



MAKING A DIFFERENCE

An Introduction to
Human Rights



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER
Europe
Regional Office

70
YEARS

UNIVERSAL DECLARATION OF
HUMAN RIGHTS
#STANDUP4HUMANRIGHTS

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MAKING A DIFFERENCE

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Foreword



“All human beings are born free and equal in dignity and rights.” So begins Article 1 of the Universal Declaration of Human Rights. Drafted by representatives from all regions of the world, the Universal Declaration captures in one text the shared values of different cultures, religions, and ideologies and sets a common standard of achievement.

Human rights free us from fear. When respected and protected, they empower us to express our beliefs and opinions, to form associations, and to participate in public affairs. Human rights also free us from need, because they entitle everyone to education and an adequate standard of living. In a nutshell, human

rights call for every person’s safety, dignity, and potential to be fully realized.

Whether civil, cultural, economic, political, or social – all rights are universal, inalienable and interdependent; and we are all endowed with these rights, no matter who we are or where we come from. It is the responsibility of States and the international community to ensure a social and international order in which our rights can be fulfilled.

Much has been achieved since the United Nations General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948. Still, we should never take human rights for granted. More progress is urgently needed as violence, deprivation, discrimination or other human rights violations continue to inflict intolerable suffering on many women, men, and children on our planet. Whenever and wherever humanity’s values are abandoned, we are all at risk.

Around the world, the Office of the United Nations High Commissioner for Human Rights Office (OHCHR) works to protect and promote human rights in cooperation with the other entities of the UN family. The commitments made by States in the 2030 Sustainable Development Agenda open a new avenue for advancing human rights while making sure that no one is left behind.

Regional organizations and courts, national human rights institutions, equality bodies, civil society organizations, and human rights defenders are all vital in ensuring that national laws, policies, and programmes respect, protect and fulfill human rights. They also play essential roles in assisting victims of human rights violations.

Yet each one of us can contribute to making human rights a reality for all. And knowledge is a prerequisite for action. This publication is not a substitute for formal or informal human rights education, but its accessible approach seeks to equip any reader with a basic understanding of human rights concepts, so that you too can make a difference!

Birgit VAN HOUT

*Regional Representative for Europe
Office of the UN High Commissioner for Human Rights*

10 December 2018

About “Making a Difference”

What is “Making a Difference?”

“Making a Difference” is a user-friendly tool that explains the basic tenets of human rights in an easy-to-understand and accessible format. It equips the reader with a concise explanation of human rights as well as the international human rights framework and mechanisms. The objective of the publication is to make an understanding of human rights available to anyone who may be interested in learning more about them.

Who is “Making a Difference” for?

“Making a Difference” is for readers without a specific human rights background. However, even readers already familiar with human rights may find this publication a useful resource for references, case studies, and illustrations. The publication deliberately avoids legal terminology and includes only essential footnotes, with a view to presenting an accessible document for a broad readership.

How is “Making a Difference” structured?

“Making a Difference” is divided into six parts that complement each other. Part I introduces the reader to basic human rights concepts. Part II describes the international, regional, and national human rights protection systems, or human rights architecture. Part III gives a brief overview of civil, cultural, economic, political, economic, social, and cultural rights. Part IV covers the human rights protection of specific groups, such as women, children, persons with disabilities, and indigenous peoples. Part V sheds light on cross-cutting human rights issues, such as business and human rights, transitional justice, or human rights in conflict situations. Finally, Part VI briefly explains the links between human rights and the 2030 Agenda for Sustainable Development.

How to read “Making a Difference”?

“Making a Difference” can be read in its entirety, or it can serve as a resource for anyone interested in finding out more about one or more specific human rights concepts. We hope you enjoy reading it!

A full list of publications by the UN Human Rights Office is available at the following webpage: <https://www.ohchr.org/en/publicationsresources/pages/publications.aspx>

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List of abbreviations

ACTHPR	African Court on Human and Peoples' Rights
AU	African Union
ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CJEU	Court of Justice of the European Union
CIM	Inter-American Commission of Women
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSO	Civil Society Organization
EAC	East African Community
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECSR	European Committee of Social Rights
ECTHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
ECOSOC	Economic and Social Council
ECRI	European Commission against Racism and Intolerance
EU	European Union
FUR	Follow Up and Review
GA	General Assembly
GANHRI	Global Alliance of National Human Rights Institutions
HRBA	Human Rights Based Approach
HRC	Human Rights Council
HRCttee	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICPPED	International Convention for the Protection of Persons from Enforced Disappearances
ILO	International Labour Organization
LAS	League of Arab States
MDG	Millennium Development Goals
MoI	Means of Implementation
NGO	Non-governmental organization
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
NMRF	National Mechanism for Reporting and Follow-up
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
SADC	Southern African Development Community
SDG	Sustainable Development Goals
SG	Secretary General
SPT	Sub-Committee on the Prevention of Torture
UN	United Nations
UNCT	United Nations Country Team
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNHCR	United Nations Office of the High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOG	United Nations Office at Geneva
UPR	Universal Periodic Review
WG	Working group
WHO	World Health Organization

List of Case Studies

“Stand Up for Human Rights” uses case studies to illustrate how international, regional, and national human rights mechanisms function and how human rights law and standards are applied in practice. Some cases address the human rights situation of specific groups, while others focus on thematic human rights challenges. Some case studies are included to illustrate the links between human rights and Sustainable Development Goals, to offer readers a perspective on how respecting, protecting, and fulfilling human rights can promote the 2030 Agenda for Sustainable Development.

- Case 1:** Universal Periodic Review of Indonesia
- Case 2:** Special Rapporteur on the right to food, from her mission to the Philippines
- Case 3:** Human Rights Committee reviews Bangladesh
- Case 4:** Mtikila and others v. Tanzania (African Court on Human and Peoples’ Rights)
- Case 5:** M.C. and C.A. v. Romania (European Court of Human Rights)
- Case 6:** Defrenne v. Sabena (European Court of Justice)
- Case 7:** Polish police officer training (OSCE/ODIHR)
- Case 8:** Human rights of women living with HIV in the Americas (Inter-American Commission of Women)
- Case 9:** Yean and Bosico v. Dominican Republic (Inter-American Court of Human Rights)
- Case 10:** National Human Rights Action Plan of Liberia
- Case 11:** Land Restitution Report of the South African Human Rights Commission
- Case 12:** Brincat and others v. Malta (European Court of Human Rights)
- Case 13:** Statement by the UN human rights experts on unlawful killings of people suspected of drug-related offences in the Philippines
- Case 14:** Nitza Paola Alvarado and Others v. Mexico (Inter-American Commission on Human Rights)
- Case 15:** Mukong v. Cameroon (UN Human Rights Committee)
- Case 16:** Celepli v. Sweden (UN Human Rights Committee)
- Case 17:** Vitaliy Symonik v. Belarus (UN Human Rights Committee)
- Case 18:** Irina Fedotova v. Russian Federation (UN Human Rights Committee)
- Case 19:** Socialist Party of Turkey (STP) and Others v. Turkey (European Court of Human Rights)
- Case 20:** A.P., Garçon and Nicot v. France (European Court of Human Rights)
- Case 21:** Supreme Court of Justice (Quintana Coello and others) v. Ecuador (Inter-American Court of Human Rights)
- Case 22:** Ben Djazia and Bellili v. Spain (UN Committee on Economic, Social and Cultural Rights, 2017)
- Case 23:** SERAC and CESR v. Nigeria (African Commission on Human and People’s Rights)
- Case 24:** Water and sanitation project in the Democratic Republic of Congo (Solidarités International)

- Case 25:** Ensuring the right of persons with disabilities to work in Mauritius, Andorra, Paraguay, and Rwanda
- Case 26:** The assessment of facilities to ensure everyone’s right to health in Algeria
- Case 27:** The right to education of minorities and traditional communities in Brazil
- Case 28:** Female genital mutilation in Guinea
- Case 29:** Ensuring the right to sanitation of persons with disabilities in Nepal
- Case 30:** Undocumented children’s access to education in Germany
- Case 31:** Review of Uruguay by the CEDAW Committee
- Case 32:** Namibia’s Communal Land Reform
- Case 33:** Reintegration of child soldiers in Central African Republic
- Case 34:** INSCHOOL Project by the European Commission and the Council of Europe: “Inclusive schools: making a difference for Roma children”
- Case 35:** “Cities of Refuge”: Sheltering persecuted writers and artists
- Case 36:** Dial 100 Hotline in Brazil for Reporting Violence against LGBT Persons
- Case 37:** The enjoyment of human rights by older persons in Georgia
- Case 38:** Review of the Democratic Republic of Congo by the CRC Committee
- Case 39:** Report of the Sierra Leone Truth and Reconciliation Commission
- Case 40:** Empowering herder communities in Mongolia
- Case 41:** Human rights abuses in the palm oil sector
- Case 42:** Need for stronger protection of people at high-risk from hazardous substances in the Republic of Korea



Part I:

**An Introduction to
Human Rights**

What are human rights?

“All human beings are born free and equal in dignity and rights.”

The Universal Declaration of Human Rights

Human rights are inherent to all human beings. Regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, all human beings are equally entitled to all human rights. This is because human rights derive from the inherent dignity and worth of all human beings.

Human rights are inalienable. No one can be deprived of their human rights. Human beings’ enjoyment of their rights may be limited only 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.

Human rights are universal. Human rights apply equally and without discrimination to everyone, everywhere in the world. States shall promote and protect all human rights and fundamental freedoms, regardless of their political, economic, and cultural systems.

Human rights are indivisible, interdependent, and interrelated. The enjoyment of some human rights cannot be emphasized over others, as they are all equally important and equally essential to respecting the dignity and worth of every person. The improvement of one right facilitates the advancement of others. Likewise, the deprivation of one right often affects the enjoyment of others.

Human rights are guaranteed under international law. Human rights are first and foremost protected at national level by States. However, the grave human rights violations that took place during the Second World War led the international community to unite around common minimum standards of dignity for all human beings, in an effort to ensure that such violations would never be repeated. These standards have evolved into human rights law and are guaranteed at the international level. In 1948, the United Nations adopted the Universal Declaration of Human Rights, and since then they have adopted nine core international human rights treaties and their additional protocols. When States become parties to international human rights treaties, they agree to be bound by the obligations set forth in those treaties and to be held accountable for their duties and responsibilities.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

NO. OF ARTICLE	TITLE
Article 1	Free and equal
Article 2	Freedom and discrimination
Article 3	Right to life
Article 4	Freedom from slavery
Article 5	Freedom from torture
Article 6	Right to recognition before the law
Article 7	Right to equality before the law
Article 8	Access to justice
Article 9	Freedom from arbitrary detention
Article 10	Right to a fair trial
Article 11	Presumption of innocence
Article 12	Right to privacy
Article 13	Freedom of movement
Article 14	Right to asylum
Article 15	Right to nationality
Article 16	Right to marry and to found a family
Article 17	Right to own property
Article 18	Freedom of religion or belief
Article 19	Freedom of expression
Article 20	Freedom of assembly
Article 21	Right to partake in public affairs
Article 22	Right to social security
Article 23	Right to work
Article 24	Right to leisure and rest
Article 25	Right to adequate standard of living
Article 26	Right to education
Article 27	Right to cultural, artistic, and scientific life
Article 28	Right to a free and fair world
Article 29	Duty to the community
Article 30	Rights are inalienable

BOX 1: A HIERARCHY OF HUMAN RIGHTS?

The Universal Declaration of Human Rights sets a common standard of achievement for all peoples and all nations. It provides for universal, indivisible, and interdependent and interrelated human rights and fundamental freedoms.

Most of the rights affirmed by the international community in the Universal Declaration of Human Rights were given a legally binding status with the adoption by the UN General Assembly of two international human rights treaties in 1966: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

The fact that there are two covenants, however, does not mean that there are two distinct categories of rights. The indivisibility, interdependency, and interrelatedness of human rights means that there is no hierarchy of human rights. Civil and political rights, and economic, social and cultural rights are all equally important and essential. They equally contribute to the expression of a person's dignity.

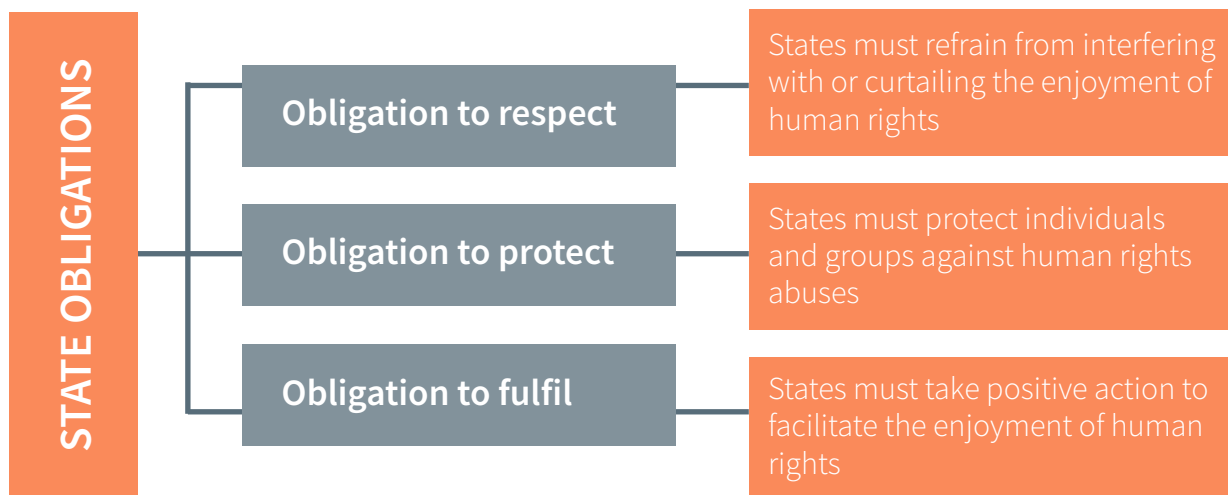
The right to health, for example, may depend on fulfilling the right to development, to education, or to information. Or a lack of access to an adequate living standard may lead to circumstances that breach the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.

“(...) All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

The Vienna Declaration and Programme of Action as adopted by the World Conference on Human Rights

Who is a duty-bearer?

The State is the principal duty-bearer under international human rights law. It has primary responsibility for respecting, protecting, and fulfilling the human rights of all persons in their jurisdiction.



For example, States are obliged under international human rights law to respect, protect, and fulfil the right to adequate food. Some examples of what States can do in this regard are:

Respect for the right to food

Refrain from any measure that would prevent access to adequate food, such as arbitrary eviction from land.

Respect for the right to liberty

Adopt laws or take other measures to prevent private companies from violating the right to food, for example by polluting land and water supplies.

Fulfil the right to food

Implement policies, such as land reform, to ensure the population's access to adequate food, and to increase the capacity of vulnerable groups to feed themselves.

Although States are the principal duty-bearers in the international human rights law system, human rights obligations may also arise for **non-State actors**, such as corporations, international organizations, paramilitary groups, or non-State armed groups. For example, transnational corporations should support and respect the protection of human rights and should make sure that they are not complicit in human rights abuses. However, this does not mean that the State can relieve itself of its human rights obligations by delegating them to non-State actors. In situations where a non-State actor does not have ties with the State, the State may still violate its human rights obligations if it fails to exercise due diligence, i.e. does not do everything in its capacity to protect the population from violations and abuses committed by non-State actors.

“(...) 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, both among the peoples of the Member States themselves and among other peoples of territories under their jurisdiction.”

The Preamble of the Universal Declaration of Human Rights

Human rights law

Following the adoption of the Universal Declaration of Human Rights, States drafted two international human rights treaties in 1966: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

BOX 2: THE INTERNATIONAL BILL OF RIGHTS

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), together with the Universal Declaration on Human Rights (UDHR), form the International Bill of Human Rights.

- **ICCPR + ICESCR + UDHR = International Bill of Human Rights**

In addition to the UDHR and the two Covenants, a series of international human rights treaties and protocols have been adopted throughout history at the global and regional levels. These instruments, together with customary international law, form the body of international human rights law.

By **signing and ratifying, or acceding to a treaty**, States acknowledge that they are legally bound by its provisions. This means that they are required to meet the obligations laid out in the treaty, including putting in place relevant domestic measures and legislation. Only the States that have become the State parties to a treaty are bound by its provisions.

States can become a State party through signature followed by ratification. Otherwise States can accede to a treaty, which entails the State's will to be bound by a treaty that it has not previously signed. If the law permits, States may also denounce or withdraw from a treaty.

State parties to treaties may be entitled to enter a **reservation** with respect to their acceptance of the obligations arising from the treaty. The objective of a reservation is to exclude or modify application of a right stipulated in the treaty. Any reservation must be compatible with the purpose and objective of the treaty. Contrary to reservations, a **declaration** offers a State party's interpretation of a provision without excluding or modifying its application for the State party.

In addition to legally binding international human rights treaties, there are so-called **soft-law instruments**, such as declarations, principles, and guidelines adopted at the international level, which contribute to the understanding, implementation, and development of human rights law.

Some human rights obligations are binding on all States regardless of whether they have ratified human rights treaties or not. These norms form **customary international law**, which is defined as "a general practice accepted as law". For example, human rights norms prohibiting apartheid, genocide, slavery, and torture constitute a part of customary international law.

Since the State is the principal duty-bearer, human rights are first and foremost protected at the national level. Most States have adopted in their constitutions and other laws provisions that guarantee the protection of human rights and fundamental freedoms. When they become parties to international human rights treaties, States undertake to put into place **domestic measures and legislation** compatible with their treaty obligations and duties. Accordingly, they must adopt, and if necessary, amend their national

laws, policies, and programmes, to uphold their human rights obligations.

Many international and regional human rights treaties provide for **mechanisms and procedures** that monitor their implementation. This can be, for example, reporting obligations that help States illustrate what measures they take in applying the treaty; an independent body monitoring the human rights situation in the country; or a court or committee that reviews individual complaints of alleged human rights violations, breaches of State obligations, or complaints brought by a State against another State. When performing their mandates, these mechanisms and procedures **interpret international human rights norms and standards**. In fact, human rights instruments are “living instruments” and must be interpreted in the light of present circumstances.

States may limit the enjoyment of certain rights as set out in the derogation clauses, but such limitation must not be arbitrary. States must respect the principles of **legality, necessity, and proportionality** when limiting rights. This means that the limitation must have a legal basis, be necessary in a democratic society, and be proportionate to the legitimate aim pursued. Whether a limitation is necessary and proportionate will vary from case to case.

When States do not comply with their human rights obligations, **human rights violations** occur. A violation may occur when a State illegally interferes with rights; when it fails to act or to prevent rights violations committed by private entities such as other individuals; or when it fails to take measures for the realization of human rights. States are responsible for rights violations when they are attributable to them; and when rights violations occur, States must remedy them. Where there is a consistent pattern and a systematic policy of violations that have reached a high degree of seriousness, this indicates **gross and systematic human rights violations**. Such a threshold may be determined by the nature of the particular right, the magnitude of the violation, the vulnerability of the victims, and the impact of the violation.

“(…) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

Article 2 of the International Covenant on Economic,
Social and Cultural Rights

Human rights, democracy and the rule of law

Respect for human rights and fundamental freedoms are essential elements of democracy and the rule of law. At the same time, democracy, the rule of law, and strong institutions are essential for the enjoyment of human rights and fundamental freedoms.

“The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

Article 21 of the Universal Declaration of Human Rights

BOX 3: THE PROGRESSIVE REALIZATION OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

When States fail to take measures for the realization of human rights, rights violations may occur. However, the international community has affirmed that certain rights can be progressively realized over time.

Because the economic and technical capacities of States vary, the International Covenant on Economic, Social, and Cultural Rights acknowledges that the fulfilment of economic, social, and cultural rights can only be achieved over time.

This does not mean that States have obligations only when they reach a certain level of economic and technical capacity. On the contrary, the Covenant implies that the realization of economic, social, and cultural rights is a continuous process, and States are obliged to take deliberate steps, using the maximum available resources to advance these rights.

There are also steps that must be taken immediately irrespective of resource availability, such as eliminating discrimination in access to economic, social, and cultural rights.

“[The rule of law] refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

Report of the UN Secretary General S/2004/616

BOX 4: THE RULE OF LAW

It is through the rule of law that human rights are turned from principles into reality. Where there is the rule of law

- all persons, institutions and entities are accountable under the law;
- laws are publicly announced, equally enforced, independently decided upon, and consistent with international human rights norms and standards;
- the supremacy of law is respected;
- all persons, institutions, and entities are equal before the law;
- laws are applied fairly;
- the principle of separation of powers applies, meaning the judiciary, the executive branch, and the legislature operate independently from one another;
- people participate in decision-making processes; and
- the principle of legal certainty is respected, and arbitrariness is avoided, ensuring procedural and legal transparency.

Accountability

Accountability refers to the obligation of duty-bearers to the rights-holders affected by their decisions and actions. Accountability from a human rights perspective has three elements: responsibility, answerability, and enforcement.



Responsibility requires that those in positions of authority have clearly defined duties and performance standards, enabling their behavior to be assessed transparently and objectively.

Answerability requires public officials and institutions to provide reasoned justifications for their actions and decisions to those they affect.

Enforcement requires public institutions to put mechanisms in place that monitor the degree to which public officials and institutions comply with established standards, impose sanctions on officials who do not comply, and ensure that appropriate corrective and remedial action is taken when required.

Reference Material

- » UN Human Rights Office, and Center for Economic and Social Rights; “Who will be accountable? Human Rights and the Post-2015 Development Agenda”; <http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf>.

Human rights education

Human rights education aims to build a universal culture of human rights. It provides knowledge about human rights and the mechanisms that protect them, and promotes universal values, such as equality and non-discrimination, human dignity, and respect for others' rights. It empowers individuals of every age to promote, defend, and apply human rights in their daily lives. As for children, human rights education should be integral to their right to a quality education that strengthens their capacity to enjoy the full range of human rights. Human rights education encourages everyone to uphold their own rights as well as the rights of others, while building an understanding of everyone's shared responsibility to make human rights a reality for all.

