



Frequently Asked Questions on the Human Rights-based Approach in Development Cooperation

The following pages give concise answers to frequently asked questions regarding human rights protection in general and the human rights based approach to development cooperation, in particular. Each answer suggests links and reading for deeper examination of the respective question.

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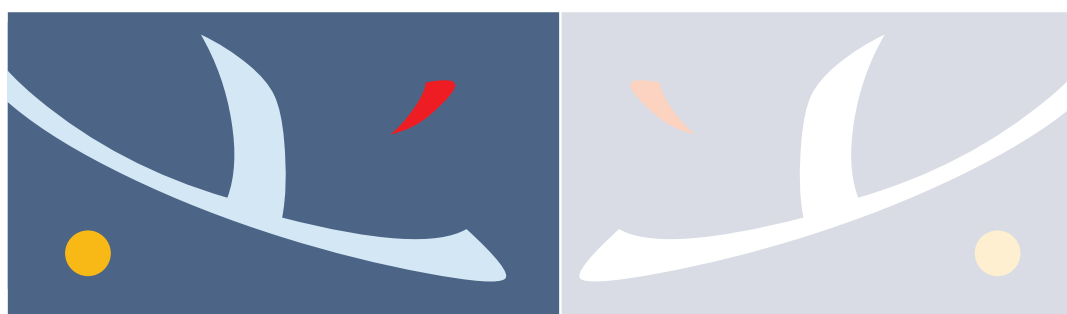
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Are human rights universal?

Yes. Human rights are inherent to all human beings solely because of being human, no matter where they live. Human rights originate in the equal dignity of all human beings and at the same time aim at protecting it. Since “All human beings are born free and equal in dignity and rights” (Article 1 Universal Declaration of Human Rights of 1948), human rights are universal.

This normative assumption on universality contained in the Universal Declaration of Human Rights has been spelled out as binding law in the international human rights treaties of the United Nations. The origins of contemporary human rights treaties can be traced back to the experiences of injustice during the two world wars and to the decolonization movement starting in the 1940s. Almost all human rights treaties have meanwhile been ratified by the majority of states and are the most important framework for the implementation of human rights.

States that have not ratified a particular treaty are still bound to observe certain human rights. The ban on genocide, torture, slavery, forced labour and discrimination on grounds of race is binding for all states under all circumstances (*ius cogens*). Also, the right to life is increasingly considered a peremptory norm.



Do regional human rights treaties contradict the universality of human rights?

No. In fact, regional human rights treaties complement the international system of human rights protection of the United Nations (UN). If they entail legally binding judicial enforcement mechanisms, they even offer a more effective way of protection human rights.

Core regional instruments are the [European Convention for the Protection of Human Rights and Fundamental Freedoms \(ECHR\)](#) of 1950, the [American Convention on Human Rights \(ACHR\)](#) of 1969, and the African Charta on Human and Peoples' Rights of 1981 ([Banjul Charter –PDF, 66 KB, not barrier-free](#)). All three regional human rights systems have established a human rights commission and/or a human rights court. The [Arab Charter on Human Rights](#) which entered into force in 2008 has not yet set up an Arab Court for Human Rights. According to the UN the [ASEAN Human Rights Declaration](#) of 2012 retains language that is not consistent with international standards.

Like international human rights law, all regional human rights treaties refer to the universality of human rights and relate explicitly to the Universal Declaration of Human Rights of 1948.

What is the difference between signing and ratifying a treaty?

By signing a human rights treaty a state declares that it has agreed upon the content of the treaty, and intends to work towards its objectives. But only the ensuing ratification leads to a legally binding obligation under international law. Ratification is usually done by the head of state who represents it internationally after approval by the national legislative authority.

In addition, the term ratification also stands for the domestic procedure that translates treaties under international law into domestic law. In many legal systems, e.g. in Germany, the legislative body has to pass the treaty in question. That is why it can take a considerable amount of time until a signed treaty gets ratified. In other legal systems (e.g. USA, Austria, Netherlands, Spain, France) human rights treaties are directly applicable, i.e. without any implementing legislative act. Nonetheless, an approval by the legislator is generally necessary.

Like other treaties under international law, human rights treaties only enter into force once a certain number of states, stipulated in the treaty, has ratified them. Sometimes this happens rather fast: the Convention on the Rights of the Child (1989) entered into force within a year; the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), however, were open for ratification for ten years before entering into force.

Further Reading

Office of the High Commissioner for Human Rights: [International Human Rights Law](#).

How many states have ratified human rights treaties?

A very large number of states have done so. On a quarterly basis, the Office of the UN High Commissioner for Human Rights (OHCHR) records the number of states that have ratified human rights treaties (OHCHR Table – EXCEL document). Updated lists of ratifications can also be found at the website Bayefsky.

<i>Human Rights Treaty</i>	Year of adoption/entry into force	Number of ratifying states
International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)	1965/1969	175
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966/1976	160
International Covenant on Civil and Political Rights (ICCPR)	1966/1976	167
Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)	1979/1981	187
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984/1987	153
Convention on the Rights of the Child (CRC)	1989/1990	193
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW)	1990/2003	46
Convention on the Rights of Persons with Disabilities (CPD)	2006/2008	126

<i>Human Rights Treaty</i>	Year of adoption/entry into force	Number of ratifying states
Convention for the Protection of all Persons from Enforced Disappearance (CED)	2007/2010	37
(Last update: December 2012)		

How are human rights implemented and how is this monitored?

Human rights treaties are legally binding treaties. The parties to the treaties (“state parties”) are responsible for their implementation, and under an obligation to do so. Thus, the state and its agencies are called “duty bearers”.

To implement human rights treaties domestically, duty bearers have to:

- adapt existing laws or pass new laws;
- change or adapt administrative or financial measures;
- issue national action plans and similar programmes;
- guarantee and facilitate access to legal protection if someone feels violated in his or her human rights;
- regularly review and evaluate the results of these measures.

Next to domestic courts, civil society organizations play an important role in the implementation of human rights, and so do National Human Rights Institutions and the media. They can inform about human rights, promote the ratification of human rights treaties, document violations of human rights as well as monitor, call for and support the implementation of human rights obligations.

Two recent human rights treaties even oblige states to establish national monitoring mechanisms: the Optional Protocol to the UN Convention against Torture, and the Convention on the Rights of Persons with Disabilities (CRPD). In Germany, the National Agency for the Prevention of Torture was founded in 2008, and the CRPD National Monitoring Body was established in May 2009 at the German Institute for Human Rights.

Further Reading

Gesellschaft für Internationale Zusammenarbeit (2011): National Human Rights Institutions. (PDF, 295 KB). 10 pp.

OHCHR: National Plans of Action for the Promotion and Protection of Human Rights. Links to handbook and national examples,

What is the role of the United Nations?

At the international level, various bodies within the United Nations system monitor the compliance of states with their human rights obligations. A short overview:

Treaty bodies in the international system of human rights protection

Treaty bodies are independent expert panels created on the basis of the respective human rights treaty. They examine and evaluate the state reports about states’ implementation of treaty obligations and subsequently issue their comments in so-called concluding observations. (see question: What are concluding observations?). Most treaty bodies also decide upon individual complaints and some may take the initiative to initiate themselves inquiries into human rights violations.

The Human Rights Council

The Human Rights Council is the most important political human rights body of the United Nations (UN). Its 47 members are elected by the UN General Assembly. Since 2006, the Human Rights Council is tasked with the regular examination of the human rights situation within all UN Member States (Universal Periodic Review) In addition, the Council follows up on the situation in individual countries - in the form of country reports and resolutions. It also appoints Special Rapporteurs for specific topics or countries.

The UN High Commission for Human Rights, General Assembly and Security Council

The Office of the High Commissioner for Human Rights (OHCHR) is in charge of the coordination of human rights work within the system of the United Nations. Besides the head office in Geneva, it maintains regional and country offices and offers technical support for the implementation of human rights.

The UN General Assembly adopts human rights declarations and treaties by resolution. Furthermore, the General Assembly discusses and decides on many human rights issues.

Last but not least, the UN Security Council can impose political, economic or military sanctions against states who commit systematic and severe human rights violations, as it has done in 2011 against Libya in Resolution 1970.

Further Reading

Deutsche Gesellschaft für Internationale Zusammenarbeit (2011): [The ABC of Human Rights for Development Cooperation](#) (PDF, 220 KB). 7 pp.

Rathgeber, Theodor (2010): [Reviewing the UN Human Rights Council: Perspectives from Civil Society](#). Friedrich Ebert Foundation, Deutsches Institut für Menschenrechte, Forum Menschenrechte (PDF, 191 KB, not barrier-free). 13 pp.

Can a state denounce a human rights treaty it has ratified?

Yes, if a treaty explicitly permits it, as does for example Article 52 of the International Convention on Children Rights. However, the International Covenant on Civil and Political Rights (ICCPR), its Second Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women and the International Convention Disappearance do not permit a denunciation of the treaty. Regarding the ICCPR, this was confirmed by the Human Rights Committee in its [General Comment No. 26 on the continuity of obligations](#) from 1997. Before, the committee had already declined North Korea's denunciation and Jamaica's denunciation from the Second Optional Protocol to the ICCPR.

When a state finds itself in a state of emergency, some civil-political human rights may be temporarily restricted ("derogation", Article 4 ICCPR). However, a state of emergency always has to be officially declared and accounted for, and has to be limited in time. Some human rights like the prohibition of torture cannot be derogated under any circumstances. All other human rights treaties do not allow the temporary derogation of particular rights in a state of emergency.

Further Reading

Human Rights Committee (2001): [General Comment No. 29: States of Emergency](#) (PDF, 130 KB, not barrier-free). 8 pp.

What are concluding observations?

The concluding observations or concluding comments are assessments of the implementation of human rights treaties by a state. They are issued by the respective [treaty bodies](#) after their examination of the [state reports](#). They also use additional information, for example, from national or international non-governmental organizations.

States have to submit the so-called state reports for the first time at the latest two years after the ratification of a human rights treaty and then subsequently every four to five years. Treaty bodies discuss these state reports at their meetings with representatives of the respective state. Non-governmental organizations and National Human Rights Institutions might be present, too. In the concluding observations the treaty bodies summarize their assessment of progress and deficits in the implementation of the human rights treaties in the particular state and give recommendations for an improved realization.

Furthermore, non-governmental organizations and National Human Rights Institutions often compile additional information, in the form of so-called parallel reports (sometimes called shadow reports), publicize the concluding observations and use them in calling for the necessary implementation measures.

Further Reading

O'Flaherty, Michael (2006): [The Concluding Observations of United Nations Human Rights Treaty Bodies](#) (PDF, 225 KB, not barrier-free). In: *Human Rights Law Review* 6 (1). 26 pp.

OHCHR (2011): [National Human Rights Institutions interaction with the UN Treaty Body System](#) (Word, 520 KB, not barrier-free). 21 pp.

Müller, Amrei / Seidensticker, Frauke (2007): [The Role of National Human Rights Institutions in the United Nations Treaty Body Process](#). Deutsches Institut für Menschenrechte (PDF, 342 KB, not barrier-free). 87 pp.

What are general comments?

General comments or general recommendations explicate rights mentioned in a specific human rights treaty. Thereby, they fill the abstract right with meaning.

Using state reports as an outset, the general comments are authoritative interpretations of individual human rights or of the legal nature of human rights obligations. General comments provide orientation for the practical implementation of human rights and form a set of criteria for evaluating the progress of states in their implementation of these rights.

General comments itself are not treaties and do not need ratification by treaty parties. Strictly speaking not legally binding, they have a highly authoritative character with legal basis.

Under public international law, Article 31 of the 1965 [Vienna Convention on Law of Treaties](#) (PDF, 135 KB, not barrier-free) stipulates that treaties need continuous contextual interpretation. Furthermore, with their initial ratification of the treaty, states accept that the treaty bodies play a key role in the interpretation of human rights treaties.

The highly authoritative character of the general comments can also be justified by the fact that they are the result of a comprehensive participatory process including interest groups of different regional, cultural, and religious context as well as non-governmental organizations.

Further Reading

Ando, Nisuke (2010): [General Comments/Recommendations](#) (PDF, 138 KB, not barrier-free). Max Planck Encyclopedia of Public International Law (OUP Online version).

Bayefsky: [Overview of General Comments by Treaty](#).

Is it not sufficient to refrain from committing human rights violations?

No. Avoiding human rights violations is crucial for the protection of human rights, but human rights do not only have to be respected but also protected and fulfilled.

What this tripartite obligation “to respect, protect and fulfil human rights” means is illustrated with respect to the right to work:

Obligation to respect: The state has to introduce appropriate measures to assure that third parties such as private enterprises also guarantee access to decent work and training without discrimination. Workers’ rights are not to be undermined by privatization, and a transition to a more flexible labour may not reduce the social protection of workers.

Obligation to protect: The state has to introduce appropriate measures to assure that third parties such as private enterprises also guarantee access to decent work and training without discrimination. Workers’ rights are not to be undermined by privatization, and a transition to a more flexible labour market may not reduce the social protection of workers.

Obligation to fulfil: The state has to recognize the right to work in the national legal system and to adopt a national policy on the right to work as well as a detailed plan for its realization. These include also measures to fight unemployment and a labour policy that stimulates economic growth and development, raises the population’s level of living and overcomes un- and underemployment. Compensatory mechanisms are to be created for the event of loss of employment. The unemployment rate is to be measured and observed by the state.

Source: Abridged from Committee on Economic, Social and Cultural Rights (2006): [General Comment No 18: The Right to Work](#) (PDF or Word, not barrier-free).

How to evaluate the implementation of human rights obligations in practice?

Concluding observations to the state reports and general comments explain how states are supposed to realize their obligations. Taken together, they provide a guideline for the implementation of particular human rights.

General comments propose suitable measures for the implementation of a human right and provide information on the core elements of particular human rights and overarching human rights principles.

Human right core elements evaluate qualitatively the fulfilment of a human right. When it comes to the rights enshrined in the International Covenant on Economic, Social and Cultural Rights these elements are usually: availability, accessibility (geographically and physically), affordability, and quality.

Furthermore, states have to follow human rights principles while implementing their human rights obligations. These principles are recurrent for all human rights:

- Do not exclude or patronize certain groups of people or individuals in the implementation process. (**equality of chances and non-discrimination**)
- Give everyone the possibility to articulate their point of view in political discourse and to participate in social and economic processes. (**participation and empowerment**)
- States have to act transparently and be accountable for their actions. (**transparency and accountability**)

Further Reading

Deutsche Gesellschaft für Internationale Zusammenarbeit (2011): [Promising Practices on the human rights-based approach in German Development Cooperation](#). Compilation. (PDF, 2.49 MB) 26 pp

Federal Ministry for Economic Cooperation and Development (2010): [Human Rights in Practice. Fact Sheets on a Human Rights-Based Approach in Development Cooperation](#) (PDF, 1.55 MB). 28 pp

What are Germany’s human rights obligations as a bilateral donor?

As a member of the United Nations, Germany is obliged to promote “universal respect and observance” of human rights (UN Charter, Articles 55 and 56) in all policy areas, including international cooperation. Germany thus has the same type of obligation as her partners. Furthermore, the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates that states realize economic, social and cultural rights by means of international cooperation.

In the process of development cooperation Germany has the following specific obligations:

- under no circumstances to take part in human rights violations through either acting or failure to act within the framework of bilateral or other forms of international cooperation (obligation to respect);
- to prevent human rights violations by German citizens or private enterprises abroad, provided these are under effective control of the state (obligation to protect);
- to go about development cooperation in such a way that it verifiably contributes to the fulfilment of human rights in the partner country (obligation to support to fulfil).

In its Concluding Observations of 2011 (para. 11, PDF, not barrier-free), the UN treaty body for the ICESCR urged Germany to make sure that development cooperation did not violate but contributes to human rights realization.

Further Reading

Committee on Economic Social and Cultural Rights (1990): [General Comment No. 2: International Technical Assistance Measures \(Art. 22\)](#)

Are poor countries obliged to implement human rights, too?

Yes. In general, the obligation to implement human rights does not depend on the wealth of a nation.

Especially the obligations to respect and protect human rights often do not require the commitment of large financial resources. This differs with respect to the obligation to fulfill human rights. This is why the International Convention on Economic, Social and Cultural Rights (ICESCR) stipulates that some economic social and cultural rights may be achieved progressively, depending on the existing resources ([Article 2, para. 1 ICESCR](#)).

However, even then states have to act upon some obligations immediately. These include:

- a ban on discrimination (see question: [What is discrimination?](#));
- effective steps towards a prompt realization of the economic, social and cultural rights enshrined in the ICESCR, e.g. through national programmes or action plans;
- detailed reasoning if there is any setback from an already achieved standard in the realization of a given human right (e.g. introduction of fees for public education institutions).

Most states will have to prioritize on how to implement human rights. Priorities have to be justified and backed up from a human rights perspective. (see question: [May a state prioritize a specific sector of development cooperation?](#))

What is discrimination?

Equality and the protection from discrimination constitute structural principles of human rights.

Discrimination takes place in different dimensions, direct and indirect. Direct discrimination may be the intended or immediate consequences of state actions due to real or ascribed particular characteristics (like origin, sex, disability, sexual orientation etc.). A prominent example is when law excludes women from the right to vote. But human rights law also entails protection from indirect forms of discrimination. These are regulations which appear to be neutral, but nevertheless have a de facto discriminating impact on a certain group of people. This is the case, for example, if school education is provided in a language that linguistic minorities have no command of.

Some types of discrimination are particularly challenging: imagine the consequences of a combination of individual behavioural patterns, social rules and/or institutional procedures. Taken together, this may create disadvantages for some groups of the population in central areas of life and may lead to social exclusion of whole sections of the population like e.g. indigenous groups. This is called structural or institutional discrimination.

Yet another form of discrimination is called multiple or multidimensional. In multidimensional discrimination several characteristics add up. Indigenous women, for example, are often discriminated against on grounds of their ethnic identity and on grounds of sex and gender.

Further Reading

Committee on Economic, Social and Cultural Rights (2009): [General Comment No. 20: Non-Discrimination in Economic, Social, and Cultural Rights](#).

Pincus, Fred L. (2000): [Discrimination Comes in Many Forms: Individual, Institutional, and Structural](#). In: Adams et al. (eds): *Readings for Diversity and Social Justice*

What is the relation between human rights and the MDGs?

Human rights and the Millennium Development Goals (MDGs) are complementary – conceptually, politically and in practice. In the Millennium Declaration (2000), the realization of human rights is conceptualized as a prerequisite to development and the fight against poverty; thus also for achieving the MDGs. According to the Millennium Declaration, the MDGs and sustainable poverty reduction cannot be accomplished without empowerment and participation of poor parts of society.

Human rights and the human rights-based approach enhance the strategies for achieving the MDGs: human rights move beyond

national averages so prominent in MDG monitoring and enable people-centered strategies to achieve the MDGs. Human rights require that those affected by poverty and discrimination shape the processes towards achieving the MDGs, and have a right to do so.

Human rights thus enrich the MDGs and the goals and strategies followed to realize them.

Further Reading

OHCHR (2008): [Claiming the Millennium Development Goals: A Human Rights Approach](#) (PDF, 1.10 MB, not barrier-free). 60 pp.

Alston, Philip (2005): [A Human Rights Perspective on the Millennium Development Goals](#). (Word, 303 KB). 62 pp.

United Nations: [HuRiLINK](#). UNDP website on human rights and MDGs

Are states obliged to provide social services free of charge to the poor?

Yes, some services are to be provided free of charge:

- The human right to education obliges the state parties to provide free basic education for all (Article 13 para. 2a [International Covenant on Economic, Social and Cultural Rights](#));
- The human right to food obliges states to provide adequate food if persons or groups cannot feed themselves, e.g. prison inmates ([Committee on Economic, Social and Cultural Rights: General Comment No. 12 on the right to adequate food, paras 15 and 17](#));
- Finally, the human right to a fair trial stipulates that state parties have to provide solicitors and interpreters to accused persons free of charge, when those persons do not have sufficient financial resources (Article 14 para. 3 d and [f International Covenant on Civil and Political Rights](#)).

However, the human rights to health and water do not oblige a state to provide services free of charge to the extremely poor. But when determining the fees for health services and drinking water, human rights laws requires that these are affordable for all sections of the population. While there is a wide array of policy choices on how to do so, it is the state's duty to ensure that everyone has access to these basic services.

Overall, the human rights-based approach implies that poorer households may not be burdened with disproportionately higher costs for basic services.

Do human rights permit support to better-off regions or groups?

That depends. The human rights principle of non-discrimination requires that public resources benefit socially or regionally disadvantaged regions and groups. Likewise, for development cooperation elite capture of development benefits poses a serious challenge to poverty reduction.

In order to effectively contribute to more equity, development cooperation may offer targeted support for persons in marginalized regions or for discriminated groups in order to enable them to access state services and infrastructure. Targeted support for comparably better-off regions or population groups is likewise possible but only if it can be shown to generate a substantial trickle-down effect for poorer groups.

Further Reading

De Albuquerque, Catarina, UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation (2012): [On the right track: Good practices in realizing the right to water and sanitation](#) (PDF, 3,6 MB, not barrier-free). 223 pp

May a state prioritize a specific sector of development cooperation?

Yes and no. On the one hand, the indivisibility and interrelatedness of human rights prohibit a rigid prioritization of one human right at the expense of another. On the other hand, human rights law encourages states to set priorities if limited resources do not allow implementation of all human rights at the same time. This is valid for recipient countries as well as for donors who usually work under request from recipients of development assistance.

It is mainly a political decision whether a state prioritizes health care or basic education, for example, and none that can be taken on the basis of human rights standards alone. But there are limits to political discretion: Human survival – in terms of shelter, food, water, and health – always needs to be guaranteed. In addition, states need to use the available resources for maximum human rights gains for persons and groups in vulnerable situations. (see question: [Are poor countries obliged to implement human rights, too?](#)).

While prioritizing, states also have to prove that they are using the maximum of resources available in order to realize all human rights systematically and effectively.

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Further Reading

Committee on Economic, Social and Cultural Rights (1990): [General Comment No 3: The nature of States parties obligations](#).

Office of the High Commissioner for Human Rights (2007): [Report on Progressive Realization of Economic, Social, and Cultural Rights \(PDF, 115 KB, not barrier-free\)](#).

What are reservations to human rights treaties, and what do they mean?

Reservations are declarations made by states upon ratification of international treaties. In them, states declare under which conditions they consider themselves to be bound by a treaty.

For example Germany withdrew her reservation to the Convention on the Rights of the Child (CRC) in 2011. The reservation excluded children without German citizenship or legal residency status from protection by the CRC. Most reservations have been made to the Convention on the Elimination of all Forms of Discrimination against Women, and primarily concerned those rights related to equal rights of women in marriage and divorce. A number of Islamic countries require that the respective human rights treaty provisions be interpreted in light of Islamic law.

Articles 19–21 of the [Vienna Convention on the Law of Treaties](#) of 1969 allow states to enter reservations unless these are refused by other states or contrary to the objective of the treaty in question. In its [General Comment No. 24 on reservations](#), the [Human Rights Committee](#) argued in 1994 that the provisions of the Vienna Convention cannot be applied to human rights treaties because:

- Human rights treaties do not regulate the relations between states, but guarantee the rights of individuals vis-a-vis the state. States should therefore not be allowed to rule on the validity of reservations, but the treaty bodies.
- All human rights are closely interrelated. Reservations to individual rights would impact the structure of the treaty, and unhinge its objectives.

In 2011, the International Law Commission – a panel of independent experts appointed by the UN General Assembly tasked with the development of international law - presented criteria for the assessment of reservations to human rights treaties which are based on the reasoning of the Human Rights Committee.

Further reading

Committee on the Elimination of Discrimination against Women (2008): [Working paper on reservations in the context of individual communications \(PDF, 46 KB, not barrier free\)](#).

International Law Commission (2011): Principles 3.1.5.6 and 3.2 in: [Guide to Practice on Reservations to Treaties \(PDF, 154 KB, not barrier free\)](#) (2011)

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