

Unit 3: Universal Human Rights Standards

Introduction and Overview

This unit covers the international human rights treaties and the rights they protect. It emphasises that there is international consensus and agreement on the meaning and scope of human rights. This has been distilled into an international human rights legal framework that sets standards, which are the minimum for all nations to follow. The unit traces the development of these standards in the United Nations, from the Universal Declaration of Human Rights in 1948 to the present.

The unit illustrates the various rights that make up the contemporary definition of human rights that is based on a shared international understanding. It indicates that the State is mandated to protect the human rights of all from violations by State and non-State actors. It outlines the international legal framework of human rights comprising the Universal Declaration of Human Rights and the seven core international human rights treaties, as well as the workings of the treaty system, including the responsibilities that come with ratification and the committees that provide the mechanism to invoke State responsibility to uphold human rights standards. In addition, this unit also provides links to other United Nations documents, conventions, guidelines and rules that protect human rights.

International Legal Framework for Human Rights

Inherent to membership of the international communities such as the United Nations, or regional groupings such as the African Union, the European Union, the Pacific Islands Forum, the Organization of American States, and the Commonwealth, is the recognition that the State has a central role in the protection, promotion and fulfillment of human rights. The principal duty to put in place the necessary institutions and mechanisms to

make human rights a reality lies with the State. It has a responsibility not only to ensure that its agents, whether they are the police, the army or civil administration, abide by internationally recognized standards, but also to ensure that others such as private companies, religious or ethnic groups or individuals, do not infringe the human rights of any person or community of persons. The idea that such private bodies have duties too is a recent one. While the international human rights regime is structured around the concept of the State, which has the primary responsibility to protect human rights, norms have been developed for transnational corporations and other businesses.

The international human rights obligations to which States commit impose a duty on in-country law making bodies at the national or provincial levels to formulate policies, draft laws, establish institutions that actively promote and protect the human rights of individuals and communities. This is part of a country's obligation to the international community.

Universal Human Rights Standards

The main international framework for human rights has been developed through the United Nations (UN). From its inception in 1945, the UN has affirmed its commitment to human rights. This is apparent most significantly through the drafting of the Universal Declaration of Human Rights.

Universal Declaration of Human Rights (UDHR): The UDHR is a ground-breaking document adopted by the UN General Assembly in 1948. It is actually a statement of principles on which to base a new world order that is designed to prevent the atrocities of the two world wars from being repeated. The UDHR states that "recognition of the inherent dignity and of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". It is the well spring from which all international treaties and declarations on human rights have emanated. The UDHR outlines minimum standards of human rights that each State must protect all people no matter who they are, what they do or from where they come.

With time, the standards laid down in the UDHR have been refined and included in separate documents that guarantee civil and political rights, economic social and cultural rights, rights against racial discrimination, women's rights, children's rights, rights against torture, rights of migrant workers and more. These documents, which are also called instruments, give human rights prominence and international legitimacy. Some, like the early International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights are broad in content, while others more recently focus on one particular theme. Together, they lay out the international community's agreement on particular issues.

Classifications of UN Instruments

UN instruments can be classified in different ways, including:

- Covenants, statutes, protocols and conventions – these are legally-binding for states that have ratified or acceded to them.
- Declarations, principles, guidelines, standard rules and recommendations – these have a strong moral force and provide practical guidance to states, although they may not have binding legal effect under international law.

Signing, Ratifying and Acceding to Treaties

Membership of the United Nations automatically means that a country accepts and subscribes to the principles of the Universal Declaration of Human Rights. However, specific obligations arise when treaties and covenants are signed, accessed, or ratified by countries. State involvement in treaties signifies a country's acceptance to abide by the international human rights regime, its commitment to the international community and to protecting the human rights of people living in-country in accordance with its principles.

The Process of Committing to International Movements

Signature: By signing a treaty, a State pledges its support for the treaty and indicates its intent to become bound by the provisions of the treaty once it comes into force. Having signed the treaty, the State should not act in a way that defeats the object and purpose of the treaty. However, the state is not actually legally bound by the treaty until it takes the further step of "ratification" or "accession". Sometimes a state will sign a treaty but then never ratify or accede to it.

Ratification: Both "ratifying" and "acceding" to a treaty mean that the State is willing to be legally bound by the obligations in that treaty. Countries that have previously signed the treaty can ratify it at the point that it comes into force. The process leading to ratification varies between countries. Sometimes the Head of State can directly ratify a treaty, however quite often ratification needs to be approved by parliament. The treaty then becomes binding for a set period (usually 30 days) after the instrument of ratification has been received by the Secretary-General of the UN. Commonwealth countries require the substance of international treaties to be incorporated in national law through specific legislation.

Accession: This is very similar to ratification in that it legally binds the State. The difference is just in the process. Countries that had not signed the treaty prior to the point it comes into force but then decide to become party to it, accede rather than ratify the treaty. As with ratification, the treaty becomes binding for a set period after the instrument of ratification has been received by the Secretary-General of the UN.

Reservations: A State may, when signing, ratifying or acceding to a treaty, formulate a reservation. This means that the State, while accepting the standards laid down in the treaty expresses its desire not to adhere to a particular article, section or clause in the treaty on the grounds that they do not confirm with customary laws or with the constitutional provisions of that country. Bangladesh, for instance, made reservations to the Convention on the Elimination of All Forms of Discrimination Against Women which calls upon States to embody the principle of equality between men and women in their national constitutions and laws among other things on the grounds that it conflicts with Sharia' law, or Islamic law. Reservations are only allowed if not expressly prohibited

under the treaty and if not incompatible with the object and purpose of the treaty. When a reservation is considered to be so broad that it negates the purpose of the treaty other countries may call it into question and object.

Another example of a reservation is The Gambia which has entered reservations to section 14 (3)(d) of the International Covenant on Civil and Political Rights which guarantees free legal aid to accused persons with insufficient means to defend themselves, on the grounds that the Constitution of the Gambia limits free legal assistance to only persons charged with capital offences, even though this arguably contravenes due process and the fundamental right to a fair trial guaranteed in the Universal Declaration of Human Rights.

The cause of human rights is greatly strengthened if countries whole-heartedly ratify international treaties without recording reservations, which go against the spirit of universality, inalienability and indivisibility of human rights. The World Conference on Human Rights has in fact called upon States to "consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them".

Core Treaties

The International Bill of Rights: The International Bill of Rights comprises the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights with its two optional protocols. Membership of the international community implies a corresponding duty to abide by the rights guaranteed in the Bill of Rights.

The rights outlined in the International Bill of Rights may be limited in specific circumstances in the interest of morality, public order and the general welfare in a

democratic society. However, there are certain rights that can never be suspended or limited, even in emergency situations.

These **non-derogable rights** are:

- The right to life;
- The right to freedom from torture;
- The right to freedom from enslavement or servitude;
- The right to protection from imprisonment for debt;
- The right to freedom from retroactive penal laws;
- The right to recognition as a person before the law;
- The right to freedom of thought, conscience and religion.

At present, in addition to the Universal Declaration of Human Rights – which is the seminal international human rights document – there are seven core human rights treaties. These were first adopted by the General Assembly of the United Nations, but, like all treaties, did not come into force until ratification by a certain number of states, usually between 20 and 35, depending on the treaty.

These treaties articulate not only the human rights standards but also the obligations on States, and additionally provide for a committee to be set up to monitor how that treaty is being implemented. These committees are referred to as treaty-monitoring bodies and are summarized below, along with each treaty:

International Convention on the Elimination of all Forms of Racial Discrimination (ICERD): This treaty came into force in 1969. It is intended to prevent any kind of discrimination and racism. It states that any doctrine of racial differentiation or superiority is false, morally condemnable, socially unjust and dangerous and cannot be justified in theory or in practice. It requires countries to condemn all forms of racial discrimination, whether based on race, color, descent, or national or ethnic origin, and to work towards eliminating racial discrimination. States must guarantee everyone's right to equality before the law, and to various political, civil, economic, social and

cultural rights. The ICERD recognizes that affirmative action measures may be necessary to achieve these ends.

