

Understanding legal terminology: A guide for non-lawyers

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International human rights treaties and domestic criminal and civil laws use specific legal terms and phrases which can be difficult for non experts to understand. This briefing note provides easy-to-understand definitions for non-lawyers of common legal terms and expressions.

Accession: Accession to a treaty indicates a State's agreement to be legally bound by a treaty. It has the same effect as ratification, but unlike ratification, accession to a treaty is not preceded by signing the treaty.

Act (of Parliament): Also called a *statute*, an Act of Parliament is a law passed by a parliament or legislature. Prior to being passed, a draft law is called a Bill.

Administrative law: Administrative law is a broad term used to refer to the legal framework which governs public administration and the powers, duties and functions of public authorities.

Age of criminal responsibility: The age at which a young person may be arrested and charged with a criminal offence (this is not the same as the *age of majority* – see below).

Age of majority: The age at which a person legally becomes an adult.

Appeal: An application to a higher court to reconsider a decision made by a lower court.

Basic Law: See Constitution.

Bill (of Parliament): A proposal for a new law under consideration by a parliament or legislature. When a Bill is introduced, it is debated and voted on by parliament. If the legislature votes to pass a bill, it becomes an Act.

Case law: Laws that are created by decisions (*judgments*) made by judges, as opposed to laws that are made by parliament. Also referred to as *precedent*, case law forms an important part of the legal framework of common law legal systems.

Child: A person who has not yet reached the age of majority. Article 1 of the Convention on the Rights of the Child (CRC) defines a child as a person below the age of 18 years, unless the age of majority is younger under the relevant law. The Committee on the Rights of the Child, the UN body responsible for monitoring the implementation of the CRC, has encouraged States to set the age of majority at 18 years.

Civil laws: The laws that govern relationships between individuals and groups of individuals. Contracts, property ownership, negligent and wrongful acts resulting in legal liability, for example to pay damages, are all regulated by civil laws.

Civil law legal system: Not to be confused with civil laws, a civil law system is one that is based on the European tradition. In civil law legal systems, judges have an investigatory role and laws are codified. In reality, many legal systems incorporate elements of both civil law legal systems and common law legal systems.

Codified: When laws are codified, they are gathered and arranged in a logical order. Penal Codes and Civil Codes are examples of codified laws.

Common law legal system: Common law legal systems are based on the English legal system, in which case law – the decisions made by judges – plays an important role in creating and developing the law. Most Commonwealth countries have common law legal systems.

Constitution: Also referred to as a *Basic Law* or *Fundamental Law* of a country, a constitution is the collection of laws and principles of a state that governs the powers and duties of the government and the rights and freedoms of individuals. A constitution is the highest domestic law. As well as defining the powers of government, constitutions also place limitations on the powers of the state and define the way that a state is governed, including the structure and functions of its institutions. A constitution may be written (codified), as in South Africa, or unwritten (uncodified), as in the United Kingdom.

Convention: Also referred to as a treaty, a Convention is a formal binding agreement between states.

Criminal law: The body of law that deals with behaviour and conduct that is prohibited by law and for which punishments that include the forfeiture of rights, such as imprisonment, can be imposed.

Customary law: Also referred to as *traditional law*, *informal law* or *non-statutory law*, customary law refers to rules and procedures that have been developed by communities. Customary laws are often not written down and questions about customary laws are usually decided by community leaders or elders, religious leaders or other traditional leaders. In some legal systems, customary laws exist alongside the formal legal system; these systems are known as *pluralist legal systems*.

Fair trial: A fair trial is a trial that has been conducted by a competent, independent and impartial judge or tribunal in accordance with appropriate legal procedures and safeguards. Fair trial rights are provided for in the International Covenant on Civil and Political Rights (ICCPR).

Fundamental Law: See Constitution.

Gender: Gender refers to the socially and culturally constructed roles, expectations, behaviour and attributes that are considered appropriate for women and men. Gender is not the same as sex.

Gender-based violence (GBV): Violence against a person which is perpetrated because of the victim's sex or gender identity. Violence includes physical, sexual, emotional, psychological or economic abuse.

General comment: General comments or general recommendations are authoritative guidance issued by treaty bodies to assist in the interpretation and application of international human rights treaties and conventions.

General recommendation: See General comment.

In force: When a law, regulation or other instrument is in force, it has been passed by the relevant legislature and has legal effect.

Informal law: See Customary law.

Intersectionality: The complex way in which the effects of multiple forms of discrimination (sex, race, gender, age, socio-economic status) overlap or intersect, especially in the experiences of marginalised individuals or groups. The theory was developed by the black feminist scholar, Kimberlé Crenshaw, to explain and examine black women's lived experiences of discrimination.

Judgment: A decision made by a court or tribunal.

Legally binding: If an instrument is legally binding, it creates obligations and responsibilities. A treaty is an example of a binding legal instrument.

Legislative scrutiny: A process to assess the effectiveness of laws. The scrutiny process that takes place before a Bill becomes a law is referred to as *pre-legislative scrutiny*. *Post-legislative scrutiny* refers to the process of assessing the impact and effectiveness of a law that is in force.

Legislature: An assembly of representatives, such as a parliament, with the power to make laws.

LGBT+: Lesbian, gay, bisexual, transgender or other groups, including intersex, asexual or questioning people.

Non-discrimination: Non-discrimination is the principle that people should be treated equally regardless of characteristics such as sex, gender, race, colour or religion. It is common for constitutions to include non-discrimination provisions to prohibit unfair treatment on the basis of such *protected characteristics*.

Non-statutory law: Laws that are not created by acts passed by legislatures but are developed from other sources (such as *customary law* or *case law*).

Optional Protocol: An optional protocol is a treaty that is added to an existing treaty or convention. The protocol may address procedural or substantive matters related to the subject of the treaty. States that have ratified the original treaty choose whether to ratify the optional protocol(s).

Pluralist legal system: In a pluralist legal system, multiple legal systems (such as *statutory law*, *customary law*, or *religious law*) exist within the same geographical area. The relationships between the different systems and their order of precedence are often addressed in the constitutions of countries with pluralistic legal systems.

Positive obligations: The term given to a state's obligations to act to secure the effective enjoyment and fulfillment of human rights, as opposed to the negative obligation to refrain from committing human rights violations.

Precedent: See Case law.

Protected characteristic: A characteristic such as sex, race, ethnicity, gender, sexuality, disability, religion on the grounds of which it is prohibited by law to discriminate.

Protection order: A civil (as opposed to criminal) order made by a court to protect a person from the behaviour of another. Protection orders are widely used in cases of domestic violence in order to prevent a perpetrator from contacting or approaching the victim or to exclude the perpetrator from a shared residence.

Quota: A fixed minimum or maximum number or percentage of a particular group that is permitted or required to do something. For example, a quota to ensure a minimum of 50% female parliamentarians.

Ratification: The process formally consenting to be bound by the terms and obligations of an agreement, such as a treaty. Ratification of a treaty comes after signature.

Religious law: A legal system based on religious teachings. In some countries, religious law forms the basis of the formal legal system. In other countries, religious law coexists alongside *statutory law* in the same way as *customary law*.

Reservation: A reservation is a statement made by a State Party when signing or ratifying a treaty to exclude or modify a provision of the treaty. The Vienna Convention on the Law of Treaties prohibits reservations which undermine the purpose and objective of a treaty.

Rule of law: A system of governance in which all people and entities – including the government – are accountable under the law. Important rule of law principles include fairness, transparency and judicial independence.

Sex: The biological differences between women and men.

Signing a treaty: Signing a treaty takes place prior to ratification and does not create any legal obligations but indicates a state's intention to comply with the terms of the treaty and to move towards formal ratification of the treaty.

State Party: A state that has acceded to or ratified a treaty or convention and is legally bound by its terms and obligations.

Statute: See Act.

Statutory law: Written laws created by a legislature.

Substantive equality: Substantive equality is concerned with outcomes and has special relevance in addressing disadvantage based on sex and gender. Substantive gender equality requires that equality is interpreted according to the broad context or realities of women's disadvantages and the impact of these circumstances in terms of eliminating disadvantage in outcome or result. The scrutiny of gender-neutral formal laws, policies and programmes that treat women and men alike becomes necessary to evaluate whether they will accelerate the achievement of gender equality in practice and eliminate discrimination against women.

Temporary Special Measures: Steps, such as the implementation of quotas, which are taken to accelerate the achievement of *substantive equality*.

Traditional law: See Customary law.

Treaty body: An independent committee of experts responsible for monitoring the implementation of international human rights treaties such as the International Convention on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Treaty: See Convention.

Tribunal: A body that is established to settle disputes. Types of tribunals include international and domestic courts, religious councils and traditional courts.