

SESSION 8

# HUMAN INTERNATIONAL LAW

HUMAN RIGHTS GENEVA CONVENTIONS

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### Human rights Geneva Conventions

#### Human rights: an overview

International human rights law began as a response to the horrors of war, in particular World War II, although the

Geneva Conventions had begun earlier. The formation of the United Nations gave human rights international legitimacy, particularly because many nations signed the United Nations Charter, which specifically mentions human rights (Preamble, Chapter I). Since the formation of the United Nations, it has passed many agreements and resolutions binding the signatories to respect human rights.

Additionally, it has set up tribunals to charge those suspected of egregious violations of human rights. Furthermore, several other organizations, created by various treaties, have come into existence. The Inter-American Commission on Human Rights, for example, ensures that signatories of the American Convention on Human Rights abide by that treaty. The European Convention on Human Rights binds members of the Council of Europe to the human rights obligations set forth in it. The Convention specifically mentions the Universal Declaration of Human Rights, and charges all signatories with upholding the basic principles of the document. Both the European and American Conventions on human rights have international tribunals in which to bring claims of violations of human rights. Additionally, several African nations have signed the African Charter on Human and People's Rights. Many nations have ratified international human rights instruments put forward by the United Nations. Thus, many human rights instruments, tribunals, and declarations have been created since World War II, some drawing inspiration for early human rights proclamations, such as the Universal Declaration. Human rights continues to be a growing body of international law.

Human rights are "inalienable rights of all members of the human family" (Universal Declaration of Human Rights). Thus, human rights are, in principle, applicable to every person, regardless of their nationality. The Universal Declaration gives an example of the

substance of human rights agreements (although it is not itself a treaty, many nations have agreed to abide by its principles, and it serves as an inspiration for treaties on human rights). Specifically, the Universal Declaration calls on nations to respect the rights to life, liberty, and security (Article 3). It also states that no person should be enslaved, tortured, or deprived of the right to a trial before a "national tribunal." Thus the Declaration proclaims negative rights, whereby national governments may not engage in certain activities against persons. Positive rights are also part of the Declaration. It states that everyone should enjoy the right to an education and basic standards of living. In doing so, it calls on nations to provide for all of their citizens without discrimination. Human rights, in substance, are protections against abuses by all states, and guarantees that people shall receive benefits from states. (Henkin, L. et al., *Human Rights*, pg. 6 (1999)).

International human rights law, through treaties, acts upon states. Documents such as the Universal Declaration of Human Rights proclaim the ideals of nations aspiring to respect the human rights of people of all nations. Legally, however, these documents do not bind countries. Rather, treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights provide the international legal framework to protect human rights. Under these treaties, nations agree to abide by certain restrictions on their conduct and to uphold certain freedoms and basic needs for citizens. The enforcement of human rights treaties naturally requires nations to comply with the terms of their agreements, and various approaches are used to enforce agreements. Specially appointed commissions and other bodies monitor compliance. Additionally, multilateral organizations such as the United Nations and the Council of Europe may impose sanctions or other measures against recalcitrant states. International tribunals provide an additional avenue to ensure compliance. Individuals may also be held accountable for human rights violations if they are brought before such a tribunal and convicted. A notable example is the International Criminal Tribunal for the former Yugoslavia, which was

set up to charge officers of the Serbian military who had allegedly committed war crimes during the breakup of Yugoslavia. It drew precedent from the Nuremburg Tribunals. The law of human rights is therefore an international body of law of treaties and decisions from international tribunals, although many individual states may have also enacted domestic laws that protect what are traditionally thought of as human rights.

The State of Human Rights for LGBT People in Africa



Nearly 50 African heads of state have been invited to gather in Washington, D.C. on August 4-6 for President Barack Obama's historic U.S.-Africa Leaders Summit. Announced by the White House as the "largest single engagement by any U.S. President with Africa", the summit will provide Obama Administration officials with a once-in-a-generation opportunity to directly engage these African leaders and their delegations on a number of critical issues.

We believe that the protection and preservation of the basic human rights of lesbian, gay, bisexual, and transgender (LGBT) Africans should be one of the many important areas of discussion. Millions of LGBT people throughout Africa face the threat of harassment, discrimination, prosecution, and violence on a daily basis, and others remain vulnerable to increasingly dangerous and concerted efforts to stoke state-sponsored homophobia and transphobia.

This joint report by the Human Rights Campaign Foundation and Human Rights First surveys 54 African nations and provides a brief overview of: existing anti-LGBT laws and efforts to enact new measures; publicly known instances of discrimination and violence; the presence and activity of LGBT rights organizations; and encouraging signs of support for LGBT people. Although limited progress is being made in some nations, the situation for LGBT Africans in many others remains dire and is growing increasingly perilous.

### Key Findings

- 37 African nations criminalize same-sex relationships
- 4 African nations allow for the death penalty against LGBT people in all or some of the country
- 2 African nations, Nigeria and Uganda, have implemented new laws in the last 12 months
- 2 African nations have laws against LGBT "propaganda"
- 1 African nation grants full marriage equality and constitutional discrimination protection to its LGBT citizens

President Obama declared in 2011 that the “struggle to end discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons is a global challenge, and one that is central to the United States commitment to promoting human rights.” Both Secretary of State John Kerry and former Secretary Hillary Rodham Clinton have affirmed this commitment, and the Obama Administration has taken tangible, concrete steps to advance the cause of achieving full LGBT equality abroad.

