment, education and training, provision of goods, facilities and services, accommodation, membership and activities of clubs, administration of any law

of the State or any State program and awards, enterprise and industrial agreements. The Act also makes sexual harassment and inciting hatred unlawful. However, while the Act contains broad protections against discrimination, it also contains a number of significant exemptions. For example, in specified circumstances it permits discrimination in employment, education, accommodation and the provision of facilities and by religious institutions and clubs. Similarly, there are exemptions for sport, insurance and superannuation, for discrimination on the grounds of family responsibilities, parental responsibilities, pregnancy, marital and relationship status, age, race, disability and industrial activity.

3.5.3 Complaints under the Act are made to the Anti-Discrimination Commissioner who investigates and may conciliate them. Where conciliation is not possible the complaint is referred to the Anti-Discrimination Tribunal, which has the power to make binding orders dealing with the discrimination including orders for compensation. The Tribunal may also review decisions of the Commissioner relating to rejections and dismissals of complaints.

3.5.4 The Anti-Discrimination Commissioner has a number of other functions, including reviewing Tasmanian legislation to determine whether or not it is discriminatory, advising the Government on matters relating to discrimination and conducting research and educational programs relating to discrimination and prohibited conduct.

3.5.5 Provisions affecting human rights in the criminal justice sphere are contained in the Criminal Code 1924 (Tas) and the *Police Offences Act 1958* (Tas) whose provisions relating to homicide, assault, and injury to the person give some protection for such rights as the right to life, liberty and security of the person. The Code also contains some protections relating to fair trials and to arrest, as do the *Justices Act 1959* (Tas) and the *Evidence Act 2001* (Tas). Further provisions relevant to the right to liberty and freedom from arbitrary detention and arrest are found in the *Criminal Law (Detention and Interrogation) Act 1995* (Tas) and the *Bail Act 1994* (Tas).

3.5.6 A number of other Acts also have significance for human rights including the *Ombudsman Act 1978* (Tas), the *Youth Justice Act 1997* (Tas), the *Consumer Affairs Act 1988* (Tas), the *Mental Health Act 1996* (Tas), the *Guardianship and Administration Act 1995* (Tas), the *Corrections Act 1997* (Tas), the *Personal Information Protection Act 2004* (Tas), the *Freedom of Information Act 1991* (Tas), the *Evidence (Children and Special Witnesses) Act 2001* (Tas), the *Children, Young Persons and Their Families Act 1997* (Tas), the *Magistrates Court (Administrative Appeals Division) Act 2001* (Tas), the *Annulled Convictions Act 2003* (Tas), the *Police Powers (Public Safety) Act 2005* (Tas), the *Terrorism (Commonwealth Powers) Act 2002* (Tas), the *Forensic Procedures Act 2000* (Tas), the *Listening Devices Act 1991* (Tas) and the *Electoral Act 2004* (Tas). This is not a complete list of all the Tasmanian legislation that deals with aspects of, or that has implications for human rights. Nevertheless, it shows that there is a wide variety of legislation of relevance in this regard. A number of these Acts encroach upon rights. Many of them aim to enhance human rights. However, they do not provide comprehensive protection in this regard. For example, there are significant gaps in the protection of the right to privacy provided under both State and federal legislation. In particular, a number of exclusions, such as those for the media, small business and private corporations, in fact leave gaping holes in the protection of personal privacy. Further, considerable legal expertise is required to uncover existing protections of rights, to determine their scope and to identify what rights have no or very limited protection. Importantly, none of the existing legislation provides a clear and accessible statement of fundamental rights for Tasmanians. So there is nothing in Tasmania at the moment that defines minimum standards for government.

3.6 Scrutiny of draft legislation

3.6.1 In some jurisdictions, Parliamentary Committees have been established to scrutinise draft legislation including subordinate legislation for its compliance with various matters including human rights standards. This is the case in New South Wales and was the case in the ACT and Victoria prior to the enactment of human rights instruments in those jurisdictions. There is no Scrutiny of Bills Committee in Tasmania. While such bodies can serve a valuable function, their protection of human rights is relatively weak and there are significant limitations on their effectiveness. In the absence of any legislated Charter of Rights, their scrutiny of legislation is not guided by any defined or set standards of relevant rights and their processes and reports are not adequately transparent or sufficiently susceptible to public access and comment. Importantly, there is no requirement that Parliament take account of or act in any way upon their reports. In Victoria and the ACT the processes for scrutiny of draft legislation have now been formalised in human rights enactments. These processes are more comprehensive and attuned to a far greater extent to the protection of rights than was previously the case and than the process for scrutiny presently in place in New South Wales, (see further below at paras 4.2.3 and 4.3.2).

3.7 Common law

3.7.1 The common law is the body of legal principles and rules developed over time by judges in cases that have come before them. The common law has developed some important protections for human rights particularly in the area of criminal justice. These include the right to be presumed innocent until proven guilty, (the assignment of the burden of proof in criminal cases to the prosecution) and the standard of proof, beyond reasonable doubt. Similarly, the right to silence, the requirement that evidence of confessions obtained by force from an accused be excluded at trials and the privilege against self-incrimination derive from the common law. The common law also imposed significant limits on police powers of detention, interrogation and search.

3.7.2 Other important common law protective principles are the rules of procedural fairness, which, among other things, require that a person be given a fair hearing before governments make decisions affecting their interests. Further significant instances of the common law development of rights are the recognition by the High Court of native title in *Mabo v Queensland (no 2)*¹⁵ and the right of an accused to a fair trial in *Dietrich v The Queen*.¹⁶

3.7.3 However, the common law has a poor record in recognising and protecting rights in other areas. For example, it does not recognise any general right to privacy and has never contained a fundamental guarantee of religious freedom and expression.¹⁷ Further it was responsible for many legal disabilities suffered by women including exclusion from the right to vote, the right to own property, the right to be admitted to educational institutions and the right to enter the professions. Further, the common law has done little to protect women from violence and, in fact, developed doctrines inimical to women's rights in this area such as the denial of the possibility of rape in marriage. The intervention of Parliaments has been necessary to remove these doctrines and to admit women to full rights as citizens.

¹⁵ (1992) 175 CLR 1.

¹⁶ (1992) 177 CLR 292.

¹⁷ *Grace Bible Church v Reedman* (1984) 36 SASR 389 at 393.

3.7.4 It is also important to remember that the common law may be overridden at any time by Parliament. For instance, legislation has been enacted to override common law restraints on police powers of interrogation,¹⁸ and the presumption of innocence and prosecution onus of proof has been displaced in respect of some offences.¹⁹

3.7.5 The common law does not provide secure, certain or complete protection of human rights. It does not protect many fundamental rights and even where it has recognised rights, the precise parameters of those rights may be unclear. Therefore, the protection it affords those rights may be uncertain and difficult and costly to enforce.

¹⁸ *Criminal Law (Detention and Interrogation) Act 1995* (Tas).

¹⁹ See for example the *Misuse of Drugs Act 2001* (Tas).

Part 4

How Are Human Rights Protected in Other Jurisdictions?

4.1.1 Australia is the only common law country that does not have some kind of national Charter of Rights. The Tasmanian Government has asked the Tasmanian Law Reform Institute to research models that protect and enhance human rights in other jurisdictions (in Australia and overseas).

4.1.2 When Charters or Bills of Rights are mentioned, it is often the United States Bill of Rights that most readily springs to mind. However, other common law countries have enacted quite different human rights bills and charters. Two jurisdictions in Australia, the ACT and Victoria, have also enacted human rights Acts that are very different to the United States model. The essential characteristics of these models and those operating in the United Kingdom, Canada, New Zealand, South Africa and the United States are summarised below. The key features of interest when investigating the potential for such models to enhance human rights protection in Tasmania are:

- How such models are enacted: are they entrenched in a Constitution or are they simply ordinary statutes? Constitutionally entrenched human rights instruments can be difficult change in comparison to ordinary statutes.
- Do they enable individual citizens to enforce their human rights in courts or to obtain damages or some other remedy in the event of their breach?
- Do they preserve the supremacy of Parliament or do they enable the courts to strike down (declare invalid) legislation that is incompatible with human rights norms? If they *do not* permit courts to invalidate legislation, what occurs when a finding is made that a legislative provision breaches human rights?
- Do they contain mechanisms for the pre-enactment scrutiny of legislation to ascertain its compliance with human rights? If so, what results from that assessment – how does it impact on the legislative process and how is the public apprised of the assessment?
- How do they operate in the curial context? That is, what is their interpretive role in judicial decisions?
- Can parliaments enact legislation that encroaches on or abrogates human rights and, if so, how and when may this be done?
- What rights do they protect? Do they focus only on civil and political rights or do they incorporate economic, social and cultural rights?
- To whom do they apply and whose rights do they protect?

4.2 The Australian Capital Territory

4.2.1 In 2004, the Australian Capital Territory (ACT) Parliament enacted the *Human Rights Act 2004* (ACT). This is an ordinary statute that can be amended or repealed by the ACT Parliament like any other statute. It does not include a direct right of action for citizens against public authorities or any explicit remedies for breaches of the rights it sets out. However, ACT courts might in the future adopt the approach of the New Zealand courts and read into the Act rights of action and remedies for breach in the absence of any provision to the contrary.²⁰ Moreover, the Act can be used as an adjunct to existing causes of action, for example, in a claim for review of administrative action where account was not taken of the *Human Rights Act*.

4.2.2 ACT courts are required to interpret legislation as far as possible in a way that is consistent with the *Human Rights Act 2004*. Where this cannot be done, the ACT Supreme Court may issue a declaration of incompatibility. This declaration does not invalidate the legislation in question but the Attorney General is required to report to the Legislative Assembly on Governmental responses to the declaration. This means that the *Human Rights Act* preserves Parliamentary supremacy because the courts do not have the power to invalidate legislation. Nevertheless, a declaration of incompatibility does exert pressure on Parliament to reconsider and revise legislation so as to conform with human rights. The rights in the Act are not absolute – but they are only limited to the extent that is demonstrably justified in a free and democratic society.

4.2.3 Pre-enactment scrutiny of legislation is provided for: when a new bill is presented to Parliament, the Attorney General is required to present a written statement on its compatibility with the *Human Rights Act*. However, it is now Government policy that human rights issues be addressed in the explanatory note to the Bill. This is prepared by the department responsible for the proposed legislation. The Legal Affairs Standing Committee of the Legislative Assembly has a duty to scrutinise bills for consistency with human rights and to report its findings to Parliament. The Act also creates the position of Human Rights Commissioner who has responsibility for reviewing laws to ensure their compliance with human rights and responsibility also for reporting to the Attorney General on the operation of the Act. Government Departments must include in their Annual Reports information about their implementation of the Act.

4.2.4 The Act protects the rights of individual citizens but not those of corporations. It does not create an explicit duty on all public officials to act consistently with human rights. However, it may be interpreted as impliedly creating such a duty. The rights protected are civil and political rights. The Act omits economic, social and cultural rights despite the recommendation for their inclusion by the ACT Human Rights Consultative Committee. Provision is made for review of the Act's operation after one and five years. The review must incorporate reconsideration by the Attorney General of the desirability of including economic, social and cultural rights in the Act and the better protection of environmental rights. Provision is also made in the Act for the Human Rights Commissioner to conduct educational programs about the Act and human rights.

4.2.5 The first review of the Act showed that it is having an impact particularly in such areas as the development and scrutiny of legislation.²¹ Matters that the Government has considered applying a human rights framework to have included emergency electro-convulsive therapy legislation, the use of children for tobacco test purchases, the wearing of headscarves at ACT schools, the banning of car window washers at traffic lights, sentencing laws, the exclusion from public employment of a person

²⁰ See discussion of the New Zealand *Bill of Rights Act 1990* at 4.5.1.

²¹ H Charlesworth and G McKinnon, 2006, *Australia's First Bill of Rights: The Australian Capital Territory's Human Rights Act*, Law and Policy Paper 28, The Federation Press.

with a criminal record and counter-terrorism legislation. A human rights audit of the ACT's youth detention facility revealed the existence of many practices inconsistent with human rights including routine strip searches and the use of seclusion and surveillance. In the courts, the Act has not promoted a flood of litigation. Nevertheless, it has been cited in a range of cases and has influenced their outcome. Following the first review, the Chief Minister of the ACT, Jon Stanhope foreshadowed amendments to the Act to introduce a direct right of action for breach of human rights and to extend the scope of the rights covered to include economic, social and cultural rights.²²

4.3 Victoria

4.3.1 The Victorian *Charter of Human Rights and Responsibilities* was enacted in July 2006 and will come into force in January 2007. It is a normal statute that may be amended by Parliament like any other Act. The rights contained in the Charter are only subject to such limits as are demonstrably justified in a free and democratic society. The Victorian Government, when it gave the human rights reference to the Victorian Human Rights Consultation Committee, also released a *Statement of Intent* indicating its preference that any new human rights instrument should not create new causes of action. In line with this preference, the Charter explicitly excludes any right to claim damages for breach of human rights obligations. However, it does contain provision for other remedies to be granted for breaches of rights, although the terms of this provision are a little obscure.²³ It appears to enable existing causes of action to be pleaded on human rights grounds. For example, a citizen may be able to seek an injunction or declaration against a public authority on the basis that the authority is acting in breach of a Charter right. Similarly, a person may bring an action for review of a decision made by a public authority on the basis that it fails to comply with human rights. If the remedies provision means something less than this then it would appear to make the Charter a hollow instrument as far as the direct protection of personal rights is concerned.

4.3.2 With regard to pre-enactment scrutiny of legislation, the Charter requires that Members of Parliament who propose to introduce a Bill into either House ensure that a 'statement of compatibility' is presented to the House before the second reading speech. This procedure differs from that prescribed by the ACT *Human Rights Act* in that it requires reasoned statements of compatibility to be given rather than mere assertions in this regard. This means that the statement must identify how the Bill is compatible with the Charter or, where it is incompatible, the nature and extent of that incompatibility. The aims of this procedure are to ensure that Members of Parliament take responsibility for the human rights impact of their legislation and to assist Parliament in its deliberations on legislation.²⁴ Additionally, the Scrutiny of Acts and Regulations Committee is required to consider Bills and subordinate legislation and to report to Parliament on their compatibility with human rights.

4.3.3 As far as possible, Victorian courts are required to interpret legislation in a way that is compatible with the Charter. The Victorian Supreme Court has power to make a declaration that legislation cannot be interpreted consistently with the Charter. But this does not affect the legislation's validity or continuing operation. Accordingly, the Charter does not impair Parliamentary sovereignty.

²² Jon Stanhope, Standing Committee on Legal Affairs, Reference on Annual Reports 2004-05, Transcript of Evidence, 10 November 2005; Jon Stanhope, Chief Minister of the ACT, *Keynote Address*, "Australian Bill of Rights – the ACT and Beyond", Australian National University, Canberra, 21 June 2006.

²³ Section 39.

²⁴ S Evans, *The Victorian Charter of Rights and Responsibilities and the ACT Human Rights Act: Four Key Differences and Their Implications for Victoria*, paper presented at the 'Australian Bills of Rights: The ACT and Beyond Conference, Australian national University, 21st June 2006.

If a declaration of 'inconsistent interpretation'²⁵ is made the Minister administering the Act in question must provide Parliament with a written response within six months.

4.3.4 The Charter also makes explicit provision for Parliament to declare that legislation explicitly overrides the Charter.²⁶ Strictly speaking this provision, which is like the section in the Canadian *Charter of Rights and Freedoms*,²⁷ is unnecessary given that courts have no power to invalidate legislation, so that the enactment of inconsistent legislation is always a possibility. Nevertheless, there are a number of important functions that this provision serves: it sets a time limit of five years on legislation containing an override declaration but then enables its extension for a further five years. Additionally, it signals Parliament's intention that override declarations are only to be made in exceptional circumstances.²⁸ The person proposing the declaration is required to provide Parliament with a statement explaining the exceptional circumstances. This reinforces the Charter's pre-enactment scrutiny provisions and encourages Members of Parliament to take human rights seriously and to provide genuine and considered justification for their reduction.²⁹ Finally, where legislation contains an override declaration, this necessarily sets aside the requirement that courts interpret legislation in a way that is compatible with the Charter.

4.3.5 The Victorian Human Rights and Equal Opportunity Commission has a number of functions in relation to the Charter including, providing annual reviews of its operation to the Attorney General, examining all declarations of inconsistent interpretation made by courts and all override declarations for new legislation, reviewing the programs and practices of public authorities when requested to do so to check their compatibility with human rights, providing education about the Charter and human rights and advising the Attorney General on any matter relevant to the operation of the Charter.

4.3.6 Reviews of the Charter's operation are to occur after four and eight years. The first review must consider whether additional rights should be included in the Charter, including economic, social and cultural rights, rights contained in the *Convention on the Rights of the Child*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, and the right to self-determination. The review must also consider whether further provision should be made in relation to proceedings that may be brought and remedies that may be granted under the Charter.

4.3.7 In accordance with the Victorian Government's expressed preference, the Charter deals largely only with civil and political rights. However, it does include protection for cultural rights and makes explicit provision for the protection of Aboriginal identity, culture and language. Otherwise, economic, social and cultural rights have been omitted but the desirability for their inclusion is a matter that must be considered in the review undertaken of the Charter's first four years of operation.

4.3.8 In contrast to the ACT *Human Rights Act*, the Victorian Charter explicitly binds public authorities, which include government departments, statutory authorities, local governments, the police and persons and bodies that perform public functions. Parliament and the courts, when interpreting the common law, are not bound by the Charter. The Charter expressly requires public authorities to comply with the Charter. The Charter protects the rights of natural persons, not corporations.

²⁵ This is the term used in the Charter, see s 36.

²⁶ Section 31.

²⁷ See below at 4.6.

²⁸ Section 31(4).

²⁹ See further discussion of this provision by S Evans, above n 24.

4.4 The United Kingdom

4.4.1 Human rights legislation was enacted in the United Kingdom in 1998. The *Human Rights Act 1998* (UK) is an ordinary statute that can be amended or repealed by the British Parliament at any time. Citizens are able to institute court proceedings to enforce human rights and can obtain various remedies for their breach including damages, (monetary compensation). However damages may only be awarded if no other remedy is appropriate.

4.4.2 The United Kingdom Act requires courts to interpret and give effect to legislation in a manner that, as far as possible, is compatible with the European Convention on Human Rights. Courts have the power to declare legislation incompatible with the Convention but they have no power to invalidate primary legislation though they may invalidate subordinate legislation like regulations. In response to a declaration of incompatibility the government may make a remedial order to amend the legislation. If the Government chooses, however, it may ignore the declaration of incompatibility and the legislation in question will continue to operate.

4.4.3 When legislation is introduced into Parliament, the relevant Minister must make a statement about its compatibility with Convention rights. Reasoned statements of compatibility appear in the Explanatory Notes on Bills.³⁰ Such statements are based on reviews of the proposed legislation with regard to Convention rights undertaken by government departments. Legislation may be enacted that is incompatible with those rights, but in this case, the relevant Minister must notify Parliament of that incompatibility and state that the Government, nevertheless, intends to enact the law. The aims of this model are to encourage governments to provide thoughtful justification for any encroachments on human rights, to ensure that such encroachments are adequately scrutinised and debated by Parliament and to promote a minimalist approach to such encroachments. Statements of incompatibility made by Ministers would necessarily impact upon the subsequent interpretation of the legislation by the courts. Pre-enactment scrutiny of legislation is also provided by the Joint Committee on Human Rights, established by the United Kingdom Parliament. The Committee has been very successful in persuading the government to amend bills to improve human rights protections.³¹ The United Kingdom government has now decided to establish a Commission for Equality and Human Rights. The Commission will have research, review, advisory and educational functions in relation to human rights.

4.4.4 The rights protected by the United Kingdom Act are those in the European Convention on Human Rights. The focus is on civil and political rights but some economic, social and cultural rights, such as the right to property and the right to education, are also included.

4.4.5 All public authorities, including courts and tribunals but excluding Parliament, must act in a manner that is compatible with the European Convention.

4.4.6 Even though the courts have adopted a conservative approach to the interpretation and implementation of the *Human Rights Act*, it has had a considerable impact upon the case law and legal culture of the United Kingdom. Commenting on that impact two years after the Act came into operation the Lord Chancellor said:

³⁰ Department of Constitutional Affairs, *Section 19 Statements: Revised Guidance for Departments*, <http://www.dca.gov.uk/hract/guidance-updated.htm>.

³¹ For details see the Committee's website at <http://www.parliament.uk/commons/selcom/hrhome.htm>.

The Act represents one small manageable step for our Courts; but it is a major leap for our constitution and our culture. It has transformed our system of law into one of positive rights, responsibilities and freedoms, where before we had the freedom to do what was not prohibited. ... [I]t has moved public decision-making in this country up a gear, by harnessing it to a set of fundamental standards. And it has breathed new life into the relationship between Parliament, Government and the Judiciary, so that all three are working together to ensure that a culture of respect for human rights becomes embedded across the whole of our society.³²

4.5 New Zealand

4.5.1 The New Zealand *Bill of Rights Act 1990* is an ordinary Act of Parliament. Even though there are no explicit enforcement provisions for citizens in the Act, the New Zealand Court of Appeal has held that compensation may be obtained from government agencies for any breach of the rights in the Act.³³

4.5.2 In interpreting legislation New Zealand courts are required to favour a meaning that is consistent with the Act. However, courts do not have the power to override inconsistent legislation and there is no express provision in the Act for the courts to declare legislation to be incompatible with it.

4.5.3 The rights covered by the Act are not expressed in absolute terms but are subject ‘only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society’.³⁴ The New Zealand government may, therefore, enact legislation that is inconsistent with the Act but the Attorney General is required to inform Parliament of this inconsistency on its introduction. Government procedures now also require that all draft legislation be certified as complying with the Act.³⁵

4.5.4 The New Zealand Human Rights Commission has a number of powers in relation to the administration of the Act, including reporting to the Minister on any matter affecting human rights, initiating educational programs, assessing whether new legislation meets human rights standards, inquiring into alleged breaches of human rights, advising the Prime Minister on human rights matters and initiating programs that foster understanding of human rights and promote a human rights culture.

4.5.5 Primarily, civil and political rights are protected under the Act. The rights apply to acts done by the legislative, judicial and executive branches of the New Zealand Government and people performing public functions. The Act protects the rights of all legal persons, both corporations and natural persons.

³² Lord Irving of Lairg, “The Human Rights Act Two Years On: An Analysis”, Durham University, 1 November 2002, available at <http://www.lcd.gov.uk/speeches/2002/lc011102htm>.

³³ *Simpson v Attorney General* [1994] 3 NZLR 667.

³⁴ Section 5.

³⁵ *Cabinet Office Manual* (Wellington 1996).

4.6 Canada

4.6.1 The Canadian *Charter of Rights and Freedoms 1982* is entrenched in the Canadian Constitution. This means that it can only be changed by altering the Constitution. The Charter was enacted following the failure of an earlier human rights instrument, the *Canadian Bill of Rights 1960*, to achieve any real impact on the courts' interpretation of legislation or on Parliament's legislative practices. The 1960 Act is still operative.

4.6.2 Charter rights are enforceable by the courts, which have power to grant such remedies as they consider appropriate and just. Because the Charter is entrenched in the Canadian Constitution, it operates to override inconsistent legislation. Courts may declare legislation that is inconsistent with Charter rights to be invalid. However, if this occurs, Parliament may pass an override clause to give effect to the legislation notwithstanding its inconsistency with the Charter. Further, the Charter rights are subject to two significant limitations. First, the rights it protects are subject to 'such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'.³⁶ Second, Parliament may pass laws that explicitly override charter rights. However, such legislation endures for only five years, after which it must be reviewed and may be extended for a further five years. The aim of this model is to promote the courts' protection of human rights by giving the Charter controlling status with respect to normal statutes while at the same time preserving the ultimate sovereignty of Parliament.

4.6.3 There is no formal mechanism in the Charter for pre-enactment review of legislation. However, the Canadian Human Rights Commission can review regulations and by-laws to determine whether they are inconsistent with the anti-discrimination provisions of the *Human Rights Act 1960*.

4.6.4 The Charter covers civil and political rights and additionally protects the language rights and educational rights of minority language groups as well as existing treaty rights of indigenous peoples. It applies to both natural persons and corporations.

4.6.5 In contrast to the previous *Human Rights Act*, the Charter has had a significant impact upon Canadian jurisprudence and human rights culture. It has been applied in numerous cases and is accepted as having a dominant role in Canadian political, legal and cultural spheres.³⁷

4.7 South Africa

4.7.1 The South African Bill of Rights is entrenched in the South African Constitution of 1996. Any limitations of rights must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. Some rights, such as the right to life and human dignity, are non-derogable. Individuals can take action to enforce their rights through the courts and the courts have power to grant whatever relief is appropriate.

4.7.2 The Bill of Rights is interpreted by the South African Constitutional Court, which has the power to invalidate any legislation that is inconsistent with the Bill. When interpreting any legislation,

³⁶ Section 1.

³⁷ Centre for research and Information on Canada, *The Charter: Dividing or Uniting Canadians?* (2002) http://www.cric.ca/pdf/cahiers/cricpapers_aprils00s.pdf.

the common law or customary law, the courts must do so in a way that promotes the objects of the Bill of Rights. The South African Human Rights Commission has research, review and educational functions in relation to human rights. It can also hear complaints about human rights breaches.

4.7.3 The rights covered by the Bill are very broad. They include not only civil and political rights but also social and economic rights. In regard to the latter, there are unqualified rights to basic education and training and to a healthy environment. Other economic and social rights, such as rights to housing, health care, food, water and social security are limited by the provision that the State must take measures to achieve their realisation within its available resources.

4.7.4 The Bill applies to all laws, all state organizations and to private relations.

4.8 The United States

4.8.1 The United States Bill of Rights was inserted into the United States Constitution in 1791. It is contained in a series of amendments to the Constitution and the rights they set down are expressed in absolute terms: they are not subject to limitations such as those that apply under the ACT, Victorian, Canadian, New Zealand and South African human rights instruments. The Bill of Rights, being entrenched in the Constitution, can only be altered by amending the Constitution. Individuals can enforce their rights by taking action in the courts. The rights contained in the Bill are primarily civil and political rights.

4.8.2 Laws that are inconsistent with the Bill of Rights are invalid. The Supreme Court of the United States has the power to declare invalid any law inconsistent with the Bill. In contrast to the position in Victoria, Canada, the United Kingdom and New Zealand, the legislature has no power to override the Bill of Rights or to enact legislation notwithstanding that it abrogates rights in the Bill of Rights. Accordingly, the United States model does not preserve the supremacy of the legislature in relation to legislation. It is the courts that have the last say on human rights issues. The criticism most frequently levelled at this model is that it can result in an unelected and unaccountable judiciary usurping the functions of the elected legislature. This has implications for the doctrine of the separation of powers.

4.8.3 The United States Bill of Rights has had enormous influence on United States jurisprudence and United States citizens' sense of their national identity. How effective it is as a model for protecting and promoting human rights, however, is a matter of some controversy. It has had a chequered history in protecting some rights.

QUESTIONS

1. Are human rights adequately protected in Tasmania?
2. Is change needed to better protect human rights?

Part 5

A Charter of Rights?

5.1 Should Tasmania have a Charter of Rights?

Arguments For and Against a Charter of Rights

5.1.1 Opponents of Charters of Rights often argue that they are unnecessary in Australia because existing protections are adequate. In particular they point to our democratic system of government and to our system of justice and independent judiciary as having provided adequate guarantees and safeguards of human rights. In a nutshell this argument is, 'if it ain't broke don't fix it.' They also argue that Charters of Rights displace the sovereignty of Parliament and deliver too much power to the unelected, non-representative judiciary. They are concerned that setting down our rights in legislation might actually restrict rights; that they may become 'set in stone' in a way that frustrates their development in a rapidly changing world. Others argue that Charters of Rights only benefit lawyers, that they open the floodgates for frivolous court actions. There are also concerns that Charters of Rights may stymie legitimate government business as a result of challenges to legislation on human rights grounds.

5.1.2 Proponents of Charters of Rights argue that existing protections of rights and freedoms are inadequate; that while our present political and justice systems and a number of our laws have delivered us a comparatively sound record on human rights, that protection is not comprehensive. There are significant gaps and shortcomings in current protections. They also point out that the fragmented nature of current human rights protections in Tasmania constitutes a significant impediment to the development of community consciousness and understanding of rights. It is also argued that our current law is deficient because it provides no statement of basic human rights that expresses the minimum standards that our government and public authorities should meet. Tasmanians therefore have no generally applicable yardstick by which to judge government legislation and the actions of our public authorities. A Charter of Rights would provide such a standard and would, therefore, enhance government and administrative decision-making and action. It would provide a vehicle for good governance and for ensuring transparency and accountability in government and administrative decision-making.

5.1.3 It is also pointed out that a basic statement of rights would be particularly useful at the present time when governments, concerned with security issues, are enacting legislation that erodes many of our longstanding rights and freedoms. A Charter of Rights could provide a balance and checkpoint for Parliament when considering such legislation. It would help ensure that the 'baby is not thrown out with the bath water' so that we do not sacrifice our democratic liberties in the name of security. In this context, a Charter could provide clear markers for our co-operation with the Commonwealth Government on security matters. More broadly, a Charter of Rights can help foster awareness of human rights and dignity. It can create a human rights culture where people are educated about human rights and alert to the necessity to protect them.

5.1.4 Responding to the arguments that Charters of Rights benefit only lawyers and that they give too much power to judges, proponents point to the ACT, United Kingdom and New Zealand models. These models do not enable the courts to invalidate legislation, do not reduce parliamentary sovereignty and, experience shows, have not resulted in a tidal wave of frivolous litigation. However, cases that have been tried in these jurisdictions have revealed significant deficiencies in human rights practices and have enabled their resolution. The fear of increased litigation ignores a fundamental principle – if protection of human rights is inadequate, fear of litigation cannot justify refusal to reform the law.³⁸ In relation to the concern that enacting a list of human rights may, in fact, ossify or restrict rights, proponents argue that where they are set down in an ordinary statute as has been done in the ACT, Victoria, the United Kingdom and New Zealand, the legislature may amend them to meet the needs of changing times.

5.1.5 Proponents of Rights Charters also point out that, because in a democratic society the focus is usually upon majority interests, the rights of minorities are often overlooked and can be infringed. Adoption of a Charter of Rights could provide a framework for avoiding this and for safeguarding minority interests and rights.

QUESTIONS

3. **If change is needed to better protect human rights in Tasmania, how should the law be changed to achieve this?**
4. **Would a Charter of Rights enhance protection of human rights in Tasmania?**

5.2 If the Government enacted a human rights instrument, what form should it take?

5.2.1 The major options in this regard are:

- An ordinary statute that can be repealed or amended by a simple majority vote in both Houses of Parliament. This is the model that operates in the ACT, Victoria, New Zealand and the United Kingdom.
- An entrenched bill of rights that can only be amended by special procedures. The Tasmanian Constitution is an ordinary statute that can be amended like any other statute. Therefore, in order to entrench any human rights instrument in Tasmania it would not be sufficient simply to include it in the Tasmanian Constitution. It would be necessary to enact special procedures for its amendment, for example, by providing that its reform must be approved by a referendum of Tasmanian citizens or by requiring for its reform more than a simple majority vote in both Houses of Parliament, for example, two-thirds majority support.

5.2.2 The Tasmanian Government has indicated to the Tasmanian Law Reform Institute that if it is recommended that a Charter of Rights be enacted, the model recommended should preserve Parliamentary sovereignty. The first option listed above achieves this to a greater extent than the second because it does not elevate the status of the Charter above other statutes and because it may be reformed, repealed or amended in the same way as other Acts of Parliament.

³⁸ H Charlesworth, "Maybe Human Rights Are Not So Well Protected" *Canberra Times* 29th April 2002.

5.3 If Tasmania were to enact a Charter of Rights, what rights should it protect?

5.3.1 The Tasmanian Law Reform Institute would like to learn which rights Tasmanians would like to see included in any human rights instrument that the Tasmanian Parliament might enact. Should only civil and political rights like those in the *International Covenant on Civil and Political Rights*, (see Appendix B) be included or should more broadly based protection be provided to encompass such rights as those in the *International Covenant on Economic, Social and Cultural Rights* (see Appendix C)? In either case, there would need to be modification of the provisions in these treaties to accommodate Tasmanian needs and the Tasmanian legal, political and social situation.

5.3.2 The human rights instruments enacted in the ACT and Victoria focus on civil and political rights. While the Victorian *Charter of Human Rights and Responsibilities 2006*, does include protection for minority and Aboriginal cultural rights, it excludes other economic, social and cultural rights. The ACT Bill of Rights Consultative Committee recommended that economic, social and cultural rights be included in the ACT *Human Rights Act 2004* but this recommendation was rejected by the ACT legislature. However, specific provision has been made in both the ACT and Victoria for review of the issue whether to include economic, civil and political rights and other rights like those in *Convention on the Rights of the Child* and the *Convention on the Elimination of All Forms of Discrimination Against Women*.

5.3.3 Economic, social and cultural rights were largely omitted from the ACT and Victorian human rights instruments because of the concern that their inclusion would encroach too much upon Parliament's ability to control spending and finance policy and resource allocation. Those who favour inclusion of these rights argue that rights are indivisible, that political and civil liberties can only be achieved when economic and social rights are also established. For example, access to adequate food, health services and education pre-determine whether the right to life, the right to vote and the right to liberty and security of the person have genuine meaning. Some people suggest that rather than try to achieve a very broad based protection of rights from the outset, it may be better 'to hasten slowly', to first provide protection for the most widely recognised rights, civil and political rights, and then to add protection for other rights later in a staged process of review.

5.3.4 An additional question of importance is whether the rights of the most vulnerable groups in society, those with physical or mental disabilities, children, cultural minorities and Aborigines should receive explicit protection under any Tasmanian Charter of Rights. Proponents of such protection argue that these groups are particularly disadvantaged and that, therefore, without provision being made for the explicit protection of their rights, their participation, on an equal footing, in the rights enjoyed by the majority may not be realised. Protections that are often mentioned in this regard are of cultural heritage and language, the right to 'self-determination' and the recognition and protection of indigenous people's land rights.

5.3.5 A further question to the 'what rights' issue is what role there is for responsibilities in any Charter of Rights. The existence of rights creates responsibilities in relation to the respect of those rights. Rights necessarily coexist with responsibilities. Should any Charter of Rights acknowledge this and, if so, how should it do so? The Victorian *Charter of Human Rights and Responsibilities 2006* recognises that rights cannot exist without responsibilities and so deals with them as 'two sides of the same coin'. It, therefore, emphasises in its preamble that human rights come with responsibilities and that they must be exercised in a way that respects the human rights of others. The ACT *Human Rights Act 2004* also includes specific mention of responsibilities in its preamble and encourages people to see themselves as responsible for upholding the rights of others.

QUESTIONS

5. If a Charter of Rights were to be enacted in Tasmania, what rights should it include?
6. Which of the rights in the International Covenants annexed to this Issues Paper are most relevant to Tasmania? Do they need to be adapted to the Tasmanian situation? Should any be excluded? Are there any other rights that should be included?
7. Should some rights be included at first with other rights being considered for inclusion later after review of the Charter?
8. Should explicit provision be made for the protection of the rights of particular vulnerable groups?
9. What role is there for responsibilities in any Charter of Rights?

5.4 If Tasmania were to enact a Charter of Rights, whose rights should it protect?

5.4.1 Human rights instruments in some jurisdictions protect the rights of corporations as well as individual human beings.³⁹ However, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* apply only to human beings. Similarly, the ACT *Human Rights Act 2004* and the Victorian *Charter of Human Rights and Responsibilities* do not apply to corporations. It might be argued that to extend the protections in human rights instruments to corporations ignores the fact that human rights are concerned critically with the dignity and value of the lives of human beings. To enable corporations to claim the protection of human rights instruments can impact detrimentally upon legitimate attempts to regulate company activity for the purpose of public and health and safety. For example, in Canada where human rights legislation protects the rights of both natural persons and corporations, a tobacco company successfully challenged Canadian legislation that restricted the sale and advertising of tobacco products without health warnings.⁴⁰

QUESTION

10. If Tasmania were to enact a Charter of Rights, whose rights should it protect?

5.5 If Tasmania were to enact a Charter of Human Rights, should the rights it contains be subject to limitations?

5.5.1 Few rights are absolute. Examples of rights that are absolute are the right not to be held in slavery and the right to be free from torture. Other rights often need to be balanced against each other. Sometimes it is necessary to restrict some rights in order to enhance or protect others. The legitimate balancing of rights can be achieved in two main ways, either by placing limits on specific rights or by including a general, reasonable limits clause that applies to all rights. The *International Covenant on Civil and Political Rights* contains specific limiting clauses. For example, the right to freedom of thought, conscience and religion in Article 18 is expressly subject only to 'such limitations as are

³⁹ See for example, the New Zealand *Bill of Rights Act 1990*, s 29 and the *Canadian Charter of Rights and Freedoms 1982*.

⁴⁰ *McDonald Inc v Canada* [1995]3 SCR 199.

necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.’ The ACT *Human Rights Act 2004*, the Victorian *Charter of Human Rights and Responsibilities 2006*, the New Zealand *Bill of Rights Act 1990*, the South African *Bill of Rights 1996* and the Canadian *Charter of Rights and Freedoms 1982* all contain general, reasonable limiting clauses. These clauses justify only such limits being placed on human rights as are ‘prescribed by law and can be demonstrably justified in a free and democratic society.’ Such clauses require Parliament to show that any limits imposed by legislation on rights are demonstrably reasonable and justifiable. They also require the courts to gauge the same thing when scrutinising legislation alleged to contravene human rights. If it is shown that any limitation is reasonable, then the reasonable limits clause will protect the legislation.

5.5.2 Express limitations on rights clauses have the virtue of achieving a degree of certainty. However, they do not necessarily achieve the broader balancing process that must often accompany rights interpretation. General, reasonable limits clauses do encapsulate this broader balancing process but they suffer from a degree of uncertainty in their application. In the Victorian and South African human rights instruments the general, reasonable limits clauses list matters that are to be taken into account in determining whether a limitation on rights is reasonable and justified. These matters include the nature of the right, the purpose, importance, nature and extent of the limitation, the relationship between the limitation and its purpose and any less restrictive means that might reasonably be available to achieve the purpose of the limitation.⁴¹ The aim of these provisions is to provide guidance in the application of the general limiting clauses and to reduce their uncertainty.

QUESTIONS

11. If Tasmania were to enact a Charter of Human Rights, should the rights it contains be limited in some way?
12. How should any limitation be provided?

5.6 If Tasmania were to enact a Charter of Rights how should the rights it contains be protected?

5.6.1 What role should the different arms of Government, the Legislature, the Executive and the Judiciary play in relation to a Charter of Rights? Each of these institutions performs different functions in a democratic society and their responsibilities are allocated to ensure that no single arm of Government can exercise sole power. This organisation of government is referred to as the ‘separation of powers’. Its aim is to provide a system of checks and balances on the exercise of power. The legislature (Parliament) enacts the laws of the State. The Executive (Government Ministers and their Departments) is responsible for formulating and implementing policy. The Judiciary (the Courts) interprets and applies the laws of the State in cases that come before them.

5.6.2 The Tasmanian Government is concerned that any human rights model that might be recommended for Tasmania should not impact upon the separation of powers and, in particular, should not encroach on the sovereignty of Parliament with respect to the making of laws. Accordingly, it should not enable the courts to overrule legislation. This directs us away from a model like that in the United States and towards models like those in the ACT, Victoria, New Zealand, the United Kingdom, and that which applied in Canada before it adopted a constitutionally entrenched model.

⁴¹ Section 7 *Charter of Human Rights and Responsibilities 2006* (Vic) and s 36 *Bill of Rights 1996* (Sth Afr).

Role of Parliament

5.6.3 Under most modern common law jurisdictions' Bills and Charters of Rights, Parliament may pass legislation that is inconsistent with, overrides or encroaches upon human rights. However, before this can occur, the Member of Parliament who introduces the proposed legislation may be required to explain why this is reasonable and justifiable in a democratic society. Further, such legislation may be subject to 'sunset clauses' so that Parliament may have the opportunity to revisit it after a fixed period and allow it to lapse or reconfirm it. The Victorian *Charter of Human Rights and Responsibilities 2006* provides a clear example of such a model. The aims of this procedure are to reduce legislation that infringes human rights standards, to promote parliamentary scrutiny of legislation in human rights terms, to ensure that human rights standards are genuinely used as a yardstick for assessing legislation and to encourage a legislative culture that is sensitive to human rights.

5.6.4 A measure that has been implemented in some jurisdictions is the creation of a Parliamentary Scrutiny Committee that is charged with the responsibility for vetting proposed legislation to ensure its compliance with human rights standards. This has occurred in the ACT, Victoria and the United Kingdom.

5.6.5 Parliament also plays a significant role in receiving reports from Ministers concerning declarations of inconsistency courts have made in relation to legislation. Such reports alert them to non-compliant legislation and provide the opportunity for its amendment. Some human rights instruments also make provision for Parliament to receive annual reports from government departments in relation to their implementation of human rights standards.

Role of Courts

5.6.6 In those jurisdictions where courts cannot invalidate legislation for being inconsistent with human rights instruments, they nevertheless, have important functions in relation to the protection of rights created by those instruments, which may include:

- Making non-binding declarations of inconsistency in relation to primary legislation (Acts of Parliament) and, in some cases,⁴² declarations invalidating subordinate legislation, (regulations and rules). If this happens then Parliament may choose to amend the legislation or, in the case of primary legislation, allow it to continue to operate.
- Interpreting laws as far as possible in a manner that is consistent with the provisions of Charters and Bills of Rights;
- Hearing and determining actions brought by citizens alleging breaches of their rights and granting remedies in the event of their breach.

Role of the Executive

5.6.7 In a number of jurisdictions, (the ACT, Victoria, the United Kingdom and New Zealand), there is provision for pre-enactment scrutiny of legislation which requires Ministers, (or in some cases the Attorney General) who propose to introduce new legislation to provide statements of compatibility

⁴² For example, the United Kingdom.

to Parliament concerning its compliance with human rights standards. In Victoria such statements are required to set out reasons for their assertions of compatibility.

5.6.8 Where courts have made declarations of inconsistency in relation to legislation, human rights instruments may require Ministers responsible for such legislation to furnish Parliament with a report which responds to the declaration. The ACT *Human Rights Act 2004* and the Victorian *Charter of Human Rights and Responsibilities 2006* make provision to this effect.

5.6.9 In a number of jurisdictions, including the ACT, Canada, New Zealand and the United Kingdom, special human rights bodies have been created with responsibility for reviewing legislation and statements of compatibility, inquiring into alleged breaches of human rights, conducting educational programs, reviewing the operation of human rights instruments and advising on policy relating to human rights. An alternative approach is to extend the functions of existing bodies in this regard. The Victorian model is an example of this. The Executive may also be charged with the function of providing annual reports to Parliament on the compliance with and implementation of human rights by government departments.

QUESTIONS

13. **What should be the role of Parliament in relation to human rights? Should there be a Parliamentary Committee with responsibility for scrutinising draft legislation for compliance with human rights standards?**
14. **Where Parliament proposes to enact legislation overriding human rights standards, should special procedures apply requiring the Member of Parliament proposing the legislation to explain the necessity for its non-compliance with human rights? Should such legislation be subject to time limits?**
15. **Should members of Parliament who propose new legislation be required to provide a statement of compatibility to Parliament concerning its compliance with human rights?**
16. **What should be the role of the courts in protecting human rights? Should courts be able to declare that legislation is inconsistent with human rights? Should courts, as far as possible, interpret laws to be consistent with the rights contained in any Charter of Rights?**
17. **If courts have the power to make declarations of inconsistency, should the Government be required to respond to such declarations?**
18. **What should be the role of the Executive in protecting human rights? Should government departments be required to report their compliance with and implementation of human rights standards in their Annual Reports?**
19. **Should a special body be created with responsibility for reviewing legislation, advising the government on human rights policy and conducting education programs on human rights? Should such a body have any other functions?**

5.7 If Tasmania were to enact a Charter of Rights should citizens be able to enforce their rights under the Charter directly in the courts?

