

Chapter 2. Human Rights Background



A. What Are Human Rights?

The modern human rights era can be traced to struggles to end slavery, genocide, discrimination, and government oppression. After World War I, many scholars, activists, and some national leaders called for a declaration and accompanying international system—the League of Nations—to protect the most basic fundamental rights and human freedoms. Atrocities during World War II made clear that previous efforts to secure individual rights and curtail the power of governments to violate these rights were inadequate. The time was ripe for adoption of a globally recognized instrument that enshrined these values. Thus was born the Universal Declaration of Human Rights (UDHR) as part of the emergence of the United Nations (UN).

The UDHR was the first international document that spelled out the “basic civil, political, economic, social and cultural rights that all human beings should enjoy.”² The UN General Assembly ratified the declaration unanimously on December 10, 1948.³ The vote to adopt the UDHR was considered a triumph as it unified diverse nations and conflicting political regimes.

The UDHR was not legally binding, though it carried great moral weight. In order to give the human rights listed in the UDHR the force of law, the United Nations drafted two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The division of rights between these two treaties is artificial, a reflection of the global ideological divide during the Cold War. Though politics prevented the creation of a unified treaty, the two covenants are interrelated, and the rights contained in one covenant are necessary to the fulfillment of the rights contained in the other. Together, the UDHR, ICCPR, and ICESCR are known as the International Bill of Human Rights. They contain a comprehensive list of human rights that governments must respect and promote, including:

- Right to life;
- Equality;
- Security of person;
- Freedom from slavery;
- Freedom from arbitrary arrest/detention;
- Freedom of movement and residence;
- Due process of law;
- Freedom of opinion and expression;
- Freedom of association and assembly;
- Right to safe and healthy working conditions;
- Right to form trade unions and to strike;
- Right to adequate food, clothing, and housing;
- Right to education; and
- Right to health.

B. Why Are Human Rights Important?

Human rights reflect the minimum standards necessary for people to live with dignity and equality. Human rights give people the freedom to choose how they live, how they express themselves, and what kind of government they want to support, among many other things. Human rights also guarantee people the means necessary to satisfy their basic needs, such as food, housing, and education, so they can take full advantage of all opportunities. Finally, by guaranteeing life, liberty, and security, human rights protect people against abuse by individuals and groups who are more powerful. According to the United Nations, human rights:

*Ensure that a human being will be able to fully develop and use human qualities such as intelligence, talent, and conscience and satisfy his or her spiritual and other needs.*⁴

² Office of the High Commissioner for Human Rights (OHCHR), “International Human Rights Law,” accessed Jan. 13, 2014, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.

³ The 58-member General Assembly unanimously ratified the UDHR, with eight abstentions. United Nations, “A United Nations Priority,” accessed Jan. 13, 2014, <http://www.un.org/rights/HRToday/declar.htm>.

⁴ UN CyberSchoolBus, “Understanding Human Rights,” accessed Jan. 13, 2014, <http://www.un.org/cyberschoolbus/humanrights/about/understanding.asp>.

Human rights are not just theoretical; they are recognized standards to which governments are to be held accountable.⁵ There are five basic tenets underlying human rights as they apply to all people. Human rights are:

- **Universal** in that they belong to all people equally regardless of status. All people are born free and equal in dignity and rights.
- **Inalienable** in that they may not be taken away or transferred. People still have human rights even when their governments violate those rights.
- **Interconnected** because the fulfillment or violation of one right affects the fulfillment of all other rights.
- **Indivisible** as no right can be treated in isolation. No one right is more important than another.
- **Non-discriminatory** in that human rights should be respected without distinction, exclusion, restriction, or preference based on race, color, age, national or ethnic origin, language, religion, sex, or any other status, which has the purpose or effect of impairing the enjoyment of human rights and fundamental freedoms.⁶

C. Who Is Responsible for Upholding Human Rights?

Governments

Under human rights treaties, governments have primary responsibility for protecting and promoting human rights. But governments are not solely responsible for ensuring human rights. The UDHR states:

*Every individual and every organ of society ... shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.*⁷

This provision means that not only the government, but also businesses, civil society organizations, and individuals are responsible for promoting and respecting human rights.

When a government ratifies a human rights treaty, it assumes a legal obligation to respect, protect, and fulfill the rights contained in the treaty. Governments are obligated to make sure that human rights are protected by both preventing human rights violations against people within their territories and providing effective remedies for those whose rights are violated.⁸

⁵ U.S. Human Rights Fund, *Perfecting Our Union: Human Rights Success Stories from Across the United States* (New York: U.S. Human Rights Fund Public Interest Projects, March 2010), 6. Also available online at <http://www.justdetention.org/pdf/ushumanrightsfund.pdf>.

⁶ The Advocates for Human Rights, *Human Rights Toolkit* (Minneapolis, MN: The Advocates for Human Rights 2011), 4. Also available online at http://discoverhumanrights.org/uploads/human_rights_toolkit_final_2.pdf.

⁷ UN General Assembly, Universal Declaration of Human Rights, 1948, Preamble.

⁸ The Advocates for Human Rights, *Human Rights Toolkit*, *supra* note 6, at 5.

Government parties to a treaty must:

<p>RESPECT Governments must not curtail the scope of a right or interfere with people exercising their rights.</p> <p>GOVERNMENTS CAN RESPECT HUMAN RIGHTS BY:</p> <ul style="list-style-type: none"> • creating constitutional guarantees of human rights; • refraining from limiting individual freedom unless absolutely necessary for the well-being of society; • providing ways for people who have suffered human rights abuses by the government to seek legal remedies from domestic and international courts; and • ratifying and implementing human rights treaties. 	<p>PROTECT Governments must prevent private actors from violating the rights of others.</p> <p>GOVERNMENTS CAN PROTECT HUMAN RIGHTS BY:</p> <ul style="list-style-type: none"> • passing laws that prohibit individuals from committing human rights violations; • prosecuting or pursuing civil actions for crimes and other violations, such as domestic violence, hazardous work conditions, and discrimination; • educating people about human rights and the importance of respecting the human rights of others; and • cooperating with the international community in preventing and prosecuting crimes against humanity and other violations. 	<p>FULFILL Governments must take positive action to facilitate the enjoyment of basic human rights.</p> <p>GOVERNMENTS CAN FULFILL HUMAN RIGHTS BY:</p> <ul style="list-style-type: none"> • providing free, high-quality public education; • creating a public defender service to provide indigent people access to lawyers; • supporting civil society organizations and public participation in order to encourage freedom of expression and association; • assisting those people in need by through funding of social service programs; and • funding public education campaigns on the right to vote.⁹
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International Human Rights System

The international human rights system, a network of human rights treaties and standards created and monitored by international and regional human rights bodies, provides advocates with many avenues for improving human rights conditions. Where governments resist or ignore one means of human rights enforcement, advocates can encourage or compel compliance through other mechanisms. Advocates can also use international human rights decisions and recommendations as part of their education and advocacy strategies.

United Nations

The United Nations is a global organization made up of almost every country in the world. The United Nations promotes and protects human rights through several key human rights bodies:

- **Human Rights Council.** The UN Charter called for the creation of an inter-governmental body, which is today called the Human Rights Council, responsible for strengthening the promotion and protection of human rights worldwide. The Human Rights Council consists of 47 UN member countries that meet regularly to conduct a Universal Periodic Review of human rights in all countries around the world, to address situations of human rights violations, to receive complaints, and to make recommendations on how to improve the fulfillment of human rights. Through the **Special Procedures of the Human**



An interactive dialogue during the Universal Periodic Review

⁹ The Advocates for Human Rights, *Human Rights Toolkit*, supra note 6, at 7.

Rights Council, independent experts hold mandates to examine, monitor, advise about, and publicly report on either a human rights situation in a specific country or a thematic human rights issue.

- **Treaty Monitoring Bodies.** There are nine core international human rights treaties. Each treaty establishes a committee of experts to monitor implementation of the treaty provisions by countries that have ratified the treaty. Some treaty bodies also are able to take complaints from individuals and others whose human rights have been violated. The following are the nine core human rights treaties and their years of adoption:

Treaty	Acronym	Year
International Convention on the Elimination of All Forms of Racial Discrimination	CERD	1965
International Covenant on Civil and Political Rights	ICCPR	1966
International Covenant on Economic, Social and Cultural Rights	ICESCR	1966
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	1979
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT	1984
Convention on the Rights of the Child	CRC	1989
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	CRMW	1990
Convention on the Rights of Persons with Disabilities	CRPD	2006
International Convention for the Protection of All Persons from Enforced Disappearance	CED	2006

- **Office of the High Commissioner for Human Rights (OHCHR) and Other UN Agencies.** The OHCHR is the center of most human rights activities of the United Nations. It coordinates UN action to protect and promote human rights and includes country and regional offices that work with local partners to ensure implementation of and education about human rights standards. The OHCHR also supports the work of the Human Rights Council and the core treaty monitoring bodies. Several other agencies within the United Nations deal with human rights issues, including agencies such as the UN Development Program and the UN High Commissioner for Refugees.¹⁰

In addition to creating international human rights treaty law, the United Nations expands the world's understanding of the scope and content of human rights by drafting non-binding international standards that reflect international consensus on specific human rights issues, such as declarations, principles, and guidelines. Examples of these instruments include:

- Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in which They Live;
- Declaration on the Rights of Indigenous Peoples;
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- Indigenous and Tribal Peoples Convention;¹¹
- Standard Minimum Rules for the Treatment of Prisoners;

¹⁰ OHCHR, "Human Rights Bodies," accessed Jan. 15, 2014, <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>.

¹¹ Also known as International Labour Organization Convention No. 169 (1989).

- United Nations Principles for Older Persons;
- Guiding Principles on Business and Human Rights; and
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Other International Human Rights Bodies

In addition to the United Nations, there are other international organizations involved in creating, monitoring, and enforcing international human rights standards. Some of these international organizations focus on a particular category of human rights issues, while others restrict their focus to a geographic region.

The International Labour Organization (ILO) oversees a group of legally binding conventions that guarantee certain human rights related to work, especially “freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation.”¹²

The International Criminal Court (ICC) is an independent, permanent court that tries persons accused of the most serious international crimes: genocide, crimes against humanity, and war crimes.¹³ The ICC is based on the Rome Statute, a treaty ratified by 122 countries that provides jurisdiction over these crimes and complements the national legal system.

¹² International Labor Organization, “Conventions and Recommendations,” accessed Jan. 15, 2014, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>.

¹³ International Criminal Court, “About the Court,” accessed Nov. 10, 2010, http://www.icc-cpi.int/en_Menus/ICC/About%20the%20Court/pages/about%20the%20court.aspx.

Regional Systems for the Protection of Human Rights

In addition to the international human rights system, there are currently three region-specific, treaty-based systems for the protection of human rights. The three regional systems were each established under the auspices of a larger intergovernmental organization for regional cooperation: the Council of Europe, the Organization of American States, and the African Union:

Regional Systems for Human Rights Protection



EUROPE

The **European Court of Human Rights** enforces the Council of Europe's **European Convention on Human Rights**. The European Convention protects rights such as the right to life, freedom from torture, the right to vote, and freedom of expression. Several other human rights treaties in the European system provide additional recognition for minority rights, economic, social, and cultural rights, and the prohibition against torture. Individuals, groups, and governments can bring allegations of human rights violations to the court. The judgments of the court are binding and typically involve compensation for the victim of the violation.¹⁴ In order to join the European Union, a country must first ratify the European Convention on Human Rights and accept the jurisdiction of the European Court of Human Rights.



