

SESSION 4

# HUMAN INTERNATIONAL LAW

WHAT ARE HUMANS RIGHTS?

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### What are human rights?

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

### Universal and inalienable

The principle of universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.



All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. Some

fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

### **Interdependent and indivisible**

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

### **Equal and non-discriminatory**

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.



The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."

### **Both Rights and Obligations**

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The

obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.

### **International Human Rights Law**



The international human rights movement was strengthened when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10 December 1948. Drafted as 'a common standard of achievement for all peoples and nations', the Declaration for the first time in human history spell out basic civil, political, economic, social and cultural rights that all human beings should enjoy. It has over time been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with the International Covenant on Civil

and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the so - called International Bill of Human Rights.

A series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights and developed the body of international human rights. Other instruments have been adopted at the regional level reflecting the particular human rights concerns of the region and providing for specific mechanisms of protection. Most States have also adopted constitutions and other laws which formally protect basic human rights. While international treaties and customary law form the backbone of international human rights law other instruments, such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development. Respect for human rights requires the establishment of the rule of law at the national and international levels.

International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with

their treaty obligations and duties. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints or communications are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.

## **The Universal Declaration of Human Rights:**

### **A Magna Carta for all humanity**

Some 50 years have elapsed since the Universal Declaration of Human Rights was adopted by the United Nations on 10 December 1948. The Declaration was one of the first major achievements of the United Nations, and after 50 years remains a powerful instrument which continues to exert an enormous effect on people's lives all over the world. This was the first time in history that a document considered to have universal value was adopted by an international organization. It was also the first time that human rights and fundamental freedoms were set forth in such detail. There was broad-based international support for the Declaration when it was adopted. It represented "a world milestone in the long struggle for human rights", in the words of a UN General Assembly representative from France.

The adoption of the Universal Declaration stems in large part from the strong desire for peace in the aftermath of the Second World War. Although the 58 Member States which formed the United Nations at that time varied in their ideologies, political systems and religious and cultural backgrounds and had different patterns of socio-economic development, the Universal Declaration of Human Rights represented a common statement of goals and aspirations -- a vision of the world as the international community would want it to become.

Since 1948, the Universal Declaration has been translated into more than 200 languages and remains one of the best known and most often cited human rights documents in the world. Over the years, the Declaration has been used in the defense and advancement of people's rights. Its principles have been enshrined in and continue to inspire national legislation and the constitutions of many newly independent states. References to the Declaration have been made in charters and resolutions of regional intergovernmental organizations as well as in treaties and resolutions adopted by the United Nations system.

The year 1998 marks the fiftieth anniversary of this "Magna Carta for all humanity." The theme of the fiftieth anniversary--"All Human Rights for All"--highlights the universality, the indivisibility and the interrelationship of all human rights. It reinforces the idea that human rights--civil, cultural, economic, political

and social--should be taken in their totality and not disassociated from one another.

### **Drafting and adopting the Declaration, a long and arduous task**

When created in 1946, the United Nations Commission on Human Rights was composed of 18 Member States. During its first sessions, the main item on the agenda was the Universal Declaration of Human Rights. The Commission set up a drafting committee which devoted itself exclusively to preparing the draft of the Universal Declaration of Human Rights. The drafting committee was composed of eight persons, from Australia, Chile, China, France, Lebanon, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America. The United Nations Secretariat, under the guidance of John Humphrey, drafted the outline (400 pages in length) to serve as the basic working paper of the Committee.

During the two-year drafting process of the Universal Declaration, the drafters maintained a common ground for discussions and a common goal: respect for fundamental rights and freedoms. Despite their conflicting views on certain questions, they agreed to include in the document the principles of non-discrimination, civil and political rights, and social and economic rights. They also agreed that the Declaration had to be universal.

Personally dedicated to the task of preparing this Declaration, Mrs. Eleanor Roosevelt, who chaired the Human Rights Commission in its first years, asked, "Where, after all, do universal human rights begin? In small places, close to home -- so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

On 10 December 1948, at the Palais de Chaillot in Paris, the 58 Member States of the United Nations General Assembly adopted the Universal Declaration of Human Rights, with 48 states in favour and eight abstentions (two countries were not present at the time of the voting). The General Assembly proclaimed the Declaration as a "common standard of achievement for all peoples and all nations", towards which individuals and societies should "strive by progressive measures, national and international, to secure their universal and effective recognition and observance".

## **The Declaration, a vision of what the world should be**

Although the Declaration, which comprises a broad range of rights, is not a legally binding document, it has inspired more than 60 human rights instruments which together constitute an international standard of human rights. These instruments include the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of which are legally binding treaties. Together with the Universal Declaration, they constitute the International Bill of Rights.

The Declaration recognizes that the "inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world" and is linked to the recognition of fundamental rights towards which every human being aspires, namely the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and to enjoy in other countries asylum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment, among others. These are inherent rights to be enjoyed by all human beings of the global village -- men, women and children, as well as by any group of society, disadvantaged or not -- and not "gifts" to be withdrawn, withheld or granted at someone's whim or will.

Mary Robinson, who became the second United Nations High Commissioner for Human Rights in September 1997, expressed this opinion when she declared that "human rights belong to people, human rights are about people on the ground and their rights". She has stated that she would take a "bottom-up" approach in promoting human rights, an approach which reflects the first words of the United Nations Charter, "We the Peoples".

The rights contained in the Declaration and the two covenants were further elaborated in such legal documents as the International Convention on the Elimination of All Forms of Racial Discrimination, which declares dissemination of ideas based on racial superiority or hatred as being punishable by law; the Convention on the Elimination of All Forms of Discrimination Against Women, covering measures to be taken for eliminating discrimination against women in political and public life, education, employment, health, marriage and family; and the Convention on the Rights of the Child, which lays down guarantees in terms of the child's human rights.

## **International mobilization in favor of the Declaration: Government commitment**

At the World Conference on Human Rights held in Vienna (Austria) in June 1993, 171 countries reiterated the universality, indivisibility and interdependence of

human rights, and reaffirmed their commitment to the Universal Declaration of Human Rights. They adopted the Vienna Declaration and Programme of Action, which provides the new "framework of planning, dialogue and cooperation", to enable a holistic approach to promoting human rights and involving actors at the local, national and international levels. The five-year review of the Vienna Programme of Action will also take place in 1998. This review provides a substantive dimension to the fiftieth anniversary, which many human rights activists and professionals see as a time for States to renew their commitment to the promotion and protection of human rights.

It is a time for Governments to ensure that the rights set forth in the Declaration are reflected in their national legislation and to move to ratify those international human rights treaties that are still pending. Governments could consider formulating and implementing a pro-active strategy in favour of the promotion of and respect for human rights. This could be translated into action by adopting national plans of action for advancing human rights and fostering human rights education. This anniversary also provides the opportunity for more countries not only to condemn blatant violations of human rights but also to take responsibility and action to break the cycle of impunity whenever human rights are violated.

### **Public awareness campaign**

The fiftieth anniversary is a time to promote public awareness of the meaning of the Universal Declaration and its relevance to our daily lives. Providing information about human rights in the languages understood by peoples everywhere is one aspect of a global public awareness campaign. Falling during the Decade for Human Rights Education (1995-2004), the anniversary also provides another focus for education and action. In addition to the 200 language versions already available, a number of other local language translations are to be released for the fiftieth anniversary.

The fiftieth anniversary of the Universal Declaration is an opportunity for people worldwide to commemorate the adoption of this landmark document. It also represents an opportunity to mobilize all strata of society in a reinvigorated and broad-based human rights movement. The involvement of civil society and non-governmental organizations in fighting for and demanding recognition of basic rights has played a central role in the advancement and promotion of human rights around the world. National Committees have already been set up in many countries, with the aim of undertaking activities to mark the Anniversary.

Grass-roots movements to encourage entire communities to know, demand and defend their rights will send a positive and strong message: that people everywhere are adamant that human rights should be respected. At local level,



concerned citizens can approach their congressional or parliamentary representatives and ask their Governments to ratify international human rights treaties if they have yet not done so.

## **The United Nations**

In accordance with the recommendations made at the 1993 World Conference on Human Rights for increased coordination within the United Nations system, Kofi Annan, Secretary-General of the United Nations, stated, "I will be a champion of human rights and will ensure that human rights are fully integrated in the action of the Organization in all other domains". Human rights, indeed, cut across all the work of the United Nations, from peacekeeping, child rights, health and development to the rights of indigenous peoples to education, social development and the eradication of poverty. Consultations have already taken place among all agencies and programmes of the United Nations, leading to strategies and campaigns being devised.

## **Challenges**

Since the inception of the United Nations, the promotion and protection of human rights have been at its very core. Reference to the promotion of and respect for human rights was made in Article 1 of the United Nations Charter and in the establishment of a commission for the promotion of human rights, mentioned in Article 68 of the Charter. Over the years, the United Nations has created a wide range of mechanisms for monitoring human rights violations. Conventional mechanisms (treaty bodies) and extra-conventional mechanisms (UN special rapporteurs, representatives, experts and working groups) have been established in order to monitor compliance of States parties with the various human rights instruments and to investigate allegations of human rights abuses. In recent years, a number of field offices have been opened at the request of Governments, *inter alia*, to assist in the development of national institutions for the promotion and protection of human rights and to conduct education campaigns on human rights.

Challenges still lie ahead, despite many accomplishments in the field of human rights. Many in the international community believe that human rights, democracy and development are intertwined. Unless human rights are respected, the maintenance of international peace and security and the promotion of economic and social development cannot be achieved. The world is still plagued with incidents of ethnic hatred and acts of genocide. People are still victims of xenophobic attitudes, are subjected to discrimination because of religion or gender and suffer from exclusion. Around the world, millions of people are still denied food, shelter, access to medical care,

education and work, and too many live in extreme poverty. Their inherent humanity and dignity are not recognized.

The future of human rights lies in our hands. We must all act when human rights are violated. States as well as the individual must take responsibility for the realization and effective protection of human rights.

#### 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

. . .

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

. . .

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

. . .

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

. . .

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