5.7.1 Should individual citizens be able to bring an action in court if their human rights are breached? Most human rights instruments in other jurisdictions allow for this to occur (the United Kingdom, Canada, South Africa and the United States). The United Kingdom model also confines awards of compensation to those cases where no other remedies are appropriate. In the ACT and New Zealand there is no express provision for individuals to enforce their rights in court. However, in New Zealand, the Court of Appeal has read individual rights of action and remedies for breach into the *Bill of Rights Act 1990* (NZ). The ACT Bill of Rights Consultative Committee recommended that the ACT Act should follow the United Kingdom model and make explicit provision for individuals to enforce their rights in the courts and that it should also make express provision for remedies in the event of any breach. Following the first review of the ACT Act, the Chief Minister of the ACT, Jon Stanhope foreshadowed its amendment to implement the Committee's recommendations in this regard.⁴³

5.7.2 In line with the *Statement of Intent* issued by the Victorian Government, the Victorian *Charter of Human Rights and Responsibilities 2006* does not create any new causes of action and explicitly denies citizens the right to claim compensation for breach of their rights under the Charter. This does not, however, mean that Victorian citizens cannot otherwise enforce their rights under the Charter in court. Existing causes of action may be instituted pleading breaches of human rights and the courts may grant any available remedies, (for example an injunction, a declaration or an order for specific performance), apart from compensation in the event of a proven breach.

5.7.3 The primary concerns of those who oppose enabling citizens to enforce their rights in the courts directly are that it will open the floodgates to unmeritorious litigation and create a culture of division and complaint. It is felt that people should be encouraged to pursue other avenues to resolve disputes such as mediation, discussion and dialogue rather than litigation. Those who support provision for individuals to enforce their Charter rights in court argue that rights are not taken seriously if they cannot be enforced directly and their breach redressed by compensation. (For additional arguments on both sides of this debate see 5.1).

QUESTIONS

- 20. If there were to be a Charter of Rights in Tasmania should individual citizens be able to enforce their rights under the Charter directly in the courts?**
- 21. Should the Charter contain an express remedies clause? Should it confine the availability of compensation in any way?**

⁴³ Jon Stanhope, Standing Committee on Legal Affairs, above n 22.

5.8 If Tasmania were to enact a Charter of Rights what other steps should be taken to enhance the protection of human rights?

5.8.1 This question concerns the measures that might be necessary to ensure that people are aware of what a Tasmanian Charter of Rights does. It also seeks Tasmanians' views on what strategies, quite apart from a Charter of Rights, might be used to promote our understanding of rights and to create a strong culture of rights in Tasmania. In some jurisdictions, as noted above, special bodies have been created to monitor human rights protections, to advise governments on human rights policies, to provide guidance and advice to government departments and public authorities, to promote human rights awareness and to undertake education and training programs both in the community and throughout government. For example, in the United Kingdom, large-scale education and training of public servants, the police, the judiciary and the community occurred prior to the *Human Rights Act 1998* (UK) coming into force. Other measures that might be implemented include the auditing of human rights programs and the implementation of phased reviews of the Charter to ensure their on-going effectiveness and relevance to the community. This often entails considerable community input. All these measures also require financial commitment and support from governments.

QUESTIONS

- 22. What other steps should be taken to enhance the protection of human rights in Tasmania?**
- 23. If a Tasmanian Charter of Rights is enacted should it be reviewed at fixed intervals to see if any amendment is necessary?**
- 24. Are there any other matters relating to the protection of human rights in Tasmania that you would like to draw to the attention of the Tasmanian Law Reform Institute?**

Information on the Tasmania Law Reform Institute

The Tasmania Law Reform Institute was established on 23 July 2001 by agreement between the Government of the State of Tasmania, the University of Tasmania and The Law Society of Tasmania. The creation of the Institute was part of a Partnership Agreement between the University and the State Government signed in 2000.

The Institute is based at the Sandy Bay campus of the University of Tasmania within the Faculty of Law. The Institute undertakes law reform work and research on topics proposed by the Government, the community, the University and the Institute itself.

The Institute's Director is Professor Kate Warner of the University of Tasmania. The members of the Board of the Institute are Professor Kate Warner (Chair), Professor Don Chalmers (Dean of the Faculty of Law at the University of Tasmania), The Honourable Justice AM Blow OAM (appointed by the Honourable Chief Justice of Tasmania), Ms Lisa Hutton (appointed by the Attorney-General), Mr Philip Jackson (appointed by the Law Society), Ms Terese Henning (appointed by the Council of the University), Mr Mathew Wilkins (nominated by the Tasmanian Bar Association) and Ms Kate McQueeney, (nominated by the Women Lawyers Association).

Appendix A

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix B

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49 status of ratifications declarations and reservations

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1 General comment on its implementation

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2 General comment on its implementation

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3 General comment on its implementation

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant. General comment on its implementation

Article 4 General comment on its implementation

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation. General comment on its implementation

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6 General comment on its implementation

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention

and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7 General comment on its implementation

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9 General comment on its implementation

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10 General comment on its implementation

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12 General comment on its implementation

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14 General comment on its implementation

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17 General comment on its implementation

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18 General comment on its implementation

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the

fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19 General comment on its implementation

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20 General comment on its implementation

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23 General comment on its implementation

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24 General comment on its implementation

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25 General comment on its implementation

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27 General comment on its implementation

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this Article.

Article 41 General comment on its implementation

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information. 7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

Appendix C

International Covenant on Economic, Social and Cultural Rights

International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27 status of ratifications declarations and reservations

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized

in the present Covenant by all appropriate means, including particularly the adoption of legislative 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11 General comment on its implementation

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. General comment on its implementation

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12 General comment on its implementation

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

((d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13 General comment on its implementation

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14 General comment on its implementation

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17 General comment on its implementation

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22 General comment on its implementation

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.