Africa is not simply waiting for assistance from outside forces. People on the ground throughout the continent are taking bold stances in support of human rights and equality for all. Activists are providing direct assistance to LGBT people, bringing cases of rights violations to court, growing public acceptance within their countries and demanding political change. This includes leaders of civil society as well as elected and appointed leaders; this report also aims to highlight some of those voices.

## **INTERNATIONAL LAW AND HUMAN RIGHTS**

The Department of International Law, Human Rights and Gender focuses on the interface between justice and the rule of law on the one hand, and sustainable peace and development on the other hand. Through trans-disciplinary epistemologies, the Department adopts a and ‘practice and policy oriented’ approach to addressing the structural causes of conflicts/disputes around the world, that include violations of the rule of law and human rights, and the challenges to global efforts at achieving gender equality. Three different strands for peaceful resolution of disputes are researched viz. international law, human rights and gender mainstreaming. Our teaching, based in the principles of education for peace, promotes student-centered learning and active participation through collaborative discussion. The Department also takes full advantage of the university’s unique positioning as an academic institution mandated by the United Nations and invites several leading practitioners from around the world to be part of the Department’s programmes. The Department also has key partnerships with important organizations such as the UNHCR, ICRC, WTO, Inter-American Court of Human Rights and ILO, which allow

students to not only receive trainings from experts in these organizations, but also receive certificates from some of them in addition to the academic credits.

Our students have advanced to successful careers with a wide variety of organizations, including international governmental organizations within the UN system and others such as the International Criminal Court or the World Trade Organization, government offices around the world, NGOs both local and international, and international law firms. Many have also continued in higher education, pursuing doctoral degrees in related fields. By joining the Department, students become part of a growing global network of scholars and practitioners working in the three fields aforementioned.

## Timeline

1815 The Congress of Vienna expresses international concern for human rights. Freedom of religion is proclaimed, civil and political rights discussed, and slavery condemned.

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1864 The First Geneva Convention protects the wounded in battle and gives immunity to hospital staff and the Red Cross during war.

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1919 The League of Nations is established with the aim of guaranteeing and protecting the basic rights of members of minority groups.

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1945 The United Nations is formed to build peace, protect human rights, oversee international law and to promote social progress and better standards of life.

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1948 The Universal Declaration of Human Rights (UDHR) outlines protection of rights for all people.

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1949 The Fourth Geneva Convention provides for the humane treatment and medical care of prisoners of war.

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1965 The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) resolves to abolish racial discrimination and promote understanding between races.

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1966 The International Covenant on Civil and Political Rights (ICCPR) protects the individual from any misuse of government power and affirms the individual's right to participate in the political processes of their nation.

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1966 The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees access to the resources needed for an adequate livelihood, such as food, health care, clothing, shelter, education and personal safety, and ensures participation by all in the life of society, religion and culture.

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1979 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women and sets up an agenda to end it.

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1984 The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines tortures and similar activities in order to prevent their use.

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1989 The Convention on the Rights of the Child (CRC) sets out the civil, political, economic, social and cultural rights of children, defined as those under 18 years of age.

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1993 The Vienna Declaration from the Second World Conference on Human Rights reaffirms the Universal Declaration on Human Rights, emphasising that human rights are universal and indivisible and rejecting arguments that some should be optional or subordinated to cultural practices and traditions.

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1995 The Beijing Declaration of The Fourth World Conference on Women declares "Women's rights are human rights".

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1999 The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour is adopted by the International Labour Organisation (ILO)

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2002 The International Criminal Court (ICC) is established. It is an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes.

civilian any person who is not a combatant

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civilian object any object that is not a military objective

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combatant member of armed forces, member of an armed group under the orders of a party to the conflict

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military objective object which by its nature, location, purpose or use makes an effective contribution to military action and whose destruction offers a definite military advantage

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hors de combat means "out of the fight" describes combatants who have been captured, wounded, sick, shipwrecked, and no longer in a position to fight

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principle of proportionality the expected number of deaths or injuries to civilians or damage to civilian objects must not be excessive compared to the anticipated military advantage

What is public international law? Rules that govern relationships involving states and international organizations. Covers a huge field involving war, human rights, refugee law, international trade, the law

of the sea, environmental issues, global communications, outer space

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What is private international law? Concerned with the class between laws from different jurisdictions and is sometimes referred to the conflict of laws.

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What is the International Court of Justice and what does it do? Part of the UN and based Hague, Netherlands

Only hear cases relating to conflicts between states

Also gives legal advice to UN bodies

Doesn't follow a precedent system

NZ is one of the 60 nations that has accepted the IJC's compulsory jurisdiction

All UN members must comply with IJC decisions that apply to them

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What is the International Criminal Court and what does it do? It was established in July 2002

Jurisdiction of the ICC includes genocide, crimes against humanity and war crimes

Put individuals on trial not their states

ICC can only act when nations won't or are unwilling to

Can only hear cases from participating nations or the SC can call upon others

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What is the United Nations? Formed in 1945 after WWII

Charge with the task preventing a WWIII

Encourages cooperation and compromise among different nations

Constitutional document establishing the UN is called the Charter of the UN

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What is the Security Council? It is an executive body made up of the 5 most powerful members of the allied forces that defeated Nazi Germany and imperial Japan

Us, Russia, China UK and France permanently sit on the SC and each has the power to veto any SC decision

These are joined by 10 other nations each of which get a 2 year temporary membership

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What does Article 24 of the charter state? The SC has primary responsibility of the maintenance of international peace and security and acts on behalf of UN members nations

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What does article 42 of the charter state? The council can order military action to maintain or restore international peace and security

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What does article 43 of the charter state? It instructs member nations to make military service available for UN use if necessary