“The World Conference on Human Rights considers human rights education, training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace. (...) Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.”

The Vienna Declaration and Programme of Action

Reference Material

- » UN Human Rights Office and UN Educational, Scientific and Cultural Organization; “Plan of Action World Programme for Human Rights Education”; <http://unesdoc.unesco.org/images/0014/001478/147853e.pdf>.

Human rights-based approach

A human rights-based approach (HRBA) is a conceptual framework for the process of human development. It is based on international human rights norms and standards and is dedicated to promoting and protecting human rights. It puts human rights at the center of the preparation, design, implementation, monitoring, and evaluation of policies, regulatory measures, and spending programmes. International human rights norms and standards, as well as principles such as participation, non-discrimination, and accountability should guide all stages of policies, regulatory measures, and spending programmes.



HRBA derives its targets not only from international human rights instruments, but also from internationally agreed upon goals, targets, norms, or standards, such as sustainable development goals and associated targets as listed in the 2030 Agenda for Sustainable Development. It provides for sustainable results and greater return on investments, and contributes to social cohesion, which include helping to resolve conflicts between different stakeholders.

Reference Material

- » UN Human Rights Office; Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation; <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

HRBA empowers marginalized and excluded groups

- HRBA empowers rights-holders, focusing on excluded and marginalized populations and those whose rights are at risk of being violated

HRBA adopts a holistic view of the social environment and the multifaceted issues within it

- HRBA takes a holistic view of its sphere of influence: the family, the community, civil society, local and national authorities, and the relations between them.
- It adopts a holistic approach when gathering information and assessing and analyzing the multifaceted challenges in order to facilitate an integrated response.

HRBA bases itself on international human rights instruments and other related goals and targets

- HRBA derives specific results, standards, and conduct from international human rights instruments, conventions, and other internationally agreed upon goals, targets, norms, or standards.

HRBA ensures rights-holders' participation

- HRBA ensures that rights-holders participate in formulating policy and legislative frameworks and that these participatory and democratic processes are institutionalized locally and nationally.
- It builds the capacity of families, communities, and civil society to participate in relevant forums.

HRBA ensures transparency and accountability

- HRBA helps to formulate policy and legislative frameworks and budgets that determine which rights are addressed, what must be done and to what standard, and who is accountable. It ensures the availability of needed capacity and resources.
- It helps to make policy formulation processes more transparent, and empowers people and communities to hold those who have a duty to act accountable, ensuring effective remedies where rights are violated.

HRBA supports monitoring of State performance

- HRBA supports the monitoring of State commitments via the recommendations of regional and international human rights mechanisms, and through public and independent assessments of State performance.

HRBA leads to sustainable results

HRBA leads to better sustained results by

- building the capacity of actors to engage in dialogue, fulfil their own responsibilities, and hold the State accountable;
- strengthening social cohesion through consensus achieved through participatory processes and by empowering the excluded and most marginalized;
- anchoring human rights entitlements within a framework of laws and institutions; and
- institutionalizing democratic processes.

Human rights impact assessment

Human rights impact assessment is the process of addressing the human rights implications of any planned action, including policies, regulatory measures, and spending programmes.

States have human rights obligations under international law, as well as obligations arising from other international agreements. Human rights impact assessment is a tool to ensure consistency and coherence between these obligations, and to overcome, or at least mitigate, the problems resulting from the fragmentation of international law.

Human rights impact assessment does not only concern States. Corporations and other business enterprises also have a responsibility to respect human rights, including by identifying, avoiding, mitigating, and remediating the human rights impacts of their actions. They should systematically identify, predict, and respond to the potential human rights impact of their business operations, as called for by the UN Guiding Principles on Business and Human Rights.

The process of human rights impact assessment should be guided by a human rights-based approach. An effective human rights impact assessment must be **independent; transparent; inclusive, and participatory**; must be **prepared by experts and sufficiently funded**; and must **feed into the decision-making process**.

BOX 5: KEY STEPS IN PREPARING A HUMAN RIGHTS IMPACT ASSESSMENT

There are a number of key steps in the process of preparing a human rights impact assessment of a trade or investment agreement:

- screening,
- scoping,
- evidence gathering,
- analysis,
- conclusions and recommendations, and
- evaluation mechanisms.

Reference Material

- » UN Human Rights Office and the Castan Centre for Human Rights Law, International Business Leaders Forum; “Human Rights Translated: A Business Reference Guide”; http://www2.ohchr.org/english/issues/globalization/business/docs/Human_Rights_Translated_web.pdf
- » UN Guiding Principles on Business and Human Rights; endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011.
- » Report of the Special Rapporteur on the right to food; “Guiding principles on human rights impact assessments of trade and investment agreements”; A/HRC/19/59/Add.5.

Gender integration/mainstreaming

Gender integration (or mainstreaming) is the process of assessing the implications of any planned action, including legislation, policies, or programmes in all areas and at all levels on the different sexes and genders. Its ultimate goal is to achieve gender equality.

Gender mainstreaming ensures high-quality and sustainable policies and programmes that benefit everyone without discrimination based on sex or gender, thus responding more effectively to society's needs. It promotes gender equality by ensuring that gender-based discrimination is not perpetuated in the design, implementation, monitoring, and evaluation of policies and programmes. This means both avoiding the creation or reinforcement of inequalities and identifying and addressing existing inequalities.

BOX 6: THE BEIJING DECLARATION AND PLATFORM FOR ACTION

In the Fourth World Conference on Women, States adopted the Beijing Declaration and Platform for Action, reaffirming their commitment to the implementation of the human rights of women and of girls, and upholding the goals of equality, development, and peace for all women. Gender integration or mainstreaming is an essential part of the Platform for Action in all policy areas, whether development or peace and security.

“Ensure the integration and full participation of women as both agents and beneficiaries in the development process and reiterate the objectives established for global action for women towards sustainable and equitable development set forth in the Rio Declaration on Environment and Development.”

The Beijing Declaration and Platform for Action

BOX 7: HOW IS GENDER MAINSTREAMING DONE?

- assessing the links between gender equality and the issue or sector being worked on;
- identifying opportunities to introduce gender perspectives in the work tasks undertaken; and
- identifying an approach to or methodology for successfully incorporating gender perspectives into the work tasks in a manner that facilitates influencing goals, strategies, resource allocation, and outcomes.

Reference Material

- » The Beijing Declaration and Platform for Action
- » UN Economic and Social Council; Report for 1997; A/52/3, 18 September 1997
- » Office of the United Nations Special Adviser on Gender Issues and the Advancement of Women (August 2001)



Part II:

Human Rights Mechanisms:

International, Regional and

National Protection of

Human Rights

1) The United Nations human rights system

The United Nations (UN) is an intergovernmental organization founded in 1945 with the **United Nations Charter** coming into force. The organization is currently made up of 193 Member States. All Member States are represented in the **General Assembly**, which is the main policymaking and representative organ of the UN. The assembly provides a forum in which States can exchange their views and solve their problems. Other main organs of the UN are the **Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat.**

The **Secretary-General** is the chief administrative officer of the organization, appointed by the General Assembly. A significant part of the organization's work is carried out by entities under the Secretariat (led by the Secretary-General), such as the Department of Peacekeeping Operations, the Office for the Coordination of Humanitarian Affairs, and the Office of the United Nations High Commissioner for Human Rights.

The primary purpose of the UN is to maintain international peace and security. Its mandate has three pillars: **(i) human rights, (ii) peace and security, and (iii) development.** However, human rights are also imbedded in the other two pillars. As former Secretary-General Kofi Annan said, "there can be no peace without development, no development without peace, and neither without respect for human rights".

The United Nations General Assembly adopted the Universal Declaration of Human Rights as "a common standard of achievement for all peoples and all nations". It represents the international community's expression of the rights to which all human beings are entitled, and lays out common aspirations that have galvanized people in the fight for their rights everywhere in the world. The UDHR initiated a process of rapidly developing international human rights law. Its content has also been enshrined in, and continues to inspire, the national constitutions and legislation of many States.

The Universal Declaration of Human Rights, as adopted by the UN General Assembly in Paris on 10 December 1948, along with the core international human rights treaties form the body of international human rights law, and therefore underpin the United Nations human rights system.

There are two sets of United Nations human rights bodies:

- **Charter-based bodies:** The United Nations Charter provides the legal basis for Charter-based bodies, or Charter bodies, that are mandated to fulfill the United Nations' purpose to promote and encourage respect for human rights. Most Charter bodies, such as the General Assembly and the Security Council, regularly address human rights issues.
- **Treaty-based bodies:** Treaty-based bodies, or treaty bodies, derive from specific human rights treaties that have established committees of experts to monitor treaty implementation.

United Nations High Commissioner for Human Rights

The High Commissioner for Human Rights is the lead human rights official of the United Nations. The High Commissioner heads the Office of the UN High Commissioner for Human Rights (the UN Human Rights Office, OHCHR) and leads the United Nations' human rights efforts. The High Commissioner comments on, investigates, and issues reports on human rights situations throughout the world.

The UN Human Rights Office has primary responsibility in the UN system for the promotion and protection of human rights. It works to empower individuals and groups of individuals (rights holders) and assists States and intergovernmental organizations (duty bearers) in upholding human rights.

BOX 8: THE MANDATE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

The mandate of the High Commissioner is described by the UN General Assembly Resolution (48/141):

- Promote and protect all human rights for all.
- Recommend that bodies of the United Nations system improve the promotion and protection of all human rights.
- Promote and protect the right to development.
- Provide technical assistance for human rights activities.
- Coordinate United Nations human rights education and public information programmes.
- Work actively to remove obstacles to the realization of human rights.
- Work actively to prevent the continuation of human rights violations.
- Engage in dialogue with governments in order to secure respect for all human rights.
- Enhance international cooperation.
- Coordinate human rights promotion and protection activities throughout the United Nations system.
- Rationalize, adapt, strengthen, and streamline the UN human rights machinery.

The UN Human Rights Office is part of the United Nations Secretariat and has its headquarters in Geneva. OHCHR's staff is based in 60 countries, in regional and country/stand-alone offices, United Nations peace missions and political offices, in United Nations Country Teams (UNCTs), as well as in OHCHR's New York Office. In executing its unique mandate, UN Human Rights cooperates with other UN entities, both from its headquarters and in the field.

BOX 9: THE UNITED NATIONS HUMAN RIGHTS MECHANISMS

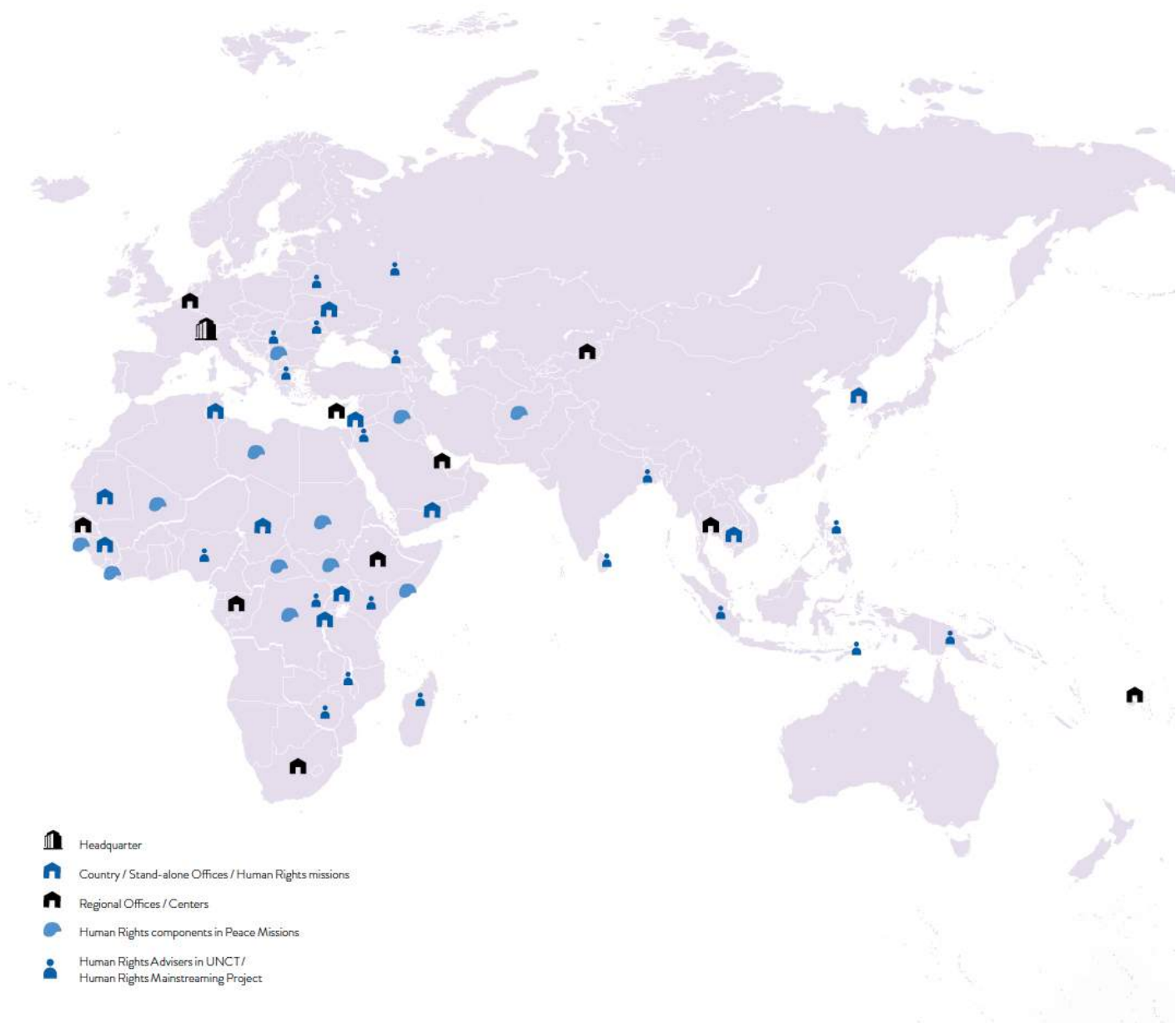
The UN Human Rights Office substantially supports the United Nations' human rights bodies and mechanisms:

- The Human Rights Council;
 - The Universal Periodic Review (UPR);
 - The special procedures;
- The UN treaty bodies.

Map of OHCHR field presences



Map of OHCHR field presences



a) Human Rights Council

The United Nations Human Rights Council (HRC) is an intergovernmental body composed of 47 States, which are elected by the UN General Assembly for three-year terms. The HRC meets in Geneva at least ten weeks a year. It is mandated by the UN General Assembly to strengthen the promotion and protection of human rights in the world.¹



The Human Rights Council chamber in Geneva, Switzerland.
Photo © UN Photo/Elma Okic

BOX 10: THE UNITED NATIONS HUMAN RIGHTS COUNCIL

The UN Human Rights Council

- discusses thematic and country-specific human rights situations;
- responds to human rights crises;
- makes recommendations on how to better implement human rights; and
- establishes international commissions of inquiry, fact-finding missions, and investigations in order to respond to human rights violations, and as such helps expose violators and bring them to justice.

i. Universal Periodic Review

The Human Rights Council undertakes a Universal Periodic Review (UPR) of the human rights record for all States. The reviews are conducted by a working group of Member States of the Council, although any State can take part in the dialogue with the States being reviewed². The UPR is a State-driven process, and through it States commit themselves to upholding human rights by taking specific measures. A UPR cycle – the period during which all States can expect a review – takes approximately four years.

What is the review based on?

- **National report:** Information provided by the State under review;
- **Compilation of UN information:** Information provided by the Special Procedures, human rights treaty bodies, and other UN entities;
- **Stakeholder report:** Information from other stakeholders including national human rights institutions (NHRIs) and non-governmental organizations (NGOs).

1 UN General Assembly Resolution; A/RES/60/251.

2 Universal Periodic Review; <http://www.ohchr.org/EN/HRBodies/UPR>.

How does the UPR take place?

- **An interactive dialogue occurs between the State under review and other States.**
- Any State can pose questions, comment, and/or make recommendations to the State under review.

What are the roles of the State under review?

- The UPR is a **State-driven process**, which provides an opportunity for States to explain what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.
- During the review, the State may **indicate which recommendations made by other States it does and does not accept**, and which **additional voluntary pledges and commitments** it undertakes. The fact that a State does not support a recommendation does not invalidate it.
- The State has the primary **responsibility to implement the recommendations**. In its subsequent review, the State is expected to provide information on what it has been doing to implement the recommendations made during the previous review, as well as on any developments in the field of human rights.

A UPR cycle takes approximately four and a half years:



CASE 1: UNIVERSAL PERIODIC REVIEW OF INDONESIA¹

Review: Indonesia completed its third UPR cycle on 3 May 2017. The first cycle was concluded on 9 April 2008 and the second on 23 May 2012. The human rights situation in Indonesia was discussed in an interactive dialogue, and an outcome document was adopted by the Human Rights Council. The review was comprehensive in that it addressed the human rights situation in Indonesia and paid attention to both the progress and gaps in human rights protection.

Recommendations: Indonesia **accepted 148 recommendations** made by other States and **took note of – but did not support – 75 other recommendations**. Below are some examples of recommendations that Indonesia supported:

- Continue to implement policies to ensure the availability and affordability of education to all Indonesians, in particular those in remote regions and those with special needs (recommended by Singapore).
- Continue making efforts to combat child labour and child marriage (recommended by Tunisia).
- Strengthen laws to ensure the protection of children from child labour and address the trafficking of children for purposes of sexual exploitation by establishing school re-insertion programmes and rehabilitation (recommended by Chile).
- Take further effective measures to promote and protect the rights and wellbeing of children and to protect them from violence, including measures to ensure their access to healthcare and education (recommended by Uzbekistan).

These are among the recommendations that were not supported by Indonesia:

- Enact and enforce legislation to raise the legal age of marriage for boys and girls to 18 (recommended by Sierra Leone).
- Raise the age of criminal responsibility to 16 years (recommended by Portugal).

¹ Report of the Working Group on the Universal Periodic Review; Review of Indonesia; 36th session of the UN Human Rights Council; 14 July 2017; A/HRC/36/7.

HUMAN RIGHTS	SDGS
Which human rights are directly relevant to the above recommendations?	How can implementing these recommendations advance the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Rights of the child • Right to development • Right to education • Right to health • Right to equality and non-discrimination • Right to not be subjected to cruel, inhuman, or degrading treatment 	<ul style="list-style-type: none"> • SDG 1: End poverty • SDG 3: Ensure healthy lives • SDG 4: Ensure quality education • SDG 5: Achieve gender equality • SDG 8: Promote decent work for all • SDG 10: Reduce inequality • SDG 11: Make cities inclusive and sustainable

ii. Special Procedures of the Human Rights Council

In the UN human rights system, the Special Procedures refer to **independent human rights experts** appointed by the Human Rights Council, who serve in their individual capacities. They advise on human rights from a thematic or country-specific perspective and report annually to the Human Rights Council.¹ They are not United Nations staff members and do not receive financial remuneration.

What tasks do the Special Procedures mandate-holders perform?

With the support of the UN Human Rights Office, the mandate-holders

- undertake country visits,
- send communications to States to bring alleged violations or abuses to their attention,
- conduct thematic studies and convene expert consultations,
- contribute to the development of international human rights standards,
- engage in advocacy,
- raise public awareness, and
- provide advice for technical cooperation.

How many special procedures are there?

On 1 January 2018, there were 44 thematic and 12 country mandates. Special Procedures involve either an individual (a special rapporteur, representative, or independent expert), or a working group composed of several experts.

Reference Materials

- » Working with the United Nations Human Rights Programme: A Handbook for Civil Society; OHCHR 2018; Chapter VI: Special Procedures.

1 UN Special Procedures of the Human Rights Council; <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

BOX 11: THE UNITED NATIONS HUMAN RIGHTS COUNCIL SPECIAL PROCEDURES: THEMATIC AND COUNTRY MANDATES

A full list of the special procedures of the UN Human Rights Council may be found on the website of the UN Human Rights Office.

Some examples of **thematic mandates** are

- Special Rapporteur on violence against women, its causes and consequences;
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and
- Working Group on the issue of human rights and transnational corporations and other business enterprises.

Some examples of **country mandates** are

- Independent Expert on the situation of human rights in Central African Republic; and
- Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.



GA President Holds Morning Dialogue with UN Representatives
Photo © 2018 UN Photo/Mark Garten

CASE 2: SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD ON HER MISSION TO THE PHILIPPINES¹ : “THE RIGHT TO FOOD IS ABOUT MUCH MORE THAN BOOSTING SUPPLY”²

Report: The Special Rapporteur on the right to food, Hilal Elver, visited the Philippines from 20 to 27 February 2015. In her report to the Human Rights Council she reviewed the legal and policy framework in the Philippines; the challenges facing the agriculture sector; the availability, accessibility, and adequacy of food; the situation of groups living in vulnerable situations; and emerging challenges, namely climate change and urbanization.

Recommendations: The report sets out a list of recommendations to the government of the Philippines, such as the following:

- Establish a programme to mitigate hunger and increase household income.
- Develop smallholder agriculture and fisheries.
- Ensure women’s participation in the development of a food security plan.
- Ensure that adequate basic social services, including food and drinking water, are made available to all indigenous peoples in the country.
- Implement legislative provisions to ensure that children with disabilities, particularly those living in rural areas, have access to adequate food and nutrition.
- Ensure that the State budget reflects a commitment to children’s right to healthy and nutritious food.

1 Report of the Special Rapporteur on the right to food on her mission to the Philippines; 29 December 2015; A/HRC/31/51/Add.1.

2 Olivier De Schutter; member of the UN Committee on Economic, Social, and Cultural Rights.



Forest Management in the Philippines
Photo © 1981 UN Photo/Carolyn Redenius

CASE 2: SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD ON HER MISSION TO THE PHILIPPINES

HUMAN RIGHTS	SDGS
Which human rights are of concern in the Special Rapporteur's report on the Philippines?	How can implementing the recommendations advance the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Right to an adequate standard of living • Right to food • Right to water and sanitation • Right to non-discrimination/equality • Rights of the child • Women's rights • Rights of persons with disabilities • Rights of indigenous peoples 	<ul style="list-style-type: none"> • SDG 1: End poverty • SDG 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture • SDG 3: Ensure healthy lives • SDG 5: Ensure gender equality • SDG 6: Ensure clean water and sanitation • SDG 10: Reduce inequality • SDG 11: Make cities inclusive and sustainable • SDG 12: Ensure sustainable consumption and production • SDG 13: Combat climate change and its impacts • SDG 14: Conserve and sustainably use marine resources • SDG 15: Protect and sustainably use terrestrial ecosystems

b) Human Rights Treaty Bodies

The Universal Declaration of Human Rights was adopted in 1948. Since then, the UN General Assembly has drafted and adopted a series of international human rights treaties, which create legal obligations for State parties to promote and protect human rights.

BOX 12: THE CORE INTERNATIONAL HUMAN RIGHTS TREATIES

The core international human rights treaties are

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social, and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child (CRC);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW);
- International Convention for the Protection of All Persons from Enforced Disappearance (IC-CPED); and
- Convention on the Rights of Persons with Disabilities (CPRD).

States recognize rights under a treaty when they adopt it, but they must also put in place the necessary measures to ensure the enjoyment of these rights by everyone under their jurisdiction. Committees made up of independent experts, called treaty bodies, monitor the implementation of each treaty.

Each treaty body is composed of ten to twenty-five independent experts with recognized competence in the field of human rights. They are nominated and elected by State parties for renewable terms of four years. However, the terms of office of members of some (but not all) treaty bodies are limited. Elections of half the membership take place every two years.

The treaty bodies generally meet at the United Nations Office at Geneva (UNOG) and hold two or three sessions per year. Regularly updated information on upcoming human rights treaty body sessions and the States parties scheduled for consideration at those sessions is available on the Calendar of events and meetings on the OHCHR website.

Treaty bodies, with the exception of the SPT as explained above, conduct **examinations of State parties' reports**, also taking into account input from civil society organizations, national human rights institutions, other UN agencies, and other stakeholders. They make recommendations known as "concluding observations". More information on treaty body reporting and follow-up can be found in the OHCHR Trainers' Guide on Reporting to the United Nations Human Rights Treaty Bodies (2017) as well as in OHCHR's treaty specific training manuals.

BOX 13: THE UNITED NATIONS HUMAN RIGHTS TREATY BODIES

There are ten human rights treaty bodies, one for each treaty and one for the Optional Protocol of the Convention against Torture:

- Human Rights Committee (HR Committee);
- Committee on Economic, Social, and Cultural Rights (CESCR);
- Committee on the Elimination of Racial Discrimination (CERD);
- Committee on the Elimination of Discrimination against Women (CEDAW);
- Committee against Torture (CAT);
- Subcommittee on Prevention of Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (SPT);
- Committee on the Rights of the Child (CRC);
- Committee on Migrant Workers (CMW);
- Committee on Enforced Disappearances (CED); and
- Committee on the Rights of Persons with Disabilities (CPRD).

Some treaties are complemented by **optional protocols** that deal with specific concerns, such as Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty. Optional Protocols are treaties in their own right and are open to signature, accession, or ratification by countries already party to the main treaty.

BOX 14: WHAT DO THE UN HUMAN RIGHTS TREATY BODIES DO?

The mandates of treaty bodies vary, and they may be found in treaties and optional protocols establishing them. In principle, treaty bodies

- review progress by State parties and make recommendations (concluding observations),
- examine complaints launched by States against other States (inter-State complains),
- inquire into grave and systematic violations of convention rights (inquiry procedure),
- consider individual complaints (individual communications), and
- interpret human rights norms (general comments).

BOX 15: THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the protocol establishing mechanisms at national and international levels to prevent torture and ill-treatment. It has established an international torture prevention mechanism and a Subcommittee on Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (SPT); and it has requested States parties to establish independent national bodies for the prevention of torture and ill-treatment at the domestic level. It is known as the National Preventive Mechanisms.

Therefore, the SPT has a different mandate compared to other treaty bodies. The SPT

- Visits any place under the jurisdiction of a State Party where persons may be deprived of their liberty (**visiting mandate**);
- advises and assists States parties regarding the establishment and functioning of their NPMs (**advisory mandate**); and
- cooperates with the relevant United Nations organs and mechanisms as well as with the international, regional, and national bodies working for the prevention of torture (**cooperation mandate**).

More information on the SPT can be found here: <https://www.ohchr.org/en/hrbodies/opcat/pages/brief.aspx>

Each human rights treaty body provides authoritative guidance on substantive provisions of the human rights treaty it monitors in the form of **general comments/general recommendations** (The Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women use the term “general recommendations”). These clarify the content of a right and specific obligations of the State party, and provide guidance on the implementation of a treaty. They cover a wide range of topics, from the comprehensive interpretation of substantive provisions, to general guidance on the information that should be submitted in State reports relating to specific articles of the treaties. The general comments/recommendations of all human rights treaty bodies are compiled and available on the webpages of each treaty body, on the OHCHR website.

Some treaty bodies have an **inquiry procedure**. This involves a confidential inquiry if they receive reliable information that appears to contain well-founded claims of grave and systematic violations of rights guaranteed under the Convention.

Treaty bodies that have an inquiry procedure are

- Committee against Torture (article 20 of the CAT)
- Committee on the Elimination of Discrimination against Women (article 8 of the Optional Protocol to CEDAW)
- Committee on the Rights of Persons with Disabilities (article 6 Optional Protocol to CRPD)
- Committee on Enforced Disappearances (article 33 of CED)
- Committee on Economic, Social, and Cultural Rights (article 11 of the Optional Protocol to ICESCR)
- Committee on the Rights of the Child (article 13 of the Optional Protocol to CRC on a communications procedure)

Treaty bodies may also examine **inter-State complaints** when a State party believes that another State party is violating a treaty. In many cases they can also examine **individual complaints**. A treaty body may consider complaints from individuals claiming that a State party has violated their rights if the State has recognized the treaty body’s competence to do so under the relevant treaty article or optional protocol, as follows:

- Human Rights Committee (Optional Protocol to ICCPR, 1966)
- Committee against Torture (article 22 of CAT)

- Committee on the Elimination of All Forms of Racial Discrimination (article 14 of CERD)
- Committee on the Elimination of Discrimination against Women (Optional Protocol to CEDAW, 1999)
- Committee on the Rights of Persons with Disabilities (Optional Protocol to CRPD, 2006)
- Committee on Enforced Disappearances (article 31 of CED)
- Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 77 of the CMW) - *The individual complaints mechanism under CMW will enter into force when ten State Parties to the Convention have made declarations recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals.*
- Committee on the Rights of the Child (Optional Protocol on a communications procedure, 2011)
- Committee on Economic, Social and Cultural Rights (Optional Protocol to ICESCR, 2008)

Reference Materials:

- » The United Nations Human Rights Treaty System: An introduction to the core human rights treaties and the treaty bodies; OHCHR; Fact Sheet No. 30
- » Working with the United Nations Human Rights Programme: a Handbook for Civil Society; OHCHR 2018.
- » UN Human Rights Office; the United Nations Human Rights Treaty System; Fact Sheet No. 30/Rev.1.
- » Individual Complaint Procedures under the United Nations Human Rights Treaties”, OHCHR Fact Sheet No. 7, Rev.2; 2013.
- » The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Obligations of States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to facilitate the visits of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CASE 3: HUMAN RIGHTS COMMITTEE REVIEWS BANGLADESH¹

Review: The Human Rights Committee has reviewed the situation of civil and political rights in Bangladesh and adopted “concluding observations”. It has noted positive aspects, raised concerns, and provided recommendations.

Concerns: Some concerns were raised by the Human Rights Committee regarding the human rights situation in Bangladesh:

- the lack of police protection, registration of complaints, investigations, and prosecutions for incidents of violent killings of “secular bloggers” by extremist groups, as well as death threats, physical attacks, intimidation, and harassment of journalists, bloggers, and human rights defenders;
- the arrest of at least 35 journalists, “secular bloggers”, and human rights defenders; and
- the limitations on the ability of human rights defenders and non-governmental organizations (NGOs) to operate through foreign donations.

Recommendations. The Committee recommended that the government should

- protect journalists, bloggers and human rights defenders from unlawful killings, physical attacks and harassment; ensure that police and officials receive adequate training regarding the protection of human rights defenders; register complaints and thoroughly investigate all attacks of these persons, bring perpetrators to justice and provide victims with appropriate remedies; and
- ensure that any legal provisions restricting access to foreign funding does not risk the effective operation of NGOs.

¹ UN Human Rights Committee; Concluding Observations on the initial report of Bangladesh; CCPR/C/BGD/CO/1.

HUMAN RIGHTS	SDGS
Which human rights are at stake in the above concerns raised by the Human Rights Committee?	How can implementing the above recommendations of the Human Rights Committee advance the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Right to life • Right to liberty and security • Freedom of opinion and expression • Freedom of association • Right to an effective remedy 	<ul style="list-style-type: none"> • SDG 16: Promote peace, justice and strong institutions

c) Special Representatives of the Secretary-General

A small number of human rights-related mandate-holders are special and personal representatives, envoys, and advisers of the UN Secretary-General. They focus, for example, on sexual violence in conflict, children in armed conflict, international migration, sexual exploitation and abuse, genocide prevention, and violence against children.

2) Regional protection of human rights

Regional human rights systems consist of regional instruments (e.g. treaties, conventions, declarations) and mechanisms for their implementation (e.g. commissions, special rapporteurs, courts). They reinforce international standards and mechanisms by addressing human rights concerns within the particular social, historical, and political context of the region concerned. The most well established regional human rights systems are in Africa, the Americas, and Europe. Newer bodies also operate in the Middle East and Southeast Asia, although they have more limited functions.

BOX 16: HOW DO REGIONAL HUMAN RIGHTS SYSTEMS PROMOTE AND PROTECT HUMAN RIGHTS

Human rights mechanisms at the regional level are invaluable for the protection and promotion of human rights. In some regions, the human rights machinery is more developed than in other regions. Importantly, regional human rights mechanisms and instruments must be consistent with international human rights norms and standards. Regional human rights mechanisms may

- Assist Governments with the implementation of their international human rights obligations.
- Have human rights courts or commissions with investigative powers. They may have mechanisms to supervise the implementation of the rulings of regional courts. Some also have High Commissioners and Special Representatives.
- Sensitize people about their human rights through a wide range of human rights awareness-raising campaigns and human rights education.
- Contribute to the development of international human rights norms and standards. Some of them have drafted and adopted specialist treaties on specific human rights issues, which in turn influence the further development of international human rights law.
- Help national governments to address regional human rights concerns that cross national borders. For example, they may provide for regional forums to address human rights concerns related to migration, transnational crime, or environmental disasters.

Reference Material

- » OHCHR, 'The Major Regional Human Rights Instruments and the Mechanisms for their Implementation', available at: <http://www.ohchr.org/Documents/Publications/training9chapter3en.pdf>.

a) Africa Region

The African Union is the only Africa-wide intergovernmental organization, although there are other sub-regional organizations in Africa. Human rights form a significant part of their agenda.

i. African Union

The African Union (AU) is a regional intergovernmental organization established in 2001 in Addis Ababa, Ethiopia, and is the successor of the Organization of African Unity. All 55 African countries are Member States of the AU. Its highest decision-making body is the Assembly of the African Union, and its secretariat is the African Union Commission.

As a regional intergovernmental organization with a broad agenda, the AU also works to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other international and African human rights instruments. Its vision is that of "an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in (the) global arena."¹



The emblem of the African Union

African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights is mandated to protect and promote human and peoples' rights in Africa². It is responsible for supervising States' compliance with **the African Charter on Human and Peoples' Rights** (the African Charter)³. The African Charter recognizes civil, political, economic, social, and cultural rights of individual human beings; their individual duties; and rights of peoples. The Commission provides human rights expertise in accordance with the African Charter on the human rights situation in the Member States as well as on certain themes. For example, it has adopted a **protocol on the rights of persons with disabilities** that complements the African Charter, and has **a working group focusing on the rights of older persons and of persons with disabilities as well as a committee of experts focusing on the rights and welfare of children**.

1 African Union, <https://au.int/>.

2 African Commission on Human and Peoples' Rights, <http://www.achpr.org>.

3 African Charter on Human and Peoples' Rights, <http://www.achpr.org/instruments/achpr>.

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Who sits on the Commission? 11 expert members

What type of body is it? Quasi-judicial body

Where is it located? Banjul, The Gambia

When did it start functioning? November 1987

Why was it established?

- To protect and promote human and peoples' rights in Africa; to monitor the interpretation and application of the African Charter on Human and Peoples' Rights

What does it do?

- Considers State reports and adopts concluding observations
- Formulates thematic, country specific and administrative resolutions
- Special mechanisms include special rapporteurs, committees, and working groups
- Reviews complaints lodged by States, individuals, or NGOs regarding violations of the African Charter
- Refers complaints to the African Court

African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights was established by an additional Protocol to the African Charter.¹ It is currently ratified by 27 States: **Algeria, Burkina Faso, Burundi, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic², South Africa, Senegal, Tanzania, Togo, Tunisia, and Uganda.**



Judges of the African Court on Human and People's Rights
Photo © 2015 AfCHPR

The African Union merged the African Court on Human and Peoples' Rights with the African Court of Justice that is yet to be established, and formed the African Court of Justice and Human and Peoples' Rights. Two Protocols establishing the two Courts were merged to establish the Statute of the African Court of Justice and Human Rights, which was adopted during the 11th African Union Summit in July 2008. However, to date it has not secured necessary ratifications to start functioning. Therefore, the African Court on Human and Peoples' Rights functions as the human and peoples' rights court within the African Union.

1 African Court on Human and Peoples' Rights; <http://www.african-court.org>.

2 Sahrawi Arab Democratic Republic is not a member state of the United Nations.

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Who sits on the Court?	11 judges
What type of body is it?	Judicial body
Where is it located?	Arusha, Tanzania
When did it start functioning?	November 2006
Why was it established?	

- To ensure the protection of human and peoples' rights in Africa; to ensure the interpretation and application of the African Charter on Human and Peoples' Rights and other international human rights instruments ratified by the States

What does it do?

- Complements the African Commission on Human and Peoples' Rights
- Considers cases and disputes on the interpretation and application of the Charter
- Adopts legally binding decisions

CASE 4: MTIKILA AND OTHERS V. TANZANIA (AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS)¹

Background: In 1992, amendments to the Tanzanian Constitution required all candidates for presidential, parliamentary, or local government elections to be members of and be sponsored by a political party. This effectively banned independent candidates from running for public office.

Facts: Christopher Mtikila, a Tanzanian citizen, filed a case in 1993 before the Tanzanian High Court and challenged this ban. For eighteen years, he continued pursuing cases through the Tanzanian domestic courts to have the ban overturned. His attempts were not successful.

Together with two Tanzanian NGOs, the Tanganyika Law Society and Human Rights Centre, Mtikila filed a communication in 2011 before the African Court on Human and Peoples' Rights, alleging violations of the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. They argued that Tanzania had violated its citizens' *rights to freedom of association, to participate freely in public and governmental affairs, and to freedom from discrimination.*

The judgment: The Court found in favour of the applicants; it held in its judgment that the ban on independent candidates standing for election violated the African Charter. It also urged the Tanzanian Government to take constitutional, legislative, and all other necessary measures within a reasonable time to remedy these violations.

¹ African Court on Human and Peoples' Rights; Christopher R. Mtikila v. United Republic of Tanzania; app no. 011/2011; Judgment on the merits; 14 June 2013.

CASE 4: MTIKILA AND OTHERS V. TANZANIA (AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS)

HUMAN RIGHTS	SDGS
Free and fair elections are fundamental for democracy, human rights, and the rule of law. Therefore, participation to electoral processes is vital. Which human rights are of concern in regard to the above judgment?	How can securing free participation in public and governmental affairs advance the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Right to participate in public affairs • Right to freedom of association • Right to equality and non-discrimination 	<ul style="list-style-type: none"> • SDG 16: Promote peace, justice, and strong institutions

BOX 17: THE AFRICAN UNION AND INTERNATIONAL CRIMINAL JUSTICE

- The African Union has decided to give the future African Court of Justice and Human and Peoples' Rights jurisdiction over international crimes. However, heads of States and governments as well as senior officials who remain in office will enjoy immunity from its jurisdiction.¹
- The African Union has also called for its Member States to withdraw from the International Criminal Court (ICC) in a non-binding decision, criticizing the Court "for only pursuing international crimes committed in the African continent".²
- Burundi withdrew from the Rome Statute (the treaty establishing the ICC) in October 2017 after the United Nations Commission of Inquiry on Burundi reported in September 2017 that it had found evidence of extrajudicial killings, disappearances, torture, and sexual violence in the country. The ICC later authorized an investigation of widespread and systematic attacks against the Burundian civilian population that occurred before Burundi's withdrawal took effect. The Gambia and South Africa also withdrew from the Rome Statute. However, they later reversed their withdrawals.

1 The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights; adopted on 27 June 2014.

2 Assembly of the African Union; Twenty-Eighth Ordinary Session; 30 - 31 January 2017 in Addis Ababa, Ethiopia; Decision on the International Criminal Court; Doc. EX.CL/1006(XXX); https://au.int/sites/default/files/decisions/32520-sc19553_e_original_-_assembly_decisions_621-641_-_xxviii.pdf.

ii. Sub-Regional Intergovernmental Organizations in Africa

There are several intergovernmental organizations in Africa, which have been established to facilitate sub-regional cooperation in the political, economic, or social spheres and have a human rights dimension in their work. For example, the Southern African Development Community (SADC) considers that regional integration and community building can only be realized by eliminating gender inequalities and the marginalization of women. In this light, the SADC has developed a Women Economic Empowerment Programme. Similarly, the East African Community (EAC) has a strategic plan for gender, youth, children, persons with disabilities, social protection, and community development. Where relevant, their judicial organs also deal with human rights matters.

	MEMBER STATES	AIMS AND OBJECTIVES
East African Community (EAC) ¹	Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda	Cooperation and integration in political, economic, and social areas
Economic Community of West African States (ECOWAS) ²	Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea-Bissau, Guinea, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo	Economic integration
Southern African Development Community (SADC) ³	Angola, Botswana, Comoros, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe	Development, peace and security, economic growth, alleviation of poverty, improving the standard and quality of life, and supporting the socially disadvantaged through regional integration

1 East African Community; <https://www.eac.int>.

2 Economic Community of West African States; <https://ecowas.int>.

3 Southern African Development Community; <https://sadc.int>.

b) Asian Region

While there are currently no Asia-wide intergovernmental organizations with a mandate to promote and protect human rights, the Association of Southeast Asian Nations (ASEAN), a sub-regional geopolitical and economic organization, has established a framework for human rights, including a declaration and a commission.

i. Association of Southeast Asian Nations

ASEAN is a sub-regional intergovernmental organization established in 1967 in Bangkok, Thailand. Its Member States are **Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam**. It works to promote intergovernmental cooperation and facilitate economic growth, social progress, and cultural development in the region. In 2015, **the ASEAN Community** was established with three pillars: the Political-Security Community, the Economic Community, and the Socio-Cultural Community.

Although ASEAN does not have as robust human rights architecture as other intergovernmental regional organizations, human rights comprise an important pillar of its work. In 2012, the ASEAN heads of State adopted the **ASEAN Human Rights Declaration, as well as the Declaration against Trafficking in Persons, Particularly Women and Children, the Declaration on the Protection and Promotion of the Rights of Migrant Workers, and the Declaration on the Elimination of Violence against Women**. They have also adopted other instruments such as the ASEAN Plan of Action for Children; or the ASEAN Commitments on HIV and AIDS, in which they commit to ensuring that persons living with HIV are protected and are not subjected to stigma and discrimination.



The emblem of ASEAN

Intergovernmental Commission on Human Rights

The ASEAN Charter, the legal and institutional framework for ASEAN, provides for the establishment of an ASEAN human rights body.¹

“In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.”

Article 14 of the ASEAN Charter

1 ASEAN Intergovernmental Commission on Human Rights; <http://aichr.org>.

Accordingly, ASEAN Member States established the Intergovernmental Commission on Human Rights in 2009. It is the only regional human rights mechanism in Asia. It holds two regular meetings per year and has an overall responsibility for the promotion and protection of human rights in the ASEAN region. As a **consultative body**, it develops strategies for the promotion and protection of human rights, conducts awareness-raising and capacity-building activities, promotes the full implementation of ASEAN instruments related to human rights, and encourages the Member States to consider acceding to and ratifying international human rights instruments.



A meeting of the Intergovernmental Commission on Human Rights – Photo © AICHR/ASEAN

c) European Region

The mechanisms of the **Council of Europe** constitute the European region's main human rights promotion and protection system. The **European Union** has a very clear human rights mandate as well, which has implications internally - for its twenty-eight Member States - and on its external policies. The **Organization for Security and Co-operation in Europe** also conducts a wide range human rights protection and promotion activities in the region (which also includes North America and Central Asia).



Palais de l'Europe, COE Headquarters in Strasbourg, France – Photo © COE

i. Council of Europe

The Council of Europe (CoE) is a European inter-governmental organisation founded in 1949 to uphold human rights, democracy, and the rule of law in Europe and to promote European culture.

The CoE has a wide range of instruments and a strong framework for the promotion and protection of human rights, including the European Convention on Human Rights (ECHR), which is the most well-known and highly-developed human rights treaty of its kind in the world. The ratification of the ECHR is a prerequisite for joining the organization.

Human rights are fundamental to the work of the **Parliamentary Assembly of the Council of Europe (PACE)**, a political forum consisting of delegations sent by Member State parliaments, as well as **the Committee of Ministers**, the principal decision making body of the organization.

The Venice Commission, the Gender Equality Commission, the Group of Experts on Action against Trafficking of Human Beings, the Advisory Committee for the Framework Convention for the Protection of National Minorities, the Steering Committee for Human Rights, and the Special Representatives of the Secretary General also have mandates to promote human rights.

COUNCIL OF EUROPE MEMBER STATES

Albania	Latvia
Andorra	Liechtenstein
Armenia	Lithuania
Austria	Luxembourg
Azerbaijan	Malta
Belgium	Moldova
Bosnia and Herzegovina	Monaco
Bulgaria	Montenegro
Croatia	Netherlands
Cyprus	Norway
Czech Republic	Poland
Denmark	Portugal
Estonia	Romania
Finland	Russia
France	San Marino
FYROM	Serbia
Georgia	Slovakia
Germany	Slovenia
Greece	Spain
Hungary	Sweden
Iceland	Switzerland
Ireland	Turkey
Italy	Ukraine
	United Kingdom

BOX 18: THE COUNCIL OF EUROPE HUMAN RIGHTS INSTRUMENTS

The Member States of the Council of Europe have drafted a wide range of legally binding human rights instruments, as well as soft law instruments. Some of the core CoE treaties are

- Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols (also known as the European Convention on Human Rights, ECHR);
- European Social Charter and its Additional Protocols;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its Additional Protocols;
- Council of Europe Convention on Action against Trafficking in Human Beings;
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (also known as the Istanbul Convention);
- Additional Protocol to the Convention on Cybercrime, Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed through Computer Systems;
- Framework Convention for the Protection of National Minorities;
- European Charter for Regional or Minority Languages; and
- Council of Europe Convention on Access to Official Documents.

BOX 19: THE COUNCIL OF EUROPE HUMAN RIGHTS MANDATES

There are many CoE bodies with a mandate to protect and promote human rights, some of which have a special mandate and expertise. They include, but are not limited to

- CoE Commissioner for Human Rights,
- European Commission Against Racism and Intolerance,
- European Committee for the Prevention of Torture,
- European Court of Human Rights, and
- European Committee of Social Rights

CoE Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution. It has a mandate to promote awareness of and respect for human rights in the 47 Member States.¹ The Commissioner conducts visits to Member States to monitor the human rights situation, provides expertise through publishing thematic documents and organizing events and workshops, and supports the work of human rights defenders.

European Commission against Racism and Intolerance

The European Commission against Racism and Intolerance (ECRI) is a human rights monitoring body that specializes in the area of non-discrimination. Besides **country monitoring** and **awareness raising**, it works on general themes and issues and **General Policy Recommendations**. It addresses the questions in Europe relating to racism; discrimination on the grounds of race, ethnic or national origin, colour, citizenship, religion, or language; xenophobia; anti-Semitism; and intolerance.²

European Committee for the Prevention of Torture

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was established under **the COE Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** and came into force in 1989.

It organizes visits to places of detention in Europe, such as prisons, juvenile detention centers, police stations, holding centers for immigration detainees, psychiatric hospitals, and social care homes. It also assesses how persons deprived of their liberty are treated and what safeguards against ill-treatment are in place. The CPT is not an investigative body; it provides “a non-judicial preventive mechanism to protect persons deprived of their liberty against torture and other forms of ill-treatment”.³ It sends reports, including its findings and recommendations, to the States concerned after each visit.

European Court of Human Rights

The European Court of Human Rights was established **by the European Convention on Human Rights** to monitor the contracting States’ compliance with the Convention and its protocols. An application to the Court can be lodged by an individual applicant as well as by other contracting States. Over 50,000 applications are lodged with the Court every year.

The Court has contributed significantly to the protection of human rights through interpreting the provisions of the European Convention and developing its case law. The Court may issue **judgments**, interim measures, advisory opinions, and decisions (on the admissibility of the applications). If the Court rules that a contracting State has violated the Convention, the State concerned is obliged to execute its judgment, including the payment of the amounts awarded by the Court to the applicants. The Committee of Ministers monitors the **execution** of the Court’s judgments⁴.

1 COE Commissioner for Human Rights; <https://www.coe.int/en/web/commissioner>.

2 European Commission against Racism and Intolerance; www.coe.int/ecri.

3 European Committee for the Prevention of Torture; <https://www.coe.int/en/web/cpt>.

4 European Court of Human Rights; <http://echr.coe.int>.

EUROPEAN COURT OF HUMAN RIGHTS

Who sits on the Court? 47 judges (1 from each contracting State)

What type of body is it? Judicial body

Where is it located? Strasbourg, France

When did it start functioning? 1959

Why was it established?

- To monitor the COE Member States' compliance with the European Convention on Human Rights and its protocols

How does it function?

- Judgments
- Interim measures
- Advisory opinions
- Decisions

CASE 5: M.C. AND C.A. V. ROMANIA (EUROPEAN COURT OF HUMAN RIGHTS)¹

Facts: In June 2006, M.C. and C.A. participated in the annual gay march in Bucharest, Romania. On their way home, they were attacked by a group of men and a woman who punched and kicked them and shouted homophobic abuse at them. M.C. and C.A. complained first to the Romanian authorities. They later applied to the European Court of Human Rights, complaining that the investigation into the attack had been inadequate. They also asserted that the fact that the offences against them had been motivated by hatred against homosexuals was not taken into consideration by the authorities.

Judgment: The Court found a violation of the prohibition of inhuman or degrading treatment and the prohibition of discrimination. It held that the investigations into the applicants' allegations of ill-treatment had been ineffective, "as they had lasted too long, had been marred by serious shortcomings, and had failed to take into account possible discriminatory motives".

¹ European Court of Human Rights; M.C. and C.A. v. Romania; application no. 12060/12; 12 April 2016.

European Committee of Social Rights

The European Social Charter is a COE treaty that guarantees social and economic rights, related to employment, housing, health, education, social protection and welfare. It emphasizes the protection of vulnerable persons such as the elderly, children, people with disabilities, and migrants. **The European Committee of Social Rights (ECSR)** monitors compliance with the European Social Charter through national reports submitted by State parties and a collective complaints procedure.

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Who sits at the Commission?	15 independent members
What type of body is it?	Expert body; quasi-judicial body
Where is it located?	Strasbourg, France
When did it start functioning?	1961 (then called the Committee of Experts)

Why was it established?

- To monitor the implementation of the European Social Charter

How does it function?

- Through a collective complaints procedure; adopting decisions on collective complaints lodged by social partners and NGOs
- Through national reports; it reviews annual National Reports on the application of specific provisions of the European Social Charter

ii. European Union

The European Union (EU) is a political and economic union currently comprised of twenty-eight European States. The EU adopts regulations, directives, decisions, and recommendations in wide-ranging areas from justice to agriculture and fisheries to development cooperation.

The treaties establishing the EU provide that the organization is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities”.

The Charter of Fundamental Rights of the EU (the EU Charter) provides for a comprehensive list of rights to be upheld and respected by the EU institutions in all their actions and by the EU Member States when they implement EU law. It brings together civil, political, economic, and social rights enjoyed by people within the EU in a single text. It covers all the rights found in the case law of the Court of Justice of the EU, the rights and freedoms enshrined in the (CoE) European Convention on Human Rights, other rights and principles resulting from the common constitutional traditions of EU countries, and other international instruments.

In its external affairs, the EU Global Strategy for Foreign and Security Policy has a particular focus on human rights; and the **EU Action Plan on Human Rights and Democracy** guides the EU’s external human rights actions. The **EU Human Rights Guidelines** also provide guidance on specific themes, such as human rights defenders or children’s rights. The **European Instrument for Democracy and Human Rights** is a multi-annual financial programme providing the means for the EU to support human rights in its external action.

EUROPEAN UNION MEMBER STATES

Austria	Latvia
Belgium	Lithuania
Bulgaria	Luxemburg
Croatia	Malta
Cyprus	Netherlands
Czech Republic	Poland
Denmark	Portugal
Estonia	Romania
Finland	Spain
France	Slovakia
Germany	Slovenia
Greece	Sweden
Hungary	United Kingdom ¹
Italy	

1 The United Kingdom has decided to withdraw its membership from the European Union.



The European Commission is the EU’s executive body situated in Brussels, Belgium – Photo © EC/EU

Some of the most prominent EU institutions are the Council of the European Union¹, the European Parliament², the European Commission³, and the Court of Justice of the European Union⁴. EU institutions aim to integrate human rights in their wide-ranging work. Some institutions have specialized human rights bodies, such as the Subcommittee on Human Rights of the European Parliament, and human rights divisions in various directorates of the European Commission. Furthermore, the Special Representative of the European Union for Human Rights works to enhance the effectiveness of EU human rights policy.



The European Parliament is the co-legislator body of the European Union, together with the Council of the European Union – Photo © EP/EU

The European Commission adopted a Strategy on the effective implementation of the EU Charter.⁵ Accordingly, all proposals for EU legislation must respect the EU Charter. With this view, the European Commission prepared a specific fundamental rights and human rights checklist in its new, improved regulation package.⁶ It also adopted a set of guidelines on fundamental rights in impact assessments. In addition, the European Commission prepares annual reports covering the full range of EU Charter provisions.⁷

BOX 20: THE EU FUNDAMENTAL RIGHTS AGENCY

The EU also works toward improving the human rights situation in Europe. The European Union Agency for Fundamental Rights (FRA) is an EU agency that provides expert advice on human rights to the EU institutions and Member States. The EU Fundamental Rights Agency focuses on all civil, political, social, economic, and cultural rights enshrined in the EU Charter of Fundamental Rights, and on wide-ranging themes concerning Europe, including

- access to justice;
- migration, asylum and borders;
- hate crime;
- information society, privacy, and data protection;
- human rights of LGBTI;
- persons with disabilities;
- racism and related intolerance;
- rights of the child; and
- Roma.

1 Council of the European Union; <http://consilium.europa.eu>.

2 European Parliament; <http://europarl.europa.eu>.

3 European Commission; <https://ec.europa.eu>.

4 Court of Justice of the European Union; <https://curia.europa.eu>.

5 https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/incorporating-fundamental-rights-eu-legislative-process_en

6 https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-28_en_0.pdf

7 https://ec.europa.eu/info/files/2017-annual-report-application-charter_en

BOX 21: THE EU AND DEVELOPMENT COOPERATION

The EU is firmly committed to implementing a rights-based approach, encompassing all human rights, to its development cooperation. This is strongly reaffirmed in the New European Consensus for Development (2017), an ambitious collective European development policy addressing the 2030 Agenda, whereby both EU and EU Member States commit to implementing a rights-based approach in all development cooperation activities. The rights-based approach, encompassing all human rights for EU development cooperation, is based on the UN Common Understanding on Human Rights-Based Approaches to Development Cooperation. It is a working methodology based on internationally recognized human rights.

Court of Justice of the European Union

The judicial body of the EU is the Court of Justice of the European Union (CJEU). The Court is tasked with examining the legality of EU measures and ensuring the uniform interpretation and application of EU law in all Member States. It is made up of two courts: the Court of Justice and the General Court.¹

COURT OF JUSTICE OF THE EUROPEAN UNION

Who sits in the Court?	28 judges (1 from each State) and 11 advocates general
What type of body is it?	Judicial body
Where is it located?	Luxembourg
When was it established?	1952

Why was it established?

- To ensure EU law is interpreted and applied the same way in every Member State; to ensure Member States and EU institutions abide by EU law

How does it function?

- Preliminary rulings (interpreting EU law)
- Infringement proceedings (enforcing EU law)
- Actions for annulment (annulling EU legal acts)
- Actions for failure to act (ensuring that the EU takes action)
- Actions for damages (sanctioning EU institutions)

1 Presentation of the Court of Justice; https://curia.europa.eu/jcms/jcms/Jo2_7024/en/.

CASE 6: DEFRENNE V. SABENA (EUROPEAN COURT OF JUSTICE)¹

Background: The principle of equal pay is crucial for the implementation of gender equality in employment. Although there has been significant progress throughout the years, the gender pay gap remains a human rights issue in Europe.

Facts: Gabrielle Defrenne worked as a flight attendant for the Belgian national airline, Sabena. Under Belgian law, female flight attendants had to retire at the age of 40, earlier than their male colleagues. Defrenne had been forced to retire when she was 40. She complained that *she had been paid less than her male colleagues doing the same job*, including allowances paid upon retirement.

Judgment: The Court held that EU law aims to *eliminate all discrimination, direct or indirect, between men and women workers*, in the economic system as a whole. It found the anti-discrimination provision applicable not only between individuals and the government, but also between private parties.

¹ European Court of Justice (today the Court of Justice of the European Union); Case 43/75; Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena; 8 April 1976.

HUMAN RIGHTS	SDGS
Which human rights are relevant to this judgment? Why?	Is the gender pay gap a challenge to the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none">• Right to equality/non-discrimination• Right to work and to just and favourable conditions of work• Women's rights	<ul style="list-style-type: none">• SDG 5: Achieve gender equality• SDG 8: Promote economic growth, employment, and decent work• SDG 10: Reduce inequality

iii. Organization for Security and Co-operation in Europe

The Organization for Security and Co-operation in Europe (OSCE) comprises fifty-seven participating States from North America, Europe, and Asia. It addresses security-related concerns, including arms control, democratization, and counter-terrorism. The organization believes that respect for human rights and functioning democratic institutions are key to ensuring lasting security. Therefore, it deals equally with both strengthening and promoting the protection of human rights across the OSCE region.

The OSCE's Secretariat is located in Vienna, Austria. It has field presences in Europe, South Caucasus, and Central Asia. Its principal human rights bodies include **the Office for Democratic Institutions and Human Rights** in Warsaw, Poland; **the Representative on Freedom of the Media**; and **the High Commissioner on National Minorities**.



Reunion in 2017 of the OSCE – Photo © OSCE

OSCE MEMBER STATES

Albania	Germany	Norway
Andorra	Greece	Poland
Armenia	Holy See	Portugal
Austria	Hungary	Romania
Azerbaijan	Iceland	Russia
Belarus	Ireland	San Marino
Belgium	Italy	Serbia
Bosnia and Herzegovina	Kazakhstan	Slovakia
Bulgaria	Kyrgyzstan	Slovenia
Canada	Latvia	Spain
Croatia	Liechtenstein	Sweden
Cyprus	Lithuania	Switzerland
Czech Republic	Luxembourg	Tajikistan
Denmark	Malta	Turkey
Estonia	Moldova	Turkmenistan
Finland	Monaco	Ukraine
France	Mongolia	United Kingdom
FYROM	Montenegro	United States
Georgia	Netherlands	Uzbekistan

OSCE Office for Democratic Institutions and Human Rights

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) provides advice and assistance to participating States. It also conducts human rights education and training activities for individuals and civil society. Human rights issues covered by the ODIHR include **minority rights; freedoms of religion or belief, movement, assembly, and association; prohibition of the death penalty; and prevention of torture and other forms of ill-treatment.**¹

CASE 7: TRAINING OF POLISH POLICE OFFICERS (OSCE/ODIHR)

Background: Systematic human rights violations against Roma communities in Europe have many layers. They include historic discrimination against the Roma population; anti-Roma discourse in politics and the media; lack of access to adequate housing, education, and healthcare; segregation of Roma in education and healthcare; forced sterilization of Roma women; and police brutality against Roma. Policing in Roma communities often involves discriminatory and disproportionate use of force, which may amount to ill-treatment, resulting in damage to property as well as injuries, and in some cases, to extrajudicial killings.

Training: On 5 and 6 December 2017, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) delivered a two-day training course to senior Polish police officers. The focus of the training was effective and human rights-compliant policing in Roma and Sinti communities.¹

¹ OSCE/ODIHR trains Polish police officers on effective and human rights-compliant policing in Roma and Sinti communities; 6 December 2017; <http://www.osce.org/odihr/360931>.

HUMAN RIGHTS	SDGS
Which human rights are relevant to this training? Why?	How can this training relate to the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none">• Right to life• Right to liberty and security of the person• Protection of children from all forms of violence, abuse, or exploitation	<ul style="list-style-type: none">• SDG 16: Promote peace, justice, and strong institutions

¹ OSCE Office for Democratic Institutions and Human Rights; Human rights and fundamental freedoms; <http://www.osce.org/odihr/human-rights>.

d) Arab Region

The League of Arab States is a regional intergovernmental organization covering parts of the Middle East and North and East Africa.

i. League of Arab States

The League of Arab States (LAS), also known as the Arab League, was formed in 1945, in Cairo, Egypt. Its Member States are **Algeria, Bahrain, Comoros, Djibouti, Egypt, United Arab Emirates, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Palestine, Qatar, Syria (suspended), Oman, Saudi Arabia, Somalia, Sudan, Tunisia, and Yemen**. It is a political organization with the aim of facilitating economic integration and solving conflicts involving Member States.

The Charter of the Arab League, the founding treaty of the LAS, does not include a reference to human rights. However, in 2008, **the Arab Charter on Human Rights** entered into force in all ratifying Member States. Accordingly, a committee of experts, the **Arab Human Rights Committee**, was established. Its Member States also adopted some other human rights instruments, such as the **Arab Plan for Human Rights Education** in 2008, and the **Arab Plan for Enhancing the Culture of Human Rights** in 2010.



The emblem of the Arab League © LAS

Arab Human Rights Committee

The Arab human rights architecture was created by **the Arab Charter of Human Rights**. The Charter established a committee of independent experts on human rights, **the Arab Human Rights Committee**, to examine periodic reports submitted by the Member States. The committee is independent and has a substantial budget directly managed by the committee, which is supported by an independent secretariat under the Arab League.

Arab Commission on Human Rights

In parallel to the system established by the Arab Charter of Human Rights, **the Arab Commission on Human Rights**, created in Teheran before the First World Conference on Human Rights in 1968, is composed of twenty-two members of the League of Arab States. The commission has not focused on the human rights situation in Arab countries, but rather on the human rights situation in Israel.

e) Americas Region

The Organization of American States (OAS) is a regional organization composed of the thirty-five states of the Americas. It has a strong mandate to promote and protect human rights, and it counts on a number of well-established bodies and mechanisms with which to carry out its work.

i. Organization of American States

OAS was formed in 1948 with the signing of the Charter of the OAS in Bogotá, Colombia. Its Member States are **Antigua and Barbuda, Argentina, The Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts & Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States of America, Uruguay and Venezuela.**



The logo of the Organization of American States
© OAS

The OAS works in the areas of democracy promotion, human rights protection, economic and social development, and security cooperation.

On **human rights protection**, the OAS human rights mechanisms work with Member States to build their capacity to strengthen their laws and institutions that provide human rights protection, raise awareness of human rights, monitor the human rights situation in Member States, and decide on human rights violations through petitions and cases. The Inter-American human rights system has two autonomous bodies that can execute their mandates effectively: **the Inter-American Commission on Human Rights** and **the Inter-American Court of Human Rights**.

There are also specialized bodies of the OAS that have specific and technical functions. For example, **the Inter-American Children's Institute** works for "the development of public policies that guarantee the promotion, protection and exercise of children and adolescents rights".¹ **The Inter-American Commission of Women** works on policies on women's rights and gender equality in the Americas, and **the Inter-American Program on Women's Human Rights and Gender Equity** and Equality constitutes a framework for the OAS' women's rights and gender equality work.

ORGANIZATION OF AMERICAN STATES

- ▶ **35 Member States**
- ▶ **4 pillars:** democracy, human rights, security, and development
- ▶ **3 primary bodies:** the General Assembly, the Permanent Council, and the General Secretariat
- ▶ **2 human rights bodies:** the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights
- ▶ **12 main human rights instruments**

1 Organization of American States; Inter-American Children's Institute; <http://www.iin.oea.org>.

BOX 22: THE ORGANIZATION OF AMERICAN STATES HUMAN RIGHTS INSTRUMENTS

The Member States of the Organization of American States have drafted a wide range of legally binding human rights instruments, as well as soft law instruments. Some of them are

- The American Declaration of the Rights and Duties of Man;
- The American Convention on Human Rights;
- The Inter-American Convention to Prevent and Punish Torture;
- The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights;
- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty;
- The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women;
- The Inter-American Convention on Forced Disappearance of Persons;
- The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities;
- The Inter-American Democratic Charter;
- The Declaration of Principles on Freedom of Expression;
- Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas;
- Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance; and
- Inter-American Convention on Protecting the Human Rights of Older Persons.

CASE 8: HUMAN RIGHTS OF WOMEN LIVING WITH HIV IN THE AMERICAS (INTER-AMERICAN COMMISSION OF WOMEN)

Project: The Inter-American Commission of Women (CIM), with the support of the Spanish Agency for International Development Cooperation, implemented the project “Human rights, HIV and violence against women in Central America: A comprehensive response”. The project aimed to analyze and strengthen the legal framework and public policies on HIV and violence against women from a human rights-based approach. It covered Central America (El Salvador, Guatemala, and Panama) and the Caribbean (Antigua and Barbuda, Barbados, Dominica, Grenada, and Guyana). It took place from January 2009 to December 2011.¹ In 2016, a comprehensive report, “Human Rights of Women Living with HIV in the Americas”, was published by the Organization of American States (OAS), the Inter-American Commission of Women (CIM), and the Joint United Nations Programme on HIV/AIDS (UNAIDS).²

1 Organization of American States; Inter-American Commission of Women; Human rights and HIV; <http://www.oas.org/en/cim/hiv-rights.asp>.

2 Organization of American States, Inter-American Commission of Women, Joint United Nations Programme on HIV/AIDS; Human Rights of Women Living with HIV in the Americas (2015); <https://www.oas.org/en/cim/docs/VIH-DD.HH-Final-EN.pdf>.

HUMAN RIGHTS	SDGS
Women living with HIV face particular risks and challenges in the enjoyment of their human rights. Which rights are particularly of concern and why?	Women living with HIV often live in fragile communities, and are most affected by discrimination, inequality, and instability. Which SDGs are of relevance for human rights of women living with HIV and why? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Right to life • Right to equality and non-discrimination • Right to health • Right to not be subjected to cruel, inhuman, or degrading treatment • Right to education • Right to work • Right to an adequate standard of living • Right to form a family • Right to information • Right to participation in public affairs 	<ul style="list-style-type: none"> • SDG 1: End poverty • SDG 2: End hunger • SDG 3: Ensure healthy lives • SDG 4: Ensure quality education • SDG 5: Achieve gender equality • SDG 8: Promote economic growth, employment, and decent work • SDG 10: Reduce inequality • SDG 11: Make cities safe and resilient • SDG 16: Promote peaceful and inclusive societies • SDG 17: Strengthen the means of implementation

Inter-American Commission on Human Rights

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Who sits on the Commission?	7 independent members
What type of body is it?	Quasi-judicial, quasi-political body
Where is it located?	Washington D.C., USA
When did it start holding sessions?	1960
Why was it established?	<ul style="list-style-type: none">• To promote the observance and protection of human rights; to serve as a consultative organ of the OAS
How does it function?	<ul style="list-style-type: none">• Receives petitions alleging human rights violations• Monitors the human rights situation in the States• Develops an awareness of human rights• Makes recommendations to the Member States• Presents cases to the Inter-American Court

BOX 23: THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Inter-American Commission on Human Rights (IACHR) works on three main pillars:

1. **The individual petition system:** Individuals, groups of individuals, and NGOs can submit **petitions** concerning alleged human rights violations.
2. **Monitoring of the human rights situation in the Member States:** In addition to its **annual reports**, the IACHR conducts **country reports** after assessing the human rights situation in a country. The Commission published its reports on the human rights situation in Guatemala, Mexico, Dominican Republic, and Honduras in 2016. These reports can be found on the IACHR website: <http://www.oas.org/en/iachr/reports/country.asp>.
3. **Priority thematic areas:** The Commission also publishes **thematic reports**, such as Poverty and Human Rights (2017); Indigenous Women (2017); or Standards for a Free, Open, and Inclusive Internet (2016). These reports can be found on the IACHR website: <http://www.oas.org/en/iachr/reports/thematic.asp>.

BOX 24: THEMATIC RAPORTEURSHIPS AND UNITS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The IACHR has established special mechanisms to advise the Commission in processing petitions, to undertake human rights monitoring missions, to prepare reports, and to conduct awareness-raising activities. These mechanisms include

- Rapporteurship on the Rights of Persons Deprived of Liberty;
- Rapporteurship on Human Rights Defenders;
- Rapporteurship on the Rights of the Child;
- Rapporteurship on the Rights of Migrants;
- Rapporteurship on the Rights of Women;
- Unit on Economic, Social, and Cultural Rights;
- Special Rapporteurship for Freedom of Expression;
- Rapporteurship on the Rights of Indigenous Peoples;
- Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination; and
- Rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons.

Inter-American Court of Human Rights

Only the State parties and the Commission can bring cases before the Inter-American Court of Human Rights (IACtHR). Its mandate is also more limited than that of the Commission, because the Court may not decide on cases brought against Member States that have not opted to accept the Court's jurisdiction even though they are parties to the American Convention on Human Rights.

The Commission may refer cases to the Court where the State party has not complied with its recommendations and has accepted the jurisdiction of the Court.

The Court then may consider the case and issue **legally binding orders**. If it finds that a violation has occurred, then the applicants may be awarded injunctive relief and compensatory damages. The Court may also order **provisional measures**. Another tool available to the Court is the power to issue **advisory opinions** interpreting the human rights obligations of States under the American Convention or other human rights treaties.



The composition of the Inter-American Court of Human Rights in 2018 – Photo © IACtHR

INTER-AMERICAN COURT OF HUMAN RIGHTS

Who sits at the Court? 7 judges

What type of body is it? Judicial body

Where is it located? San José, Costa Rica

When was it created? 1979

Why was it established?

- To enforce and interpret the provisions of the American Convention on Human Rights; its two main functions are thus adjudicatory and advisory

How does it function?

- Adjudicatory function: it considers cases and orders provisional measures where necessary
- Advisory function: it issues advisory opinions

CASE 9: YEAN AND BOSICO V. DOMINICAN REPUBLIC (INTER-AMERICAN COURT OF HUMAN RIGHTS)

Background: Dominicans of Haitian descent have historically been subjected to discrimination. Article 18 of the Constitution of the Dominican Republic grants nationality to anyone born in the country, except those born of “foreign members of diplomatic legations and consulates, and of foreigners who are in transit or residing illegally in Dominican territory”. The Government interprets this clause in order not to grant Haitian migrants, their children, and their grandchildren citizenship. For example, if migrant workers are considered “persons in transit,” their children are not granted Dominican nationality.

Facts: Dilcia Yean and Violeta Bosico were two girls of Haitian descent, aged 10 months and 12 years. In 1997, their mothers, both Dominican nationals, went to the civil registry to ask for copies of their daughters’ birth certificates. Even though both girls were born in the Dominican Republic, they were denied birth certificates. The children remain Stateless, and Violeta Bosico was unable to attend school for one year because she did not have identity documents.

Judgment: The Court identified “[a] **situation of extreme vulnerability** in which the State placed the Yean and Bosico children, because it denied them their right to nationality for **discriminatory reasons**, and placed them in the impossibility of receiving protection from the State and having access to the benefits due to them, and since they lived in fear of being expelled by the State of which they were nationals and separated from their families owing the absence of a birth certificate”.¹ The Court held that the discriminatory treatment of the Yean and Bosico children in terms of access to nationality and **special protection as children** violates the American Convention of Human Rights.

1 Inter-American Court of Human Rights; Case of the Girls Yean and Bosico v. Dominican Republic; Judgment of 8 September 2005; para 173.

CASE 9: YEAN AND BOSICO V. DOMINICAN REPUBLIC (INTER-AMERICAN COURT OF HUMAN RIGHTS)

How does the above judgment of the IACtHR contribute to the protection of human rights? What are the challenges to international and regional courts' roles in this regard?

The Court ordered that damages be paid to the two children, that the State apologize to the girls, and that the State take necessary measures to effectively apply the rights in the American Convention.

The Senate of the Dominican Republic issued a resolution **rejecting the judgment**. Later, the Supreme Court of Justice of the Dominican Republic passed a decision and upheld the previous interpretation of the law, which was found inconsistent with the American Convention.

The Court decided to **supervise the enforcement** of the decision and asked the Dominican Republic to submit to the Court a report indicating the measures adopted by the Government to comply with the judgment.

3) National protection of human rights

States are the principal duty bearers in promoting and protecting human rights. Human rights are first and foremost respected, protected, and fulfilled at national level. This is because of the direct relationship between States and individuals or groups of individuals under their jurisdiction. The executive branch, the legislature, and the judiciary are the three main organs of a State. Institutions such as the parliament, courts, ombudspersons, national human rights institutions, and national mechanisms for reporting and follow-up are crucial for effective human rights protection. Human rights activities by other stakeholders, such as civil society organizations or universities, are also very important. Their efforts are all guided by international and regional human rights mechanisms. They also interact with other States, civil society, and other national, regional, and international partners to fulfill their human rights obligations.

National Human Rights Action Plans

Many States have already drawn up **national action plans** to identify steps to improve the promotion and protection of human rights – and others have committed to do so, or are in the process of drafting them. These plans are also known as National Human Rights Action Plans (NHRAPs). They are prepared by the government and generally provide a background of the human rights situation in the country in question, the country's obligations of the State under international law, and planned steps to fulfill these obligations and uphold human rights.



Members of the United Nations country team and the government working group discuss actions of the National Human Rights Action Plan of Turkmenistan – Photo © UNDP Turkmenistan

Reference Material

- » United Nations Human Rights Office (OHCHR); Handbook on National Human Rights Plans of Action; <http://www.ohchr.org/Documents/Publications/training10en.pdf>.

CASE 10: NATIONAL HUMAN RIGHTS ACTION PLAN OF LIBERIA¹

Background: The Government of Liberia prepared a National Human Rights Action Plan for 2013 – 2018. The action plan provides background on the human rights situation in Liberia. It also outlines Liberia’s international and regional human rights obligations (including recommendations received during the Universal Periodic Review), and contains action points on advancing human rights.

Action Points: The government of Liberia aims to (1) strengthen women’s participation in the labour market and ownership in income-generation and employment opportunities, and (2) reduce cultural practices that impede the rights of women and girls. On the first objective, the government committed itself to take nine actions, including actions to

- provide women with information about market opportunities and price levels;
- improve job opportunities for women by increasing women’s access to vocational training;
- engage chiefs, elders, and Zoes (traditional leaders) to empower women in societies;
- create awareness and implementation of Inheritance Law: women should own, rent or inherit land, property, or housing; and
- sensitize chiefs and Zoes to play a more proactive role in promoting women’s participation in decision-making in their communities.

¹ National Human Rights Action Plan of Liberia; http://www.ohchr.org/Documents/Issues/NHRA/Liberia_en.pdf.

HUMAN RIGHTS	SDGS
Which rights are promoted with the above action points in the NHRAP of Liberia?	How can achieving the objectives in the plan advance the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Right to equality and non-discrimination • Right to work and to just and favorable conditions of work • Right to participation in public affairs • Women’s rights 	<ul style="list-style-type: none"> • SDG 5: Achieve gender equality • SDG 8: Promote economic growth, employment, and decent work • SDG 10: Reduce inequality

National Mechanism for Reporting and Follow-up

A national mechanism for reporting and follow-up is a governmental structure that is mandated to coordinate and prepare reports to and engage with regional and international human rights mechanisms (including treaty bodies, the UPR and Special Procedures). It also coordinates and tracks national follow-up and implementation of the treaty obligations as well as the recommendations emanating from these mechanisms.

National mechanisms have the potential to become one of the key components of the national human rights protection system, bringing international and regional human rights norms and practices directly to the national level. They build national ownership of human rights, enhance human rights expertise in a sustainable manner, stimulate national dialogue, facilitate communication within the Government, and allow for structured and formalized contacts with parliament, the judiciary, national human rights institutions, and civil society.

BOX 25: NATIONAL MECHANISMS FOR REPORTING AND FOLLOW-UP

A national mechanism for reporting and follow-up coordinates and prepares reports to, and engages with, international human rights mechanisms (including the UN treaty bodies, the universal periodic review, and the UN special procedures). It can also coordinate the State's engagement with regional human rights mechanisms.

It coordinates and tracks national follow-up and implementation of the State's treaty obligations and the recommendations made by these mechanisms.

Reference Material

- » United Nations Human Rights Office (OHCHR); National Mechanisms for Reporting and Follow-up; A Practical Guide to Effective State Engagement with International Human Rights Mechanisms; http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf.
- » Trainers Guide on Reporting to the United Nations Human Rights Treaty Bodies, OHCHR, 2017.

National Human Rights Institutions

National human rights institutions (NHRIs) are State bodies with a constitutional / legislative mandate to protect and promote human rights. Although they are part of the State structure and are funded by the State, they should operate and function independently from government¹

BOX 26: NATIONAL HUMAN RIGHTS INSTITUTIONS' ENGAGEMENT WITH INTERNATIONAL HUMAN RIGHTS MECHANISMS

National human rights institutions also provide input to international human rights mechanisms:

- The Human Rights Council
 - » The Universal Periodic Review
 - » The UN special procedures;
- The UN treaty bodies.

NHRIs can act as bridges between governments and civil society, as well as between national and international human rights protection systems. They can provide international human rights mechanisms with information on national situations, and promote and monitor follow-up to their recommendations.

BOX 27: WHAT DO NATIONAL HUMAN RIGHTS INSTITUTIONS DO?

Although the mandates of national human rights institutions may vary from State to State, they mainly

- monitor and assess the observance of human rights in the country,
- make recommendations to the State to reform its laws and policies,
- contribute to regional and international human rights mechanisms,
- promote human rights education, and
- consider complaints.

1 Global Alliance of National Human Rights Associations (GANHRI); <https://nhri.ohchr.org>.

BOX 28: THE PARIS PRINCIPLES

Principles relating to the Status of National Institutions, also known as the Paris Principles, provide that the national human rights institutions must

- be independent from the government,
- enjoy a broad, democratic mandate, and
- be established with a pluralist composition that reflects the nature of society.

BOX 29: ACCREDITATION OF THE NHRIS

NHRIs are accredited by the Global Alliance of National Human Rights Associations (GANHRI) for their **compliance with the Paris Principles**, which provides for an important indicator of their independence. Accordingly, NHRIs can have a status of “A” (fully compliant), “B” (partially compliant), or “C” (non-compliant).

4 regional networks: There are four primary regional networks of NHRIs in connection with the International Coordinating Committee for NHRIs. They are the European Network of National Human Rights Institutions, the Asia Pacific Forum of National Human Rights Institutions, the Network of African Human Rights Institutions, and the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas.

6 types: There are six principal models of NHRIs across the world: human rights commissions, human rights ombuds-institutions, hybrid institutions, consultative and advisory bodies, institutes and centres, and multiple institutions.

CASE 11: LAND RESTITUTION REPORT OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Background: Land ownership in South Africa has long been a source of conflict. The Restitution of Land Rights Act was passed in 1994 at the advent of democratic rule in South Africa after the end of apartheid. Its stated objective is “to provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law”.¹

South African Human Rights Commission’s Report: The South African Human Rights Commission (SAHRC) is an “A” status NHRI. It has seven primary focus areas, including “environment, rural development, and natural resources”. Accordingly, the SAHRC prepared a Land Restitution Report in 2013, which focuses on investigating the systemic challenges affecting the land restitution process.

1 Report of the South African Human Rights Commission; Investigative Hearing; Monitoring and Investigating the Systemic Challenges Affecting the Land Restitution Process in South Africa; 12 November – 5 December 2013; <https://www.sahrc.org.za/home/21/files/Land%20Restitution%20Report%20Proof%202.pdf>.

Land is not a mere commodity, but an essential element for the realization of many human rights. Access to, use of, and control over land directly affects the enjoyment of a wide range of human rights. Disputes over land are also often the cause of human rights violations, conflicts, and violence. Importantly, the human rights dimensions of land management are directly linked to most aspects of social development, peace-building, and humanitarian assistance, as well as disaster prevention and recovery.

HUMAN RIGHTS	SDGS
What human rights are directly affected by problems in access to, use of, and control over land?	South Africa is working to overcome the challenges of the country’s land restitution process. How do land restitution and land rights relate to the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Right to equality and non-discrimination • Right to adequate food • Right to adequate housing • Right to an effective remedy • Rights to freedom of movement and residence • Right to freedom of religion • Right to information • Right to life • Right to participation • Right to property • Right to self-determination • Right to take part in cultural life • Rights to water and sanitation 	<ul style="list-style-type: none"> • SDG 1: End poverty • SDG 2: End hunger • SDG 5: Ensure gender equality • SDG 10: Reduce inequality • SDG 11: Make cities inclusive and sustainable • SDG 15: Protect and sustainably use terrestrial ecosystems



Part III:

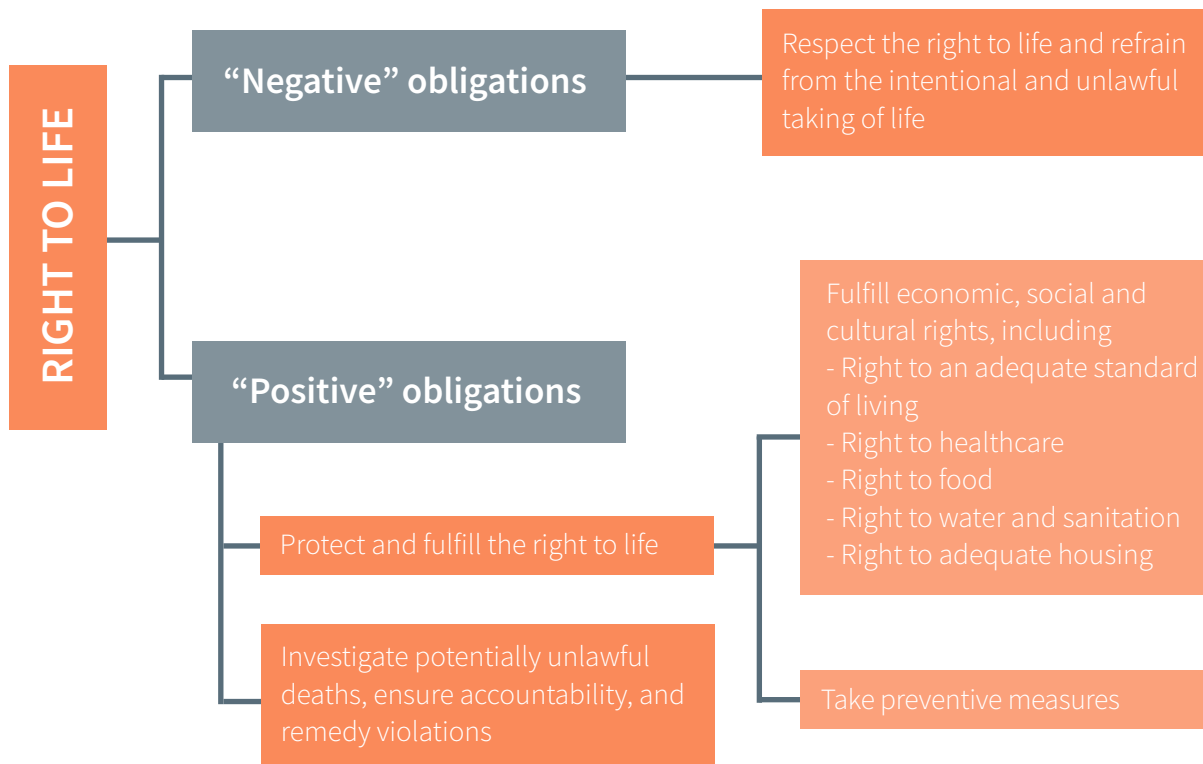
Human Rights and

Fundamental Freedoms

1) The right to life

The most fundamental right – The right to life is the most fundamental of all rights. Individuals can only exercise their other rights if they can enjoy their right to life. However, the right to life is not absolute. There are circumstances in which deprivation of life may be justified. This is the case, for example, when deprivation of life takes place in accordance with the law of armed conflict.

State obligations – States must not intentionally and unlawfully take life or take unlawful measures that lead to deprivation of life. They must take all possible measures to safeguard the right to life. They must **take preventive measures** to protect an individual from the criminal acts of another when authorities know or should know that there is an immediate risk to the person’s life. They must **enact criminal legislation** and conduct effective investigations and prosecution of cases where State authorities, individuals, or other entities may be responsible for potentially unlawful deaths, and where necessary, provide protection and redress to victims and their family members. They must **take measures to fulfill economic, social, and cultural rights** to safeguard the right to life. The Human Rights Committee adopted its **General Comment No. 36 on the right to life** to interpret article 6 of the ICCPR and to clarify State parties’ legal obligations, including as concerns the prohibition against arbitrary deprivation of life, the duty to protect life, the imposition of the death penalty, and the relationship of article 6 to other issues, such as torture and ill-treatment, enforced disappearances, environmental degradation, climate change, and many others.



CASE 12: BRINCAT AND OTHERS V. MALTA (EUROPEAN COURT OF HUMAN RIGHTS)

Facts: Shipyard repair workers were exposed to asbestos from the 1950s to the early 2000s, which caused suffering from asbestos-related health conditions. In the 1960s, Malta became a member of the International Labour Organization (ILO) and the World Health Organization (WHO), which has been raising awareness about the dangers of asbestos since the 1950s. Survivors as well as family members of deceased workers complained to the European Court of Human Rights about their or their relatives' exposure to asbestos, and about the Maltese Government's failure to protect them from its fatal consequences.

Judgment: The Court found a violation of the right to life in respect to the applicants whose relatives had died. Regarding the other complainants, it found a violation of the right to respect for private and family life.

The Court held that

- the Maltese Government had failed to satisfy its positive obligations to legislate or take other practical measures to ensure the effective protection of the employees whose lives might have been endangered by the inherent risk of exposure to asbestos; and
- the Maltese Government had failed in its duty to provide access to essential information enabling individuals to assess risks to their health and lives.

HUMAN RIGHTS	SDGS
<p>The Court found a violation of the right to life in respect to the applicants whose relatives had died. What other rights are of concern with respect to the facts of the case? Why?</p>	<p>How does addressing these human rights issues advance the realization of the SDGs? Consider the SDG targets and indicators.</p>
<ul style="list-style-type: none"> • Right to life • Right to health • Right to just and favorable conditions of work • Right to information 	<ul style="list-style-type: none"> • SDG 3: Ensure healthy lives • SDG 8: Promote economic growth, employment, and decent work • SDG 9: Promote inclusive and sustainable industrialization • SDG 12: Ensure sustainable consumption and production

Extrajudicial, summary or arbitrary executions

Unlawful deprivation of life – The killing of individuals by deliberate, illegal, and excessive use of lethal force is unlawful. Deprivation of life by police or military forces is arbitrary where it is unlawful under international human rights law or not in line with international standards.

A human rights violation – Extrajudicial, summary, or arbitrary executions violate **the right to life**, as well as the right to liberty and security of person and the right not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment.

International standards – States must respect and protect life as well as investigate suspicious deaths, in line with international standards, including

- the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990);
- the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions (1989); and
- the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions (1991, revised in 2016), also known as the Minnesota Protocol.

CASE 13: STATEMENT BY THE UN HUMAN RIGHTS EXPERTS ON UNLAWFUL KILLINGS OF PEOPLE SUSPECTED OF DRUG-RELATED OFFENCES IN THE PHILIPPINES

Background: Rodrigo Duterte, the President of the Philippines, instigated and incited law enforcement agencies and the public to kill people suspected of trafficking drugs as well as people who use drugs. He was also reported to have promised impunity for such killings.

Statement: The UN Special Rapporteurs on summary executions and on the right to health issued a joint Statement urging the Government of the Philippines to end extrajudicial executions and killings:

“Claims to fight illicit drug trade do not absolve the Government from its international legal obligations and do not shield State actors or others from responsibility for illegal killings (...) the State has a legally binding obligation to ensure the right to life and security of every person in the country, whether suspected of criminal offences or not.”¹

1 UN Special Procedures; “UN experts urge the Philippines to stop unlawful killings of people suspected of drug-related offences”; <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20388>.

Enforced or involuntary disappearances

An unknown fate – Enforced or involuntary disappearances occur when government officials or affiliated groups arrest, detain, or abduct a person against their will, and refuse to disclose the whereabouts of the person or do not acknowledge the deprivation of their liberty.

Human rights violations of the disappeared persons and their family members – When the disappeared person is killed, it is a violation of **the right to life**. Enforced or involuntary disappearances also violate:

- the right to liberty and security of the person;
- the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment;
- the right to an identity;
- the right to a fair trial;
- the right to an effective remedy;
- the right to information;
- the right to protection and assistance to the family;
- the right to an adequate standard of living;
- the right to health; and
- the right to education.



Members of the Working Group on Enforced Disappearances
Photo © OHCHR/UN

Forbidden by international law – There are a number of international treaties protecting the right to life. There are also specific international and regional human rights treaties protecting persons from enforced disappearances. Enforced disappearances can also amount to crimes against humanity under the Rome Statute. These instruments include

- The Declaration on the Protection of All Persons from Enforced Disappearance,
- The International Convention for the Protection of All Persons from Enforced Disappearance
- The Inter-American Convention on Forced Disappearance of Persons.

International monitoring – There are international bodies mandated to work on cases of enforced disappearances, including

- The UN Committee on Enforced Disappearances, and
- The Working Group on Enforced or Involuntary Disappearances.

Reference Material

- » UN Human Rights Office Fact Sheet; “Enforced or Involuntary Disappearances”; <http://www.un.org/en/events/disappearancesday/pdf/FactSheet6Rev3.pdf>.

CASE 14: NITZA PAOLA ALVARADO AND OTHERS V. MEXICO (INTER-AMERICAN COMMISSION ON HUMAN RIGHTS)¹

Background: Enforced disappearances constitute a widespread human rights issue in Mexico. It has been reported that over the last decade that an estimated 26,000 people have disappeared in Mexico. A variety of reports also show the involvement by state actors, including the army and the police. The problem has also been scrutinized at the regional and international levels, including by the Organization of American States as well as the United Nations human rights mechanisms. The Government is working to improve the human rights situation in the country, including by fighting against enforced disappearances. Challenges posed by the complex public security situation in the country require the Mexican authorities to intensify their efforts in the fight against enforced disappearances.

Facts: Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera, and Rocío Irene Alvarado Reyes were deprived of their liberty by members of the military in the Mexican State of Chihuahua in December 2009, and have been “missing” ever since. The State officials told their family members that they were unaware of the victims’ detention or their whereabouts. Their fate or whereabouts remain unknown.

Findings: The case was brought before the Inter-American Commission on Human Rights, which characterized what happened as forced disappearance. The Commission recommended that the Mexican Government

- conduct a thorough, impartial, and effective investigation into the whereabouts of the victims;
- if appropriate, adopt the necessary measures to identify their remains and turn them over to their families;
- conduct the appropriate proceedings for the crime of forced disappearance of the three victims and hold accountable those who committed the crime;
- provide adequate compensation for the human rights violations; and
- adopt measures to respond to the problem of forced disappearance in Mexico.

The Commission found that the Mexican Government had not complied with its recommendations, and on 22 November 2016, it transferred the case to the Inter-American Court of Human Rights.

¹ OAS, Inter-American Commission on Human Rights; Report No. 3/16 Case 12.916; <http://www.oas.org/en/iachr/decisions/court/2016/12916fondo.en.pdf>.

Death penalty

There is not a complete global ban on the death penalty in international law. However, the United Nations General Assembly has adopted resolutions¹ urging States, among other things to

- respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty,
- progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed, and
- establish a moratorium on executions with a view to abolishing the death penalty.

Yet, people around the world are still executed by some States as punishment for a variety of crimes, including for acts that should not be criminalized in the first place (such sexual orientation and/or gender identity). Some States execute people who were under eighteen years old when the crime was committed. Prior to execution, people sentenced to death are often imprisoned for years on “death row”, which may amount to torture and other cruel, inhuman, or degrading treatment or punishment that causes mental suffering.

Neither the Committee against Torture nor the Human Rights Committee has yet concluded whether the death penalty per se amounts to torture. However, the methods for carrying out the death penalty, as well as the death row phenomenon, may amount to torture and cruel, inhuman, or degrading treatment or punishment. On the other hand, taking into account that international human rights treaties are living instruments and must be interpreted in present day conditions, the European Court of Human Rights has taken the view that the death penalty is prohibited under the ECHR. The UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment is also of the opinion that “even if the emergence of a customary norm that considers the death penalty as per se running afoul of the prohibition of torture and cruel, inhuman or degrading treatment is still under way, most conditions under which capital punishment is actually applied renders the punishment tantamount to torture. Under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment”.²

BOX 30: DEATH PENALTY: WHAT SHOULD STATES DO?

In accordance with international standards

- States that have not yet abolished the death penalty should take steps towards its abolition.
- States that have abolished the death penalty in law shall not reintroduce it.
- States should not deport persons who could face a death sentence upon their extradition.
- States that have moratoria on the death penalty should take steps to formalize its abolition in law.

1 UNGA resolutions A/RES/62/149, A/RES/63/168, A/RES/65/206.

2 Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, A/67/279.

International law urges that imposing the death penalty on certain groups of people constitutes a violation of human rights, regardless of the circumstances. The death penalty shall not be imposed for crimes committed by pregnant or nursing women, children, elderly persons, or persons with psychosocial or intellectual disabilities. Furthermore, military courts shall not have the power to impose the death penalty.

BOX 31: DEATH PENALTY IN INTERNATIONAL LAW

International law explicitly bans the death penalty, except during times of war, in

- The Second Optional Protocol to the International Covenant on Civil and Political Rights,
- Protocol No. 6 to the European Convention on Human Rights, and
- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

Protocol No. 13 to the European Convention on Human Rights prohibits the use of the death penalty at all times, even during war.

2) Prohibition of torture and other cruel, inhuman, or degrading treatment or punishment

A violation of human rights and dignity – Torture and other cruel, inhuman, or degrading treatment or punishment is a violation of human rights and dignity. It seeks to annihilate the victim's personality and denies the inherent dignity of the human being. It is absolutely prohibited and cannot be justified under any circumstances.

Prohibited by international human rights law – Torture and other cruel, inhuman, or degrading treatment or punishment is expressly prohibited in the International Covenant on Civil and Political Rights; the UN Convention against Torture; the European Convention for the Protection of Human Rights and Fundamental Freedoms; the EU Charter of Fundamental Rights; the American Declaration of the Rights and Duties of Man; the Inter-American Convention on Human Rights; the Arab Charter on Human Rights; the African Charter on Human and Peoples' Rights; and others.

“(...) The term ‘torture’ means any act by which severe pain or suffering, whether physical or mental [first element: nature of the act], is intentionally inflicted on a person [second element: intention of the perpetrator] for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind [third element: purpose], when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity [fourth element: involvement of public officials or assimilated].”

Article 1 of the Convention against Torture

Prohibited by international criminal law and humanitarian law – Torture is a crime under international law and a matter of humanitarian law where applicable. It is prohibited by the Geneva Conventions and its Additional Protocols, as well as by the Rome Statute. The systematic or widespread practice of torture constitutes a crime against humanity. Further, the prohibition of torture forms part of customary international law and is generally regarded as a norm of *ius cogens*, which means that it is binding regardless of whether a State has ratified international treaties in which torture is expressly prohibited.

Cruel, inhuman or degrading treatment – Torture may be distinguished from cruel, inhuman, or degrading treatment by taking into account elements such as the purpose of the conduct and the powerlessness of the victim, or the severity of the treatment. All such conduct is forbidden by international law.

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment, which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12, and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman, or degrading treatment or punishment.

Article 16(1) of the Convention against Torture

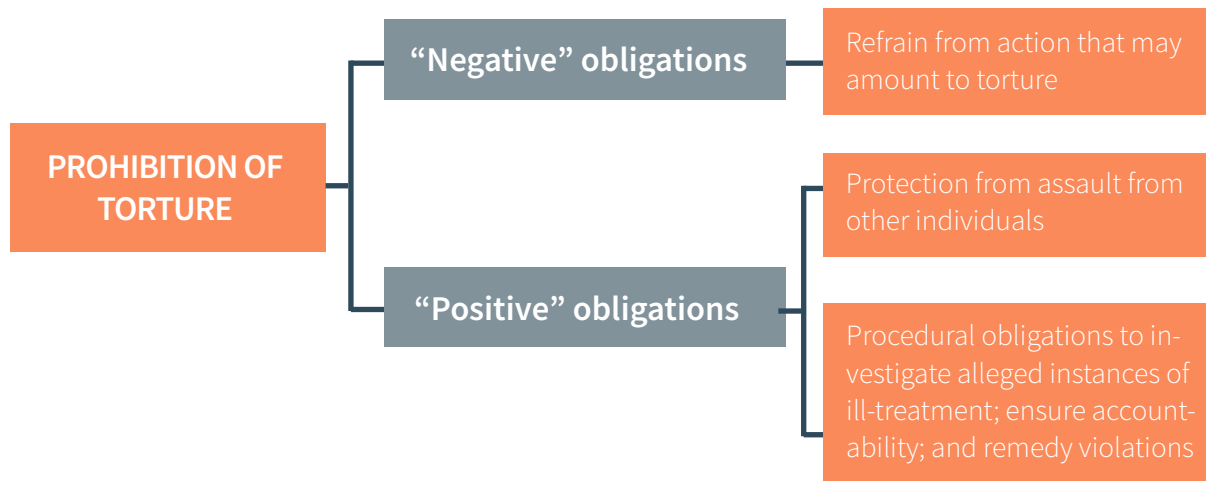
BOX 32: DETENTION FACILITIES

Persons deprived of their liberty are at particular risk of torture and other cruel, inhuman, or degrading treatment or punishment. States must ensure respect for prisoners' inherent dignity and value as human beings.

Such facilities where persons are deprived of their liberty include

- police stations;
- pre-trial detention centres;
- remand prisons;
- prisons;
- juvenile detention centres;
- border police facilities and transit zones at land crossings, international ports, and airports;
- immigration and asylum seekers' detention centres;
- psychiatric institutions;
- security and intelligence service facilities;
- detention facilities under military jurisdiction;
- places of administrative detention;
- means of transport for the transfer of detainees;
- social care homes provided by the State or subject to State regulations or licensing; and
- unofficial places of detention (such as those operating secret detentions).

State obligations – States have a wide range of obligations in combatting torture and other cruel, inhuman, or degrading treatment or punishment. Among other things, they should take measures to comply with international human rights standards concerning the treatment and living conditions of persons deprived of their liberty, such as **the UN Standard Minimum Rules for the Treatment of Prisoners** (also known as the Nelson Mandela Rules). They should provide training to their law enforcement and military forces. They should, under the Optional Protocol to the UN Convention against Torture, establish **National Preventive Mechanisms**. They should also ensure the enjoyment of the right to redress and rehabilitation by the victims.



Reference Material

- » UN Human Rights Office; “Combating Torture”; <http://www.ohchr.org/Documents/Publications/FactSheet4rev.1en.pdf>.
- » UN Human Rights Office; UN Voluntary Fund for Victims of Torture; “Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies”; http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf.

Here is a non-exhaustive list of acts that may amount to torture or cruel, inhuman, and degrading treatment:

Conditions of detention

- Detention facilities are the most common places where serious violations of the prohibition of torture and other cruel, inhuman or degrading treatment take place.

Refoulement

- Deporting a person to a third country may give rise to concerns, where a person would be deported to a country where he/she may be sentenced to death or where there is a real risk of being tortured or subject to cruel, inhuman and degrading treatment.

Gender based violence

- States have a duty to prevent the physical and psychological suffering that may amount to torture or cruel, inhuman and degrading treatment, which is inflicted upon women, including in the form of domestic violence, female genital mutilation or rape.

Death penalty

- The methods for carrying out the death penalty as well as the “death row” phenomenon may amount to torture or inhuman treatment.

Psychological torture

- Psychological and mental torture may occur in many ways, such as threats against a person’s life or life of his/her relatives, or torture of other persons, including relatives.

Trafficking in persons

- Trafficking in persons constitutes torture or cruel, inhuman and degrading treatment.

Enforced disappearances

- Enforced disappearance also amounts to torture or cruel, inhuman and degrading treatment.

Corporal punishment

- Corporal punishment may also amount to torture or cruel, inhuman and degrading treatment, regardless of whether it is lawful under national law.

3) The right to be free from enslavement

- Slavery and related practices constitute a **violation of human rights and dignity**.
- The prohibition of slavery and related practices have achieved the level of customary international law and *ius cogens*, meaning that it is **binding on all States** regardless of whether they have signed or ratified any treaty.
- The practice of slavery may also amount to a **crime against humanity**.

Defining slavery – At first, slavery was defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.¹ Later, the definition was broadened to include the practices and institutions of debt bondage, servile forms of marriage, the exploitation of children and adolescents, forced labour, and serfdom.²

International instruments – Protection against abuses of human rights that fall within the broad definition of slavery is a feature of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

BOX 33: INTERNATIONAL TREATIES PROHIBITING SLAVERY AND RELATED PRACTICE

- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Rights of the Child
- The Slavery Convention
- The Supplementary Convention
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Related ILO Conventions (e.g. no. 29 prohibiting forced labour in most of its forms; no. 105 prohibiting the use of forced labour for development; and 1973 Minimum Age Convention)

1 League of Nations Slavery Convention of 25 September 1926 art 1(1).

2 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery art 1.

4) The prohibition of human trafficking

Defining human trafficking – Trafficking in persons has been traditionally associated with the movement of women and girls into sexual exploitation. However, men and women, boys and girls, can all be victims of human trafficking. Today, human trafficking also includes a broader range of conduct for the purpose of exploitation.

The Protocol to Prevent, Suppress, and Punish Trafficking in Persons (Trafficking in Persons Protocol) defines the term “trafficking in persons” as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons [first element: action], by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person [second element: means], for the purpose of exploitation [third element: purpose]. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

International law provides a different definition for trafficking in children. The second element in the above definition (i.e. “means”) is not required, as the first and third elements (i.e. “action” and “purpose”) are enough.

- Trafficking does not require the crossing of an international border; **it can be internal as well as cross-border.**
- **Trafficking is different from migrant smuggling**, as the “purpose” of migrant smuggling is to profit from the movement, not the eventual exploitation as in the case of trafficking.
- **Trafficking does not always require movement**, as different “actions” can be used for such means and purposes.

Reference Material

- » UN Human Rights Office; “Instruments concerning Trafficking in Persons”; http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/IntInstrumentsconcerningTraffickingpersons_Aug2014.pdf.
- » UN Human Rights Office; “Human Rights and Human Trafficking”; http://www.ohchr.org/Documents/Publications/FS36_en.pdf.

A human rights violation – Trafficking in persons is prohibited by international law and is a violation of international human rights law. Moreover, such conduct must be criminalized according to the Trafficking Protocol.

Non-treaty instruments – Besides treaties, there are various other instruments related to the fight against human trafficking, such as the Recommended Principles and Guidelines on Human Rights and Human Trafficking; the UNICEF Guidelines on the Protection of Child Victims of Trafficking; the ASEAN Practitioner Guidelines on Criminal Justice Responses to Trafficking in Persons; and the UNHCR Trafficking Guidelines.

BOX 34: INTERNATIONAL INSTRUMENTS ON THE PROHIBITION OF TRAFFICKING IN PERSONS AND RELATED PRACTICES

- The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol)
- ILO Conventions 29, 105, and 182
- Recommended Principles and Guidelines on Human Rights and Human Trafficking
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Convention on the Elimination of All Forms of Discrimination against Women (art. 6)
- Convention on the Rights of the Child (art. 35)
- Optional Protocol on the Convention on the Rights of the Child, and on the sale of children, child prostitution, and child pornography
- UN Convention against Transnational Organized Crime
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social, and Cultural Rights
- Various regional instruments (e.g. Council of Europe Convention on Action against Trafficking in Human Beings; South Asian Association for Regional Cooperation; and the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution)

BOX 35: HUMAN RIGHTS CONCERNS RELATED TO TRAFFICKING IN PERSONS AND RELATED PRACTICES

Human trafficking is itself a violation of human rights; but it also gives rise to various other human rights concerns, including

- the right to life;
- the prohibition of discrimination;
- the right to liberty and security;
- the right not to be submitted to slavery, servitude, forced labour, or bonded labour;
- the right not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment;
- the right to freedom of association;
- the right to freedom of movement;
- the right to the highest attainable standard of physical and mental health;
- the right to just and favorable conditions of work;
- the right to an adequate standard of living;
- the right to social security; and
- the right of children to special protection.

Duty bearers – In the fight against human trafficking, international law imposes obligations on States as well as, where relevant, individuals and private entities, such as corporations. These obligations are as follows: (i) to identify, protect, and support victims of trafficking; (ii) to facilitate the return of trafficked persons; (iii) to offer remedies for trafficking; (iv) to provide an effective criminal justice response; (v) to prevent trafficking; and (vi) to ensure that responses to human trafficking do not violate established rights.



Event on Stepping up Action to End Forced Labour, Modern Slavery and Human Trafficking
Photo © 2018 UN Photo/Laura Jarriel

5) The right to liberty and security

Every person has the right to liberty. However, this does not grant complete freedom from arrest or detention. Persons may be deprived of their liberty only **for a limited range of reasons** under some international human rights treaties, and only if it is **in accordance with law** and if **not arbitrary**. Deprivations of liberty must be in accordance with a procedure established by domestic law and must respect the due process of law. Otherwise it constitutes a violation of human rights.

Grounds for deprivation of liberty – Liberty of the person is the rule, to which detention must be the exception. The following may constitute grounds for depriving persons of their liberty:

- non-compliance with the lawful order of a court or the fulfilment of an obligation prescribed by law;
- reasonable suspicion of having committed an offence;
- preventing flight; or
- administrative grounds (educational supervision, mental health, or deportation and extradition).

The right to due process of law – When a person is deprived of their liberty, minimum guarantees must be respected.

BOX 36: THE RIGHT TO DUE PROCESS OF LAW

The right to due process is crucial in the enjoyment of the right to liberty and security. It has many aspects, some of which are that every detained person

- shall be promptly informed of the reasons for her/his arrest;
- shall be promptly brought before a judge;
- is entitled to a trial within a reasonable time or should otherwise be released pending trial;
- has an enforceable right to compensation if detention is determined to be unlawful;
- is entitled to a prompt examination by a court as to the lawfulness of his/her detention, including habeas corpus proceedings;
- shall have access to a lawyer;
- has the right not to confess or testify against her/himself;
- must be allowed to promptly notify his/her family; and
- shall be provided an interpreter when necessary.

Incommunicado detention – Deprivation of liberty, even for a short period of time, in complete isolation from the outside world, including from family and a lawyer, is called *incommunicado detention*. Although it is not explicitly prohibited by international human rights law, it is linked to various other rights and therefore may constitute a human rights violation, including of the right to be free from torture or cruel, inhuman, and degrading treatment or punishment.

Arbitrary arrest and detention – A lawful arrest must not only be **in accordance with the law** but also be **reasonable** and **necessary** in all circumstances.

The right to security of the person – Every person has the right to the protection of the law in the exercise of their right to liberty. This, for example, puts an obligation on the State to take reasonable and appropriate measures to protect persons from known threats.

BOX 37: A LAWFUL DEPRIVATION OF LIBERTY

To be lawful under international human rights law, arrests and detentions must

- be carried out in accordance with law (both formal and substantive rules of domestic and international law), including the principle of non-discrimination; and
- be free from arbitrariness, in that the laws and their application must be appropriate, just, and foreseeable and must comply with the due process of law.

BOX 38: THE RIGHT TO LIBERTY AND SECURITY IN INTERNATIONAL HUMAN RIGHTS LAW

Unlawful or arbitrary deprivation of liberty is prohibited under international human rights law, including by the following treaties:

- Articles 3 and 9 of the Universal Declaration of Human Rights,
- Article 9 of the International Covenant on Civil and Political Rights,
- Article 37 (b) of the Convention on the Rights of the Child,
- Article 14 of the Convention on the Rights of Persons with Disabilities,
- Article 31 of the Convention Relating to the Status of Refugees,
- Article 6 of the African Charter on Human and Peoples' Rights,
- Article 7 of the American Convention on Human Rights, and
- Article 5 of the European Convention on Human Rights.

Reference Material

- » UN Human Rights Office; “Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers”; “Chapter 5: Human Rights and Arrest, Pre-Trial Detention and Administrative Detention”; <http://www.ohchr.org/Documents/Publications/training9c-hapter5en.pdf>; p. 168-169.

CASE 15: MUKONG V. CAMEROON (UN HUMAN RIGHTS COMMITTEE) ¹

In the case of Mukong, the applicant alleged that he had been arbitrarily arrested and detained for several months, an allegation rejected by the State party on the basis that the arrest and detention had been carried out in accordance with the domestic law of Cameroon.

The Human Rights Committee concluded that article 9(1) had been violated, since the author's detention "was neither reasonable nor necessary in the circumstances of the case". For instance, the State party had not shown that the remand in custody was "necessary ... to prevent flight, interference with evidence or the recurrence of crime" but had "merely contended that the author's arrest and detention were clearly justified by reference to" article 19(3) of the Covenant, which allows for restrictions on the right to freedom of expression.

However, the Committee considered that the author's right to freedom of expression had therefore been violated. Consequently, **the Committee also concluded that the author's arrest and detention were contrary to article 9(1) of the Covenant.**

¹ UN Human Rights Committee; Communication No. 458/1991; A. W. Mukong v. Cameroon; views adopted on 21 July 1994; in UN doc. GAOR, A/49/40 (vol. II); case study from UN Human Rights Office; "Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers".

6) Freedom of movement

Every person residing lawfully in a country has the right to move freely and to choose a place of residence anywhere within the territory of that country. This right should be protected from both public and private interference.

The right to freedom of movement is provided for in article 13 of the Universal Declaration of Human Rights, article 12 of the ICCPR, article 18 of the CRPD, article 39 of the CMW, article 5 (d/i) of the CERD, and article 15 (4) of the CEDAW.

Restrictions on freedom of movement – Restrictions on freedom of movement may take the form of

- restrictions on the entry of non-nationals,
- confinement to a certain region of a country,
- curfews,
- expulsion from a country, or
- prohibition to leave a country.

However, such restrictions must be provided by law; must be necessary to protect national security, public order, public health or morals, or the rights and freedoms of others; and must be consistent with other State obligations under international human rights law.

Freedom to leave a country – Article 12 (2) of the ICCPR provides that all persons (citizens, non-nationals, and persons residing in a country irregularly) are free to leave the territory of a State. Both the State of nationality and the State of residence have obligations to respect individuals' freedom to leave a country. For example, issuing travel documents or passports to all citizens both within and outside the national territory is an obligation of the State of nationality.

Reference Material

- » UN Human Rights Office and Inter-Parliamentary Union (IPU); Human Rights Handbook for Parliamentarians; <http://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf>

CASE 16: CELEPLI V. SWEDEN (UN HUMAN RIGHTS COMMITTEE) ¹

Mr. Celepli, a Turkish citizen of Kurdish origin living in Sweden, was ordered to leave the country on grounds of suspected involvement in terrorist activities. That order was not enforced, as the Swedish authorities believed Mr. Celepli was at risk of persecution in Turkey; he was allowed to remain in Sweden provided that he resides in a particular municipality and report regularly to the police. The Human Rights Committee found that these restrictions on freedom of movement did not violate Article 12 (3) of the ICCPR.

¹ UN Human Rights Committee; Communication No. 456/1991, Celepli v. Sweden; case study from UN Human Rights Office and IPU; Human Rights Handbook for Parliamentarians p. 152.

7) Freedom of thought, conscience, and religion

Everyone has the freedom of thought, conscience, and religion. This includes the freedom to change one's religion or belief, and the freedom – either alone or in community with others, and either privately or publicly – to manifest one's religion or belief in teaching, practice, worship, and observance. Forced religious conversion is a violation of the right to freedom of religion and is prohibited under international law.

The right to freedom of thought, conscience, and religion is provided for in article 18 of UDHR, article 18 of the ICCPR, article 14 of the CRC, article 12 of the CMW, and article 5 (d/vii) of the CERD.

Limitations on the manifestation of one's religion or belief – Freedom of thought, conscience, or religion is an absolute right. However, the manifestation of religion or belief may be restricted on legitimate grounds. Under article 18, paragraph 3 of the ICCPR, such restrictions must be prescribed by law and be necessary for protecting public safety, order, health or morals, or the fundamental rights and freedoms of others.

- The manifestation of one's religion or belief must be a form of “worship, teaching, practice or observance”. For example, when the manifestation of religion amounts to incitement to hatred against certain groups in society, such conduct may constitute incitement to discrimination, hostility, or violence, and may therefore provide legitimate grounds for a State to restrict the freedom of thought, conscience, and religion in order to protect the fundamental rights and freedoms of others.



Religious minorities often face serious threats, not only to their freedom of thought, conscience, and religion, but also to their right to life and various other rights. Genocide of the Yazidi religious minority in the Middle East has occurred in Iraq and Syria. The Special Rapporteur on freedom of religion and belief said that “freedom of religion and belief is being denied in the most gross and systematic way possible – through the attempted extermination of religious minorities. The Independent International Commission of Inquiry on Syria released a report of its findings. - Photo © UNICEF/Razan Rashidi

8) Freedom of opinion and expression

Everyone has the right to hold opinions. It is an absolute freedom; there are no exceptions or restrictions on its enjoyment. Everyone has the right to express their opinions and beliefs, which is crucial in a democratic society where there is a flow of ideas and information. However, freedom of expression is not absolute, and States may – and in some cases should – impose restrictions.

The right to freedom of opinion and expression is provided for in article 19 of the UDHR, article 19 of the ICCPR, article 13 of the CRC, article 13 of the CMW, and article 5 (d/viii) of the CERD.

The scope of freedom of opinion and expression – The right to freedom of opinion and expression includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas. It also includes, for instance, the right of access to information held by public bodies, freedom of the media, and academic freedom.

CASE 17: VITALIY SYMONIK V. BELARUS (UN HUMAN RIGHTS COMMITTEE) ¹

In the case of Vitaliy Symonik v. Belarus, the Human Rights Committee found that preventing an author from distributing political leaflets, confiscating the leaflets, arresting him, charging him with an administrative offence, and subsequently sentencing him to a fine, unjustifiably restricted his right to freedom of expression as guaranteed in Article 19 of the ICCPR.

¹ UN Human Rights Committee; Communication No. 1952/2010, Vitaliy Symonik v. Belarus; case study from UN Human Rights Office and IPU; Human Rights Handbook for Parliamentarians p. 158

Limitations to freedom of expression – Restrictions imposed by a State on the exercise of freedom of expression must be provided by law; must be necessary for a legitimate purpose, such as respect for the reputation or rights of others or the protection of national security, public order or public health or morals; and must be proportionate to the aim pursued.

Prohibition of the incitement to national, racial, or religious hatred – Freedom of expression does not permit hate speech and/or advocacy of national, racial, or religious hatred. This issue is also covered in the **Rabat Plan of Action** on the prohibition of advocating national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.

CASE 18: IRINA FEDOTOVA V. RUSSIAN FEDERATION (UN HUMAN RIGHTS COMMITTEE) ¹

The applicant was convicted of an administrative offence and fined 1,500 rubles for displaying near a secondary school two posters that stated, “Homosexuality is normal” and “I am proud of my homosexuality”. In its decision, the Human Rights Committee found that the applicant’s conviction under the Ryazan Law on Administrative Offences, which prohibits “public actions aimed at propaganda of homosexuality among minors”, violated her right to freedom of expression, in conjunction with her right to freedom from discrimination, under the ICCPR.

¹ UN Human Rights Committee; Communication No. 1932/2010, Irina Fedotova v. Russian Federation; case study from UN Human Rights Office and IPU; Human Rights Handbook for Parliamentarians p. 158-159.

9) Freedom of peaceful assembly and association

Freedom of peaceful assembly – Everyone has the right to peaceful assembly with others. States must guarantee the right of individuals to hold meetings to publicly discuss or disseminate information or ideas. Therefore, States have both negative obligations (not to interfere with the enjoyment of the right) and positive obligations (to take measures to guarantee its enjoyment). State authorities should, however, take measures to prevent a peaceful assembly from escalating to a riot, due to provocation, for example, or to the use of force by private parties, such as counter-demonstrators or agents provocateurs.

The right to peaceful assembly and of association is provided for in article 20 of the Universal Declaration on Human Rights, articles 21 and 22 of the ICCPR, article 15 of the CRC, and article (d/ ix) of the CERD.

Freedom of association – Everyone has the right to freedom of association. The formation of and membership in an association must be voluntary. Neither State nor private parties can force anyone, whether directly or indirectly, to join an association – be it a political party, a religious society, or any other organization.

Trade unions – Freedom of association includes the right to form and join, not join, or leave trade unions to protect one's interests. The freedom of association in relation to trade unions is also protected under article 8 of ICESCR.

Limitations to freedom of peaceful assembly and association – The right to freedom of peaceful assembly and association may be limited on certain grounds. Such limitation must conform to the law, be necessary in a democratic society, and be proportionate to the aim pursued.



Modified photo by Kipras Štreimikis on Unsplash

BOX 39: THE FREEDOM OF ASSOCIATION

The freedom of association includes the right

- to form an association,
- to join an association,
- not to join an association, and
- to leave an association.

CASE 19: SOCIALIST PARTY OF TURKEY (STP) AND OTHERS V. TURKEY (EUROPEAN COURT OF HUMAN RIGHTS)¹

The STP was formed on 6 November 1992, but on 30 November 1993 the Constitutional Court of Turkey ordered its dissolution on the grounds that its programme was liable to undermine the territorial integrity of the State and the unity of the nation. It found that the STP had called for a right of self-determination for the Kurds and had supported the right to “wage a war of independence”. The court ruling likened the STP’s views to those of terrorist groups. The applicants alleged, inter alia, that the party’s dissolution had infringed their rights, as guaranteed under Article 11 of ECHR on freedom of association.

The European Court of Human Rights found that the dissolution of the STP amounted to a violation of the applicants’ right to freedom of association. It said there could be no justification for hindering a political group merely because it sought public debate on the situation of part of the State’s population and wished to participate in the nation’s political life and employ democratic means of satisfying every group concerned. Moreover, since the Constitutional Court’s ruling was made before the STP had begun its activities, the European Court found that there was no evidence to support allegations that the STP was responsible for the problems posed by terrorism in Turkey. According to the European Court, the STP’s dissolution was therefore disproportionate and unnecessary in a democratic society.

1 Case study from UN Human Rights Office and IPU; Human Rights Handbook for Parliamentarians; p. 167.

10) The right to participate in public affairs

The right to participate in public affairs – Every citizen should have the right and opportunity to take part in the conduct of public affairs; to vote and stand for election; and have equal access to public service in their country. States that are party to ICMW have also recognized the right of migrant workers and their families to participate in the public affairs of their State of origin.

BOX 40: THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

The right to participate in public affairs has three components:

- the general right to public participation,
- the right to vote and be elected, and
- equal access to public service.

The general right to public participation – The right to public participation consists of (a) **indirect participation** in public affairs through elected representatives, and (b) **direct participation** in public affairs. Indirect participation: Participation in the conduct of public affairs usually takes place through elections and representative bodies (e.g. national parliaments, local bodies, i.e. municipal/city councils). Through these means, citizens can express their will and hold the government to account. Direct participation: Citizens are also able to participate directly in public affairs, not only through elected representatives. This can be through public debate and dialogue with elected representatives, referendums, and popular initiatives.

The right to vote – Every citizen has the right to vote and the State has the obligation to guarantee this right. In this respect

- The right to vote should be established by law.
- All individuals must have equal access to the election process without discrimination on prohibited grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.
- This does not mean, however, that everyone has the right to vote. Participation in elections may be limited to the citizens of the State. There may be age restrictions, often requiring persons to reach the age of 18 to be able to vote. In some jurisdictions, prisoners may be deprived of their voting rights during their prison term, while in others, their voting rights may be subject to restrictions.
- The State should take measures to prevent rights violations and coercion in registration and voting.
- The State must take positive measures to remove obstacles (e.g. language barriers, poverty, non-accessibility for persons with disabilities, and obstacles to freedom of movement) to participation in elections.

The right to be elected – The right to stand for election may be subject to restrictions. However, they must be justifiable and reasonable. For example, there may be minimum age or citizenship requirements, but physical disability, illiteracy, educational background, party membership, or property ownership should not restrict the right to be elected.¹

Free, fair, and periodic elections should be guaranteed by national law. In order to ensure that elections take place in a free and fair manner, an independent authority to supervise the electoral process is a must. The security of ballot boxes during voting as well as the counting of the ballots in the presence of observers, candidates, or their agents is also necessary.

Equal access to public service – Everyone must have the right and opportunity to take part in public service positions. The principle of equality and non-discrimination must apply in the appointment, promotion, suspension, and dismissal of those serving in such positions. Both the criteria and the process should be objective and reasonable.

BOX 41: ARE NON-CITIZENS ENTITLED TO THE ENJOYMENT OF POLITICAL RIGHTS?

The International Covenant on Civil and Political Rights explicitly refers in article 25 to “citizens” as the beneficiaries of the right to participate in public affairs. Therefore, under the ICCPR, non-citizens are not entitled to the general right to public participation, the right to vote and be elected, or equal access to public service.

State Parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families have also recognized the right of migrant workers and their family members to participate in the public affairs of their countries of origin.

This does not mean that non-citizens are not entitled to political rights outside their countries of origin. First, non-citizens are equally entitled to the right of freedom of expression, assembly, and association without discrimination. Through exercising these rights, they may influence public debate and dialogue. Second, international human rights law only sets minimum standards. Therefore, States can grant a wide range of political participation rights to non-citizens as well. This is, for example, the case in provincial and/or municipal elections in a large number of States.

1 UN HRCtee, General Comment No. 25 (1996), para. 16.

11) Protection of private and family life and the right to privacy

Everyone has the right not to be subjected to arbitrary interference with their privacy, family, home, or correspondence, and to be free from unlawful attacks upon their honor and reputation. Respect for private and family life is guaranteed under international human rights law. It is not, however, an absolute right and is subject to some forms of legitimate restrictions.

BOX 42: WHAT DOES THE RIGHT TO PRIVACY ENTAIL?

Preservation of individual identity and intimacy: An individual's specific identity is at the core of their private life and must be respected. This includes, for example, respect for one's name, appearance, clothing, hairstyle, and gender.

Protection of individual autonomy: Individuals have the right to achieve self-realization with full respect for their individuality and autonomy, as long as doing so does not interfere with the rights of others. This includes a right to take autonomous decisions regarding one's own body, including, for example, in relation to gender identity or sexual conduct.

Protection of family life: Everyone has a right to the protection of their family life from arbitrary or unlawful interference. According to the UN Human Rights Committee, the term "family" must be interpreted broadly. Furthermore, the rights to marry and form a family, sexual and reproductive rights, equality between spouses, protection of motherhood and the special rights of children, the right to family reunification, foster placement, and adoption are also linked to the guarantees relating to the family.

Protection of personal information: The gathering of personal information by State officials about individuals without their consent is related to the right to private life and privacy. This concerns, for example, fingerprints, photography, and other personal information gathered by the police, or the collection of medical data.

Protection of private correspondence: Everyone has a right to correspondence without unlawful interruption or censorship. The term "correspondence" covers all forms of communication (e.g. letters, telephone calls, and emails).

Limitations to the right to privacy and private life – The right to privacy and private life may be restricted on the grounds of legitimate public interests, which may be the protection of public order, health, morals, and the rights and freedoms of others. Even so, restrictions must be prescribed by law, be necessary in a democratic society, and be proportionate to the aim pursued.

- For example, laws enacted in recent years in a number of countries, to broaden the powers of police and security services to combat crime, including terrorism, have particularly affected the right to privacy. Although combatting crime is a legitimate public interest, human rights concerns have arisen, particularly in relation to the mass screening, scanning, processing, combining, matching, storing, and monitoring of private data.

CASE 20: A.P., GARÇON AND NICOT V. FRANCE (EUROPEAN COURT OF HUMAN RIGHTS)¹

Three transgender persons wished to change the entries concerning their sex and their forenames on their birth certificates. They were not allowed to do so by the courts, due to not having fulfilled administrative requirements, such as undergoing sex reassignment surgery. They applied to the European Court of Human Rights, alleging a violation of their right to respect for private life.

The Court held that there had been a violation of the right to respect for private life and held, in particular, “that making recognition of the sexual identity of transgender persons conditional on undergoing an operation or sterilizing treatment to which they did not wish to submit amounted to making the full exercise of one’s right to respect for private life conditional on relinquishing full exercise of the right to respect for one’s physical integrity”.

1 European Court of Human Rights; A.P., Garçon and Nicot v. France; application nos. 79885/12, 52471/13 and 52596/13; 6 April 2017.



Photo by Picsea on Unsplash

12) Administration of justice and the right to a fair trial

Administration of justice – International human rights standards must be respected in the administration of justice:

Human rights guarantees relating to the administration of justice are well established in international human rights law. Articles 6-11 of the UDHR, 14-16 of the ICCPR, 18 of the CMW, and 40 of the CRC provide for human rights standards in the administration of justice. There are also provisions in regional human rights instruments, such as article 6 of the European Convention on Human Rights, 8 of the American Convention on Human Rights, 7 of the African Charter on Human and People's Rights, 13 of the revised Arab Charter on Human Rights, and 20 of the ASEAN Human Rights Declaration. In addition, there are international principles for good administration of justice, such as the *UN Basic Principles on the Independence of the Judiciary*.

BOX 43: RESPECT FOR HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE

States must guarantee human rights in the administration of justice, in particular

- the right to a fair and public hearing by an independent and impartial tribunal;
- the right to recognition as a person before the law;
- the right to equal protection of the law without any discrimination;
- the right to an effective remedy by the competent national tribunals for acts violating fundamental rights;
- the right to be presumed innocent until proven guilty; and
- the right not to be held guilty of any penal offence on account of any act that did not constitute a penal offence, under national or international law, at the time when it was committed.

Equality of arms – Both parties of a trial (the prosecution and the accused in criminal proceedings, or the plaintiff and the defendant in civil proceedings) must have equal rights and opportunities at the various stages of the proceedings. They shall be kept informed of the facts and arguments of the opposing party and have their arguments heard by the court.

Public hearings – In principle, court hearings and judgments must be open to the public. This is particularly important for the transparency of proceedings. Another reason for public hearings is that the administration of justice is also a matter of public interest. However, there may be restrictions: for reasons of morality, public order, or national security in a democratic society, when the interest of the private lives of the parties is served; for the protection of the identity of children; or when (and to an extent strictly necessary), in the opinion of the court, special circumstances dictate that publicity would prejudice the interests of justice.

Special, extraordinary or military courts – Some countries have set up special, extraordinary, or military courts to try specific types of offences. Their establishment is not explicitly prohibited under international law; but they must also comply with fair trial guarantees relating to their competence, independence, and impartiality. However, such courts offer fewer fair trial guarantees compared to ordinary courts.

Trial of civilians in special, extraordinary, or military courts: The UN Human Rights Committee noted that while trying civilians in military or special courts is not prohibited in all circumstances, it should be exceptional. The State must justify, with objective and serious reasons, the necessity of resorting to such trials. This is a safeguard for civilians, as serious human rights concerns may arise as regards the equitable, impartial, and independent administration of justice in such courts.¹

The right to a fair trial in a state of emergency and in armed conflict – States may derogate from their certain international human rights obligations during a state of emergency. However, the UN Human Rights Committee has stated that States must respect, even in a state emergency

- the principle of legality,
- the rule of law, and
- the fundamental requirements of a fair trial.

The Committee further explained that even in a state of emergency

- only a court of law may try and convict a person for a criminal offence,
- the presumption of innocence must be respected, and
- the right to take proceedings before a court must be upheld (in order to protect non-derogable rights).²



Photo by Claire Anderson on Unsplash

1 UN HRCttee General Comment No. 29: Article 4: Derogations during a State of Emergency; UN HRCttee General Comment no. 32, 31 August 2001, CCPR/C/21/Rev.1/Add.11; Right to equality before courts and tribunals and to fair trial, 23 August 2007; CCPR/C/GC/32

2 Ibid.

BOX 44: THE RIGHTS OF THE ACCUSED IN CRIMINAL TRIALS

International human rights law provides for specific rights that persons charged with a criminal offence should enjoy:

- the right to equality of arms;
- the right to a public hearing;
- the right to be presumed innocent;
- the right not to be compelled to testify or to confess guilt (evidence elicited by torture or ill-treatment may not be used in court);
- the right to defend oneself in person or through a lawyer of one's own choosing, and the right to be provided with legal assistance free of charge;
- the right to have adequate time and facilities for one's defence, and the right to communicate with one's lawyer;
- the right to be tried without undue delay;
- the right to be present at one's trial;
- the right to call and examine witnesses;
- the right to be provided with language interpretation free of charge;
- the right to appeal to a higher tribunal;
- the right not to be tried and sentenced twice for the same offence;
- the right to receive compensation in the event of a miscarriage of justice;
- the right not to be held guilty of any penal offence on account of any act that did not constitute a penal offence, under national or international law, at the time when it was committed; and
- the right to benefit from a lighter penalty if the criminal offence has been committed before the law was amended to provide for a heavier penalty.

CASE 21: SUPREME COURT OF JUSTICE (QUINTANA COELLO AND OTHERS) V. ECUADOR (INTER-AMERICAN COURT OF HUMAN RIGHTS)¹

In Ecuador, the Parliament passed a resolution concerning the removal of twenty-seven judges of the Supreme Court of Justice. The case was later brought before the Inter-American Court of Justice, which interpreted the American Convention in line with the ICCPR (taking into account General Comment No. 32 of the UN Human Rights Committee) and the UN Basic Principles on the Independence of the Judiciary.

The Court found that the State had violated the right to a fair trial and the obligation to respect rights under the American Convention. The Court held that the victims had been dismissed from office by a body without jurisdiction and were not granted an opportunity to be heard. Therefore, the Court also found a violation of the right to have access to public service. Furthermore, the Court pointed to the negative effects that the removal of twenty-seven judges of the Supreme Court of Justice would have on the independence of the judiciary.

¹ Inter-American Court of Human Rights; the case of Supreme Court of Justice (Quintana Coello et al.) v. Ecuador; Preliminary Objection, Merits, Reparations and Costs; Judgment August 23, 2013.

13) The right to an adequate standard of living

Everyone has the right to a standard of living adequate for the health and wellbeing of themselves and their family. The UDHR's article 25(1) and the ICESCR's article 11 guarantee this right and set out some of its elements, including the right to food, clothing, housing, medical care, necessary social services, and social security. It is also guaranteed under article 27 of the CRC, article 14 of the CEDAW, article 29 of the CRPD, and article 5(e) of the CERD.

a) The right to adequate housing

BOX 45: THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

In its General Comments, the Committee on Economic, Social, and Cultural Rights has explained the components of the right to an adequate standard of living. They include

- **the right to adequate housing** (General Comments 4 and 7),
- **the right to food** (General Comment 12),
- **the right to water** (General Comment 15), and
- **the right to social security** (General Comment 19).

According to the Committee on Economic, Social, and Cultural Rights, the right to adequate housing should be interpreted broadly and be seen as the right to live somewhere in security, peace, and dignity. It is provided for in article 25 of the UDHR, article 11 of the ICESCR, article 14 of the CEDAW, article 5 of the CERD, article 27 of the CRC, article 43 of the CMW, and article 28 of the CRPD.

Links to other human rights – The right to adequate housing is linked to the enjoyment of several other human rights, including the rights to work, health, social security, voting, privacy, and education. For example, forced evictions have implications on the right to education, as they often result in the interruption or cessation of children's schooling.

Guarantees under the right to adequate housing – The right to adequate housing guarantees

- protection against forced evictions and the arbitrary destruction and demolition of one's home;
- the right to be free from arbitrary interference with one's home, privacy, and family; and
- the right to choose one's residence, determine where to live, and enjoy freedom of movement, within legitimate and lawful restrictions.

“Guarantee the equal enjoyment of the right to adequate housing for citizens and noncitizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices.”

The UN Committee on the Elimination of Racial Discrimination
General Recommendation No. 30

No discrimination or segregation in housing – Non-discrimination and equality are crucial for the enjoyment of the right to adequate housing.

Minimum criteria for the enjoyment of the right to adequate housing – The right to adequate housing is about more than merely guaranteeing four walls and a roof. For its full enjoyment, the following criteria must be met:

- A degree of tenure security is necessary to provide for legal protection against forced evictions, harassment, and other threats.
- Services, materials, facilities, and infrastructure must be available. Some examples are access to safe drinking water, adequate sanitation, and energy for cooking, heating, lighting, food storage, or refuse disposal.
- The right to participation in housing-related decision-making at the national and community levels must be respected.
- Housing must be affordable, so that it doesn't negatively affect the enjoyment of occupants' other human rights.
- Physical safety and adequate space must be guaranteed, as must protection against the cold, damp, heat, rain, wind, and other threats to health and structural hazards.
- Housing must be accessible and take the specific needs of disadvantaged and marginalized groups into account.
- The location of housing must not be separated from employment opportunities, health-care services, schools, childcare centres, and other social facilities.
- The expression of cultural identity in the enjoyment of the right to adequate housing must be respected.

Forced evictions – Forced evictions are the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.¹ Forced evictions take place for a variety of reasons, such as to make way for development and infrastructure projects, urban redevelopment, city beautification, or prestigious international events; or as a result of conflicts over land rights, armed conflicts, or societal patterns of discrimination.²

Safeguards in the case of evictions – The right to adequate housing does not prohibit evictions as such – but these must take place in a lawful, reasonable, and proportional manner, and in accordance with international law. Forced evictions tend to be violent, and they disproportionately affect the poor, so it is important to ensure that certain safeguards are in place:

- Effective legal recourses and remedies should be available to those who are evicted.
- Evictions should not lead to homelessness or further vulnerabilities.
- All feasible alternatives must be explored before carrying out any eviction, so as to avoid, or at least minimize, the need for force.

1 UN-Habitat, *Global Report on Human Settlements 2007: Enhancing Urban Safety and Security* (Nairobi, 2007).

2 UN Human Rights Office and UN Habitat Fact Sheet; “The Right to Adequate Housing”.

- Effective procedural guarantees for those affected by the eviction must be respected. They include, for example, an opportunity for genuine consultation; availability of information on the proposed eviction within a reasonable timeframe; or access to legal remedies.³

Reference Material

- » UN Human Rights Office and UN Habitat Fact Sheet; “The Right to Adequate Housing”; http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf.

CASE 22: BEN DJAZIA AND BELLILI V. SPAIN (UN COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, 2017)¹

In October 2013, Mr. Mohamed Ben Djazia, Ms. Naouel Bellili, and their two minor children were evicted from their home in Madrid, Spain. Their private rental contract had expired, and as they were affected by the economic crisis in Spain at the time, they were unable to pay their rent. Mr. Ben Djazia applied to the court in Madrid against the eviction order. He had also repeatedly - and unsuccessfully - applied for social housing for over ten years. The Madrid court rejected his claims, and the family was evicted and left without shelter. He later communicated his case to the UN Committee on Economic, Social, and Cultural Rights, a procedure provided for under the Optional Protocol to the ICESCR.

On 20 June 2017, the Committee held that “the authors’ eviction, without a guarantee of alternative housing by the authorities of the State party as a whole, (...) constituted a violation of their right to adequate housing.” It highlighted the positive obligations of the state to protect the right to housing even when an eviction is justified. It further noted that the State had an even greater duty to justify the outcome because minor children were negatively affected. It also noted that the “lack of housing is often the result of structural problems, such as high unemployment or systemic patterns of social exclusion”, which the authorities must resolve through an appropriate, timely and coordinated response, to the maximum of their available resources.

¹ UN CESCR; Mohamed Ben Djazia and Naouel Bellili v. Spain, Communication No. 5/2015, 20 June 2017, UN Doc. E/C.12/61/D/5/2015.

3 Ibid.

b) The right to adequate food

Everyone has the right to adequate food. It is an essential part of the right to an adequate standard of living. It is guaranteed in international human rights law, both as part of the right to an adequate standard of living and separately. Articles 25 of the UDHR, 11(1) and 11(2) of the ICESCR, 12(2) of the CEDAW, 24(2) as well as 27 (3) of the CRC and 25(f) and 28(1) of the CRPD provide for the right to adequate food.

“The right to adequate food is realized when every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for its procurement.”

The UN Committee on Economic, Social, and Cultural Rights
General Comment No. 12

Available, accessible, and adequate food – For everyone to enjoy this right, food must be *available*, *accessible*, and *adequate*. Under the ICESCR, the State party “undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means”. This includes taking steps to progressively realize the right to food.

According to the Food and Agriculture Organization of the United Nations, the world produces enough food to feed its entire population. A lack of access to available food, however, leads to hunger and malnutrition. There are systemic challenges in accessing available food, not only in developing countries but also in some of the most economically developed countries. Social exclusion and discrimination are among the root causes of hunger and malnutrition. The availability, accessibility, and adequacy of food means

- **Available food** – Food should be available for all, either through the means of feeding oneself directly from natural resources, or through well-functioning distribution, processing, and market systems that can move food from the site of production to where it is needed.
- **Accessible food** – Both economic and physical access to food should be guaranteed. Food should be affordable (the minimum wage or social benefits should be sufficient to meet the costs). Food should also be accessible to all, including children, the sick, persons with disabilities, the elderly, people in remote areas, victims of armed conflicts or natural disasters, and prisoners.
- **Adequate food** – The adequacy of food depends on the dietary needs of the individual (based on age, living conditions, health, etc.), its safety (from adverse substances such as contaminants from industrial or agricultural processes), and cultural appropriateness (for example, aid containing food that is a religious or cultural taboo for the recipients is not culturally appropriate).

Links to other human rights – Where individuals cannot enjoy their right to adequate food, this may create further obstacles to their access to other human rights. A lack of access to some human rights may also negatively impact the enjoyment of the right to adequate food. Some rights that are closely linked to the right to adequate food are: the rights to health; life; water; adequate housing; information; education;

work and social security; freedom of association; taking part in public affairs; freedom from the worst forms of child labour; or freedom from torture and cruel, inhuman, or degrading treatment or punishment. For example

- Hunger and malnutrition negatively affect children’s learning abilities and may force them to drop out of school. This undermines their enjoyment of the right to education.
- Individuals, in particular the most marginalized and excluded, should be able to participate in public policy-making related to food. Therefore, the enjoyment of the right to participate in public affairs, as well as the freedom of association and assembly are linked to the right to adequate food. For example, people living in rural areas and facing food insecurity, especially landless workers such as sharecroppers and agricultural labourers, should be able to participate in relevant public policy making.

CASE 23: SERAC AND CESR V. NIGERIA (AFRICAN COMMISSION ON HUMAN AND PEOPLE’S RIGHTS)¹

The state-owned Nigerian National Petroleum Company is the majority shareholder in a consortium with Shell Petroleum Development Corporation. Their oil extraction activities have caused a wide range of human rights violations in Nigeria, in particular against the Ogoni community, which is one of the indigenous peoples living in southeastern Nigeria, across the Local Government Areas of Khana, Gokana, Eleme, and Tai. In 1996, two NGOs complained to the African Commission on Human Rights, alleging that the Nigerian Government had “participated in irresponsible oil development that has poisoned much of the soil and water upon which Ogoni farming and fishing depended (...) Nigerian security forces have destroyed crops and killed farm animals (...) and made it impossible for many Ogoni villagers to return to their fields and animals”. They argued that the destruction of farmlands, rivers, crops, and animals caused malnutrition and starvation.

The Commission held that the Nigerian Government had violated the right to food through the destruction of food sources and through allowing private oil companies to destroy food sources, and that it had thereby created obstacles to Ogoni communities’ access to their right to food.

1 African Commission on Human and People’s Rights; Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, Communication No. 155/96.

c) The right to water

Everyone has the right to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. International human rights law provides for specific obligations related to the access to safe drinking water. Accordingly, States must take steps, especially economic and technical ones, to ensure everyone's access to a sufficient amount of safe drinking water for personal and domestic use. They must do this either independently or with international assistance and co-operation, to the maximum of their available resources. This includes water for drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. States must also protect the quality of drinking-water supplies and resources.



Special Rapporteur on the human rights to safe drinking water and sanitation: "There is still a long way to go to make this right a reality for all (...) the proposed Sustainable Development Goals will provide an opportunity to reach this reality."

Photo © UNTV

"The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements."

The UN Committee on Economic, Social and Cultural Rights
General Comment No. 15

The right to sanitation – A lack or poor quality of sanitation poses a serious threat to the enjoyment of the rights to health and housing. The UN Committee on Economic, Social, and Cultural Rights, in its General Comment no. 15, has stated that ensuring everyone's access to adequate sanitation is fundamental for human dignity and privacy, and is one of the principal mechanisms for protecting the quality of drinking water supplies and resources. States must progressively extend safe sanitation services, taking into account the needs of women, children, and persons living in rural and deprived urban areas.

Key aspects of the right to water – States have the obligation to progressively achieve the full realization of the right to water. These are the key measures they must take to guarantee this right:

- Unlawful pollution of water resources is prohibited. It must be free from microbes and parasites, chemical substances, and radiological hazards that pose a threat to a person's health.
- Discrimination in access to safe drinking water and sanitation, for example on the basis of land or housing status, is prohibited. Safe drinking water must be physically accessible and within safe reach for all, taking into account the needs of particular groups, including persons with disabilities, women, children, and the elderly. It must also be affordable to all, and no one should be denied access because they cannot afford it.
- Access to existing water supplies, especially to traditional water sources, must not be interfered with.

- Personal security when accessing water or sanitation outside the home must be ensured.
- Access to a minimum amount of safe drinking water to sustain life and health must be ensured. This includes access to safe drinking water and sanitation in detention.
- Protection against arbitrary and illegal disconnections must be provided.
- Everyone must have the opportunity to participate in water and sanitation related decision making at the national and community levels.

International human rights law – Obligations related to access to safe drinking water and sanitation are explicit in articles 14(2) of the CEDAW, 5 of the ILO Convention no. 161, 24 and 27(3) of the CRC, and 28 of the CRPD, and are implicit in a number of other treaties, and can be derived from other obligations related to the rights to life, adequate housing, education, food, health, work, and cultural life.

CASE 24: WATER AND SANITATION PROJECT IN THE DEMOCRATIC REPUBLIC OF CONGO (SOLIDARITÉS INTERNATIONALE)¹

Solidarités Internationale, a non-profit humanitarian organization, implemented the project “Water and sanitation” in the Democratic Republic of Congo. The project successfully decreased diseases and reduced domestic tasks, by providing water in Beni village through standpipes. Human rights with a focus on gender-related issues were taken into account in designing the project, which helped to decrease the number of rapes as women no longer had to go through the forest to reach water sources where, in the past, they had repeatedly been sexually assaulted.

¹ The case study is taken from the European Commission Staff Working Document: A rights based approach, encompassing all human rights for EU development cooperation, Brussels, 30.4.2014.

State obligations – The State must take appropriate measures toward the full realization of the right to water to the maximum of its available resources. It must respect, protect, and fulfil everyone’s right to water. Some examples are below.

Respect

Do not disconnect an individual’s water supply without respecting due process.

Protect

Where water services are operated or controlled by the private sector, ensure adequate pricing regulation.

Fulfil

Ensure that all persons are progressively connected to a safe drinking water supply.

Reference Material

- » UN Human Rights Office, UN Habitat, UN World Health Organization; Fact Sheet no. 35; “The Right to Water”; <http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>.
- » UN Human Rights Office; Frequently Asked Questions on Economic, Social and Cultural Rights; Fact Sheet No. 33.

d) The right to social security

Everyone has the right to social security, including social insurance. It is provided for in Articles 9 of the ICESCR and 22 and 25(1) of the UDHR.

“The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents. Social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.”

The UN Committee on Economic, Social and Cultural Rights
General Comment No. 19

Key elements of the right to social security – Social security must be available, adequate, affordable, and accessible:

- **Availability** – a social security system that is available and in place to ensure that benefits are provided for the relevant social risks and contingencies.
- **Adequacy** – adequate benefits in an amount and duration to enjoy the rights to family protection and assistance, an adequate standard of living, and adequate access to health care.
- **Affordability** – affordable contribution costs for all (if a social security scheme requires contributions).
- **Accessibility** – a social security system that covers all persons, regardless of their ability to afford or physically access it.

14) The rights to work and to just and favorable conditions of work

Everyone has the right to work. This includes the opportunity to gain one's living by work that is freely chosen or accepted. The right to work is provided for in articles 23(1) of the UDHR and 6 of the ICESCR. Everyone has the right to the enjoyment of just and favorable conditions of work. This right is guaranteed under article 7 of the ICESCR, and ensures:

- remuneration, which entails
 - ▶ fair wages,
 - ▶ equal remuneration for work of equal value, and
 - ▶ the ability of workers to afford a decent living for themselves and their families;
- safe and healthy working conditions;
- equal opportunity for everyone to be promoted;
- rest, leisure, and reasonable limits on working hours and periodic holidays with pay, as well as remuneration for public holidays.

Key elements of the right to work – Employment must be available, accessible, and acceptable.

BOX 46: KEY ELEMENTS OF THE RIGHT TO WORK

- **Availability** – specialized services to assist and support individuals in order to enable them to identify and find available employment.
- **Accessibility** – a labour market open to everyone under the jurisdiction of State parties. Accessibility to the labour market has three dimensions: (a) the prohibition of discrimination in access to and maintenance of employment; (b) physical accessibility; and (c) the right to seek, obtain, and impart information on the means of gaining access to employment.
- **Acceptability and quality** – the right of the worker to just and favorable conditions of work, in particular to safe working conditions, the right to form trade unions, and the right to freely choose and accept work.

State obligations – The State must respect, protect, and fulfil everyone's right to work. Some examples are below.

Respect

Do not use forced labour.
Do not deny political opponents work opportunities.

Protect

Ensure that employers, both in the public and in the private sectors, pay the minimum wage.

Fulfil

Provide for technical and vocational guidance and training programmes, policies and techniques.
Undertake educational and informational programmes to promote the enjoyment of the right to work.

Reference Material

- » UN Human Rights Office; Frequently Asked Questions on Economic, Social and Cultural Rights; Fact Sheet No. 33.

CASE 25: ENSURING THE RIGHT OF PERSONS WITH DISABILITIES TO WORK IN MAURITIUS, ANDORRA, PARAGUAY, AND RWANDA¹

Discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status in access to and maintenance of employment is prohibited. In order to tackle discrimination against persons with disabilities, most countries have legislation providing for a percentage of positions in the public sector for persons with disabilities. Some countries also have quotas for the private sector.

A *Strict quota system* provides for schemes in which a person with a disability is treated preferentially irrespective of whether they are as qualified as other applicants.

A *Flexible quota system* provides for schemes in which an applicant with a disability is treated preferentially only if one has equal merits and qualifications to another applicant.

Mauritius has introduced legislation requiring both public and private sector employers with more than a certain number of staff to employ a defined percentage of persons with disabilities, and providing for sanctions for non-compliance. Andorra, Paraguay, and Rwanda have systems of flexible quotas. Although the quota system may not by itself provide for a comprehensive solution to discrimination against persons with disabilities in employment, it is a positive step toward increasing their participation in the labour force.

1 Thematic study on the work and employment of persons with Disabilities; Report of the Office of the United Nations High Commissioner for Human Rights; http://www.ohchr.org/Documents/Issues/Disability/A-HRC-22-25_en.pdf, p. 10-11.

15) The right to health

The World Health Organization (WHO) defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.¹ The right of everyone to the enjoyment of the highest attainable standard of physical and mental health is a fundamental human right guaranteed under international human rights law.

State obligations – The State must take appropriate measures toward the full realization of the right to health to the maximum of its available resources. It must respect, protect, and fulfil everyone’s right to health. Some examples are below.



A health worker, right, cleans a man’s arm before injecting him with an Ebola vaccine in Conakry, Guinea, March 7, 2015. Photo © Youssouf Bah—AP

Respect

Do not deny access to health facilities on a discriminatory basis.

Protect

Control the quality of medicines marketed in the country by either public or private suppliers.

Fulfil

Establish universal vaccination campaigns for children

Key aspects of the right to health – There are key measures to be taken in order to guarantee the right to the highest attainable standard of physical and mental health:

BOX 47: KEY ASPECTS OF THE RIGHT TO HEALTH

The right to health is an inclusive right. Safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education, and information and gender equality all contribute to enjoying the right to health.

The right to health incorporates

- the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization;
- freedom from torture and other cruel, inhuman, or degrading treatment or punishment;

1 Constitution of the World Health Organization, as adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946.

- the right to a health care system that gives everyone an equal opportunity to enjoy the highest attainable level of health;
- the right to prevention, treatment, and control of diseases;
- access to essential medicines;
- maternal, child, and reproductive health;
- equal and timely access to basic health services;
- the provision of health-related education and information; and
- participation of the population in health-related decision-making at the national and community levels.

Health services, goods, and facilities must be provided to all without any discrimination.

- All services, goods, and facilities must be
 - » available in sufficient quantity;
 - » accessible physically, financially, and on the basis of non-discrimination;
 - » acceptable with respect to medical ethics, gender, and cultural appropriateness;
 - » scientifically and medically appropriate, and of good quality.

CASE 26: THE ASSESSMENT OF FACILITIES TO FULFIL EVERYONE’S RIGHT TO HEALTH IN ALGERIA¹

Dainius Pūras, the UN Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health, visited Algeria from 27 April to 10 May 2016. After his visit, he shared his end-of-mission statement. He said,

“During the two weeks in the country, I visited various healthcare structures at different levels. The facilities I visited were in relatively good condition, and services provided seemed adequate. However, I am aware of studies that show deficiencies in infrastructure and equipment, as well as in the availability and quality of the health workforce, especially in remote areas, including the study conducted by the National Human Rights Commission.”

¹ Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health Mr. Dainius Pūras; Country Visit to Algeria, 27 April to 10 May 2016; A/HRC/35/21/Add.1.

Reference Material

- » UN Human Rights Office and World Health Organizations; The Right to Health; Fact Sheet No. 31; <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

16) The right to education

Everyone has the right to education, which shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. Under international human rights law, primary education shall be compulsory, available, and free to all; secondary education should be generally available and accessible; and higher education should be equally accessible to all. Access to secondary and higher education should be fostered through the progressive introduction of free education. In the Sustainable Development Goals, the universal right to free, high-quality primary education without discrimination has been expanded to include secondary education. The right to education is guaranteed under articles 13 and 14 of the ICESCR, and 28, 29 and 30 of the CRC.

Key aspects of the right to education – The State must ensure that education in all its forms and at all levels is

- **Available:** There are functioning educational institutions and programmes in sufficient quantity. This includes the availability of sanitation facilities, safe drinking water, teaching materials, etc.
- **Accessible:** Educational institutions and programmes should be physically and financially accessible to everyone, without discrimination.
- **Acceptable:** Education, in its form and substance, including curricula and teaching methods should be of acceptable quality.
- **Adaptable:** Education should be flexible enough to adapt to the needs of changing societies and be able to respond to the needs of students within their diverse social and cultural settings.



UN Photo/Shehzad Noorani

“Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.”

The UN Committee on Economic, Social, and Cultural Rights
General Comment No. 13

BOX 48: INCLUSIVE EDUCATION

- Respect for the principles of equality and non-discrimination is essential to enjoying the right to education. Inclusive education, as opposed to segregated education, provides the same learning environment for students of diverse backgrounds and abilities.
- Inclusive education refers to the inclusion of all students into a regular classroom environment. These may be students with disabilities, older students who have been out of school for some time, students with different cultural and linguistic backgrounds, or any student who requires additional support to succeed in the education system.

Reference Material

- » Report of the Special Rapporteur on the right to education (A/72/496)

Key aspects of the right to education – The State must ensure that education in all its forms and at all levels is

Respect

Respect the liberty of parents to choose schools for their children.

Protect

Ensure that third parties, including parents, do not prevent girls from going to school.

Fulfil

Ensure that education is culturally appropriate for minorities and indigenous peoples.
Ensure that education is of good quality for all.

CASE 27: THE RIGHT OF MINORITIES AND TRADITIONAL COMMUNITIES TO EDUCATION IN BRAZIL¹

Rita Izsák, former UN Special Rapporteur on minority issues, visited Brazil from 14 to 24 September 2015. Following her visit, she submitted a report to the Human Rights Council, in which she wrote, “Quilombos and traditional communities are also often lacking access to basic services, such as education, access to health services, sanitation and basic infrastructure, including roads, transport and communication services. The Special Rapporteur learned that, in some cases, a Quilombo child will need to walk 5-6 kilometers just to reach the bus stop to travel to school each day, in order then to travel one hour to school, where she or he will be unable to perform well because of constant fatigue. In another Quilombo [community] visited, students are only provided two hours of class per day, even for pupils up to 15 years of age. Few Quilombos have local schools with teachers from their communities. In view of this, the Special Rapporteur notes that, even if affirmative action programmes exist, if Afro-Brazilians, including Quilombolas, are unable to better access quality basic education, these programmes will remain powerless to address inequalities.”

1 Report of the Special Rapporteur on minