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# **Bringing International Law Home: A Guide for Australian NGOs on the UN Human Rights System**

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# Aims of the Workshop

- To “de-mystify” the UN system...
    - Overview of the UN human rights system
    - Benefits of using the UN human rights system
  - Discussion of the important role that Australian NGOs can play...
    - How the UN system can be useful to NGOs
    - How can NGOs access the UN human rights system?
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# Overview of the UN Human Rights System

## ■ Charter Bodies

- Human Rights Council, formerly the Commission on Human Rights (abolished June 2006)
- Special Procedures (ie Special Rapporteurs)

## ■ Treaty Bodies

- Human Rights Committee (ICCPR)
  - Committee on Economic Social and Cultural Rights (ICESCR)
  - Committee on the Elimination of All Forms of Racial Discrimination (CERD)
  - Committee on the Elimination of Discrimination Against Women (CEDAW)
  - Committee on the Rights of the Child (CROC)
  - Committee on Persons with a Disability (Disability Convention)
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# Objectives of using the UN Human Rights System

- To secure the domestic implementation of international human rights standards
  - To use the outcomes of these mechanisms in litigation, policy development and advocacy
  - NGOs play a crucial role
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# International Human Rights Monitoring and Complaints Mechanisms

1. Periodic Reporting and 'Shadow Reporting'
  2. UN Special Rapporteurs, Working Groups
  3. Individual Complaints Mechanisms
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# 1. Monitoring and Reporting

- Purpose of reporting
    - Fulfilling the State party's international obligations
    - Opportunity to record, monitor and evaluate the implementation and realisation of human rights
    - Helps planning for the implementation of rights, and assessing goals and future needs
    - Promote a 'constructive dialogue' between the State party and the international community
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## 1. Monitoring and Reporting (cont)

- Australian Government's obligations
    - Periodic reports – every 2-5 years
    - Examination by the Committee
      - Concluding Observations
  - Role and participation of NGOs
    - Input into Australian Government Report
    - Shadow Reporting
      - “fills the gaps” in the dialogue between the UN Committees and the State party
      - Holds governments to account
      - Provides opportunity to bring IHR into domestic work
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# 1. Monitoring and Reporting (cont)

## ■ Advantages and disadvantages

### ■ General considerations:

- Committee's recommendations are 'optional' and 'unenforceable'
- Ambivalence of Australian Government?

### ■ Domestic considerations:

- Limited constitutional and legal framework in Australia
- Can influence executive decision-making and policy development

## ■ Case Studies:

- CEDAW
  - Currently – CAT, ICCPR and ICESCR
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## 2. UN Special Procedures

- What is a ‘special procedure’?
    - Independent expert entrusted with mandate to examine, monitor, research, report and advise on human rights issues
  - Mandates
    - Term of appointment generally 6 years and renewed for 3 years at a time
    - Country Mandates (13)
    - Thematic Mandates (28)
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## 2. UN Special Procedures (cont)

- Thematic Mandates:
    - Working Group on Arbitrary Detention
    - SR on Adequate Housing
    - SR on the Right to Health
    - SR on the Right to Education
    - SR on Extrajudicial, Summary or Arbitrary Executions
    - SR on the Rights of Indigenous People
    - SR on Extreme Poverty
    - SR on Violence Against Women
    - SR on Torture and other Cruel, Inhuman or Degrading Treatment
    - SR on Promotion and Protection of Human Rights while Countering Terrorism
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## 2. UN Special Procedures (cont)

- Functions - five key responsibilities:
    - Urgent appeals
    - Country visits
    - Follow-up
    - Normative work
    - Annual reports
  - Case Studies
    - UN Working Group on Arbitrary Detention – ‘Melbourne 13’
    - Country visit by the UN Special Rapporteur on Adequate Housing
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## 2. UN Special Procedures (cont)

### ■ Advantages:

- Timely and expeditious
- No need to 'exhaust domestic remedies'
- SRs, as independent experts, generally highly regarded

### ■ Disadvantages:

- Confidential between SR and Govt
  - Author may not be informed of outcome
  - Govt may simply ignore urgent appeal or refuse request for country visit
  - Generally make observations, not 'legal' recommendations
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## 3. Individual Complaints Mechanisms

- Use and purpose of individual complaints mechanisms
  - Admissibility and Process
    - Must be individual and must not be anonymous
    - State must be party to the treaty and optional protocol
    - Must be a violation of a right under the treaty
    - Complaint must be in writing
    - Domestic remedies must be exhausted
    - Must not be under examination by another international procedure
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### 3. Individual Complaints Mechanisms (cont)

- Determinations

- 'Views' of HRC often include recommendations

- Advantages and disadvantages

- Status of a Committee's view is only a recommendation
- Lengthy procedure – can take 2-4 years for a decision

- Case studies:

- Toonen v Australia
  - Young v Australia
  - A v Australia (see also Baban, Bhaktiaryi, D&E, Shafiq)
  - Winata v Australia
  - C v Australia
  - Brough v Australia
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## In your case work, consider...

- Could the international human rights system be useful?
  - Context – in the Australian legal, political and social landscape, the cupboard is sometimes very bare...
  - However, there is a need, opportunity and obligation to make use of international human rights law in litigation, policy development and advocacy
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## In your case work, consider...

- What mechanism is most appropriate?
  - Making use of General Comments, Communications and Concluding Observations (reactive)
  - Lodging an individual complaint (proactive)
  - Getting involved in Shadow Reporting process
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# Further information

- Shadow Reporting

Contact Teena Balgi (02) 9385 9569

- Special Procedures

- Individual Communications

See [www.hrlrc.org.au](http://www.hrlrc.org.au)

Contact: Ben Schokman 03 9225 6653

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