The Committee on the Elimination of Racial Discrimination (CERD): This committee monitors how States fulfil their human rights obligations under the treaty and requires reports every two years. The Committee hears individual complaints of violations and also accepts complaints from one State about racial discrimination in another. It also has an early-warning procedure to be able to quickly respond to serious, urgent incidents.

International Covenant on Civil and Political Rights (ICCPR): This treaty was

Rights of the ICCPR

- Life
- No torture
- Equality
- Equal justice
- Self-determination
- Equality for minorities
- Privacy
- Democratic vote
- Free expression
- Religion
- association

adopted by the UN General Assembly in 1966 and came into force in 1976. It guarantees civil and political rights, which include: the right to life and to be free from torture, the right to equality and to be treated equally under the law, the right to self-determination and the rights of minorities, the right to privacy, the right to vote and to be part of governance, and the freedom of expression, religion and association. The ICCPR also has two optional protocols: one relating to individual complaints (if a country agrees to this Optional Protocol, then individuals can send complaints of violation in that country to the committee, explained below) and one relating to abolition of the death penalty.

The treaty also explains the obligations of States and provides for a Human Rights Committee to monitor how states comply with the treaty. All countries that are party to the ICCPR must report to the Human Rights Committee every five years on what they have done to promote these human rights and about the progress made. The Committee reviews these reports in public meetings, including representatives of the state whose report is being reviewed.

International Covenant on Economic, Social and Cultural Rights (ICESCR):

This treaty was adopted at the same time as the ICCPR, and also came into force in 1976. The economic, social and cultural rights in this document include: the right to work with fair conditions and to form trade unions, the right to an adequate standard of living including food, clothing and housing, the right to education, and the right to marry and to participate in cultural life.

The Committee on Economic, Social and Cultural Rights: This committee monitors the implementation of this treaty and requires countries to submit reports to the Committee every five years outlining the legislative, judicial, policy and other measures taken towards fulfilling their obligations. This Committee does not take up individual complaints, as ECOSOC to which the Committee reports, but it encourages economic, social and cultural rights to be progressively realized. However, increasing advocacy around this may lead to an Optional Protocol which would create an international complaint mechanism against violations of economic, social and cultural rights, similar to that which exists for the ICCPR.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

This came into force in 1981 and defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which impairs or stops the recognition, enjoyment or exercise by women of any human right or fundamental freedom”. Under the treaty, States must adopt legislation prohibiting all forms of discrimination against women, and must not act in a way that is discriminatory to women. However, CEDAW has the maximum reservations of any treaty. While there are no non-derogable rights and there is no specific article to which reservations are prohibited, incompatible reservations are not permitted. Some States have declared that they will not be bound by any provision that compels a change of law or that domestic law will prevail in case of conflict.

The Committee on the Elimination of Discrimination against Women is the monitoring body for this treaty. All countries must submit reports to this committee every four years. The Committee can make suggestions and general recommendations

on the implementation of the Convention; but cannot pronounce a State to be a violator of the Convention and as such does not pressure individual States to change their policies and legislation. An Optional Protocol came into force in 2000, which means that the Committee can now investigate individual cases as long as they relate to a country that has agreed to the Optional Protocol.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT): This treaty came into force in 1987. It describes torture as “any act which causes severe pain (physical or mental) to a person as a way of obtaining information or a confession, or to punish him/her for an act he/she or a third person has or is suspected of having committed”. Torture could be aimed at intimidating the victim or a third party and is committed with the consent of a public official, but does not include suffering that comes about as a result of legal penalty. States that are party to the Convention are required to take action to prevent torture in their territory. Of note is that exceptional or emergency circumstances such as war or an order from a superior officer cannot be used to justify torture.

The Committee Against Torture reviews States' reports, which are submitted every four years. It considers individual complaints, as well as complaints from one State about another. An Optional Protocol to the Convention allows on-site visits to places of detention in countries that have agreed to the Optional Protocol.

Convention on the Rights of the Child (CRC): This treaty came into force in 1990 and has more ratifications than any other convention as all but two members of the UN (USA and Somalia) have ratified it. The four guiding principles of the treaty are: non-discrimination (no child should suffer discrimination under any circumstances); best interest of the child (in any decision by State authorities that affects a child, the best interest of the child must be the first consideration); right to life, survival and development (as well as basic survival this includes the child's positive mental, emotional, cognitive, social and cultural development; and the views of the child (the views of the child on all matters affecting them should be considered, taking into account the age and maturity of the child). The CRC has two Optional Protocols: one on

preventing the involvement of children in armed conflict; and one on the sale of children, child prostitution and child pornography.

States must submit reports every five years to the Committee on the Rights of the Child on steps taken to put the Convention into practice and details of progress in their territories. The Committee operates under the guideline of the four principles laid down by the Convention and does not accept individual cases.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW): The newest of the core treaties, this came into force in 2003. It aims to prevent and end the exploitation of migrant workers (which includes both documented and undocumented migrants) throughout the entire migration process and lays out the obligations and responsibilities of both the sending and receiving States. In particular, it seeks to put an end to illegal or clandestine recruitment and trafficking of migrant workers and discourages the employment of migrant workers in an irregular or undocumented situation.

The Committee on Migrant Workers monitors this treaty and requires reports from States every five years, and will, in certain circumstances, consider communications from individuals claiming that their rights under the Convention have been violated.

Other Treaties

In addition to the International Bill of Rights and the core human rights treaties, the United Nations has stressed greater protection of human rights through conventions and declarations on specific issues. The UN also has prescribed standard basic minimum rules and principles to guide States in dealing with particular situations. There are many such instruments, of which some of the most relevant are listed following this unit.

Unit 3 Questions

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. What is the International Bill of Rights?
2. If a state has signed a treaty are its obligations different from if it had ratified or acceded to the treaty?
3. What are the core international human rights treaties?
4. What is the role of the committees associated with each core treaty?

Relevant Internet Resources

Human Rights Resources:

University of Minnesota Human Rights Library
<http://www1.umn.edu/humanrts/>

Human Rights Education Associates
<http://www.hrea.org/>

International Council on Human Rights Policy
<http://www.ichrp.org/>

United Nations and Human Rights:

Office for the High Commissioner of Human Rights
<http://www.ohchr.org/english/>

International Service for Human Rights
<http://www.ohchr.org/english/>

United Nations
<http://www.un.org/>

Other Treaties

Significant conventions: Indigenous and Tribal Peoples Convention, 1989 (No. 169); Worst Forms of Child Labour Convention, 1999 (No. 182); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; Convention on the Prevention and Punishment of the Crime of Genocide and Convention relating to the Status of Refugees.

Significant declarations: Declaration on the Rights of Mentally Retarded People; Declaration on the Rights of Disabled Persons; Universal Declaration on the Eradication of Hunger and Malnutrition; Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind; Declaration of Commitment on HIV/AIDS; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live.

Significant basic principles and rules: Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Standard Minimum Rules for the Treatment of Prisoners; Basic Principles for the Treatment of Prisoners; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Safeguards guaranteeing protection of the rights of those facing the death penalty; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Basic Principles on the Independence of the Judiciary; Basic Principles on the Role of Lawyers; Guidelines on the Role of Prosecutors; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; Declaration on the Protection of All Persons from Enforced Disappearance; and Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.

In addition to human rights law, there is a body of humanitarian law commonly known as the **Geneva Conventions** that prescribe the conduct of a country in times of war. These are: Geneva Convention relative to the Treatment of Prisoners of War; Geneva Convention relative to the Protection of Civilian Persons in Time of War; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