THE AMERICAS

The **Inter-American Commission on Human Rights** and the **Inter-American Court of Human Rights** together interpret and enforce the **American Convention on Human Rights** and the **American Declaration on the Rights and Duties of Man**. The Inter-American Commission investigates individual complaints, conducts independent monitoring, and refers cases to the Inter-American Court. The court rules on cases involving violations of the American Convention brought by governments or by the commission, and it offers advisory opinions on the correct interpretation of regional human rights treaties.



AFRICA

The **African Commission on Human and Peoples' Rights** acts as the primary human rights monitoring mechanism for the **African Charter on Human and Peoples' Rights**. The commission receives regular reports on human rights conditions from governments that are signatories to the charter. In addition, governments can lodge complaints before the commission, which then issues a report of its findings and recommendations.¹⁵ The African system has also promulgated human rights treaties on specific rights (refugees, children, women, and elections and good governance). The **African Court on Human and Peoples' Rights**, which delivered its first ruling in 2009, is the main judicial body in the African system.

¹⁴ European Court of Human Rights, "Information Documents: The Court in Brief," accessed Jan. 7, 2014, http://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf; Hellenic Resources Network, "European Convention on Human Rights and its Five Protocols," accessed Jan. 7, 2014, <http://www.hri.org/docs/ECHR50.html>.

¹⁵ African Commission on Human and Peoples' Rights, "History," accessed Jan. 7, 2014, <http://www.achpr.org/about/history>.

D. What Is the Connection Between Human Rights and Domestic Law?

International human rights law provides an important framework for guaranteeing the rights of all people regardless of the countries in which they live. International human rights law is contained in many different types of documents, including treaties, charters, conventions, and covenants. Despite the different official names, all of these documents are considered treaties and have the same effect under international law: a country that ratifies a treaty is legally obligated to protect the rights it describes.

Countries have different methods for joining or consenting to be bound by multilateral human rights treaties. Some countries use a process called accession which requires only one step—depositing the instrument of accession with the United Nations. Other countries require a two-step process of signing and ratification. For example, for the United States to become a party to a treaty, the President must first sign and then present it to the Senate, where two-thirds of the Senators must vote to ratify it.¹⁶ Regardless of the method for ratifying a treaty, however, the end result is the same. Through accession or ratification, a country agrees to be legally bound by the terms of the treaty.

Countries that ratify treaties are allowed to enter reservations to those instruments. Reservations are statements made by a country that modify the legal effect of certain provisions of the treaty. Entering a reservation allows a government to agree to most of a treaty, while excluding or limiting parts that might be controversial or unconstitutional in its own country.

The means by which an international treaty enters into national legislation differs depending on the parliamentary system and national procedures. In some countries, the constitution or other legal provisions allow direct application of the treaty. In others, national legislation must be passed first to make the provisions of the treaty applicable.

Even after treaty ratification, however, the strongest protection for the rights of individuals is often domestic law. In some countries, the constitution may provide fundamental, minimum human rights protections. For example, many of the rights contained in the U.S. Constitution are also found in the Universal Declaration of Human Rights (UDHR), especially rights related to political and civil liberties. Although the U.S. Constitution provides strong protections for civil and political rights, it lacks similar guarantees for the economic, social, and cultural rights identified in the UDHR. In the United States, fulfillment of those rights depends on national and state legislation rather than on the U.S. Constitution. U.S. courts also provide a remedy for people whose fundamental rights have been violated. Decisions of the U.S. Supreme Court specify fundamental rights that have analogs in human rights treaties, such as the presumption of innocence in a criminal trial¹⁷ and freedom of movement.¹⁸

Many diaspora community groups and others doing social justice work use multiple strategies, including human rights monitoring, documentation, and advocacy, to advance their missions. Integrating a human rights approach into social justice work keeps all avenues for advocacy open, whether at the local, national, or international level.

International Humanitarian Law

International Humanitarian Law, also known as the law of war or armed conflict, is a body of law created to place restrictions on the conduct of hostilities (the use of certain weaponry and means of warfare), to protect people who are not or who are no longer participating in the conflict (e.g., civilians, prisoners of war,

¹⁶ U.S. Senate, "Treaties," accessed Jan. 7, 2014, <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm>.

¹⁷ *Coffin v. United States*, 156 U.S. 432 (1895).

¹⁸ *Paul v. Virginia*, 75 U.S. 168 (1869); *Kent v. Dulles*, 357 U.S. 116 (1958).

wounded and sick, and humanitarian workers), and to confine the use of violence to the achievement of the objectives of the conflict.¹⁹ The overarching goal of international humanitarian law is to “ensure the safety and dignity of people in times of war.”²⁰

The rules of international humanitarian law set forth in the four Geneva Conventions (1949) and their two Additional Protocols (1977) differ in content and application depending upon the type of conflict. The most comprehensive international humanitarian law rules apply to situations of “international armed conflict” (i.e., conflicts between countries).²¹ Less extensive rules cover situations of “internal armed conflict” (i.e., those that take place within a country and involve one or more groups and possibly the country’s government).²²

Both international humanitarian law and international human rights law share a common goal of protecting the rights and dignity of individuals, but that goal is pursued in different ways in the two separate but overlapping bodies of law.²³ International humanitarian law operates in a specific emergency situation—armed conflict; human rights law applies more broadly and seeks generally to protect the rights of individuals regardless of the presence of conflict.²⁴ In addition, no derogations are allowed from international humanitarian law rules;²⁵ however, governments may suspend some human rights during a public emergency that threatens the country’s security.²⁶



Peter Maurer, president of the International Committee of the Red Cross, and Riyadh Ksheik, head of the Sahnaya sub-branch of the Syrian Arab Red Crescent, listen to a displaced woman tell her story.

¹⁹ American Red Cross, “Fact Sheet: International Humanitarian Law and Human Rights,” accessed Jan. 7, 2014, http://www.redcross.org/images/MEDIA_CustomProductCatalog/m21969262_IHL_and_HR_Factsheet.pdf; Office of the High Commissioner for Human Rights, “Fact Sheet No. 13: International Humanitarian Law and Human Rights,” accessed Jan. 7, 2014, <http://www.ohchr.org/Documents/Publications/FactSheet13en.pdf>.

²⁰ International Committee of the Red Cross, *IHL: The Basics of International Humanitarian Law* (Geneva: ICRC, 2005). Also available online at <http://www.icrc.org/eng/assets/files/publications/icrc-002-0850.pdf>.

²¹ American Red Cross, “Fact Sheet: International Humanitarian Law and Human Rights,” *supra* note 19.

²² American Red Cross, “Fact Sheet: International Humanitarian Law and Human Rights,” *supra* note 19.

²³ International Committee of the Red Cross, *International Humanitarian Law: Answers to Your Questions* (Geneva: ICRC, Oct. 2002), 36. Also available online at http://www.ehl.icrc.org/images/stories/resources/ihl_answers_to_your_questions.pdf.

²⁴ American Red Cross, “Fact Sheet: International Humanitarian Law and Human Rights,” *supra* note 19.

²⁵ *Ibid.*

²⁶ International Committee of the Red Cross, *International Humanitarian Law: Answers to Your Questions*, *supra* note 23, at 36.

Photograph and Image Credits

Chapter 2

page 5 United Nations, Photo No. 1292 (Mrs. Eleanor Roosevelt of the United States holding a Universal Declaration of Human Rights poster in English, November 1949.)

page 8 UN Photo/Jess Hoffman, UN Geneva Flickr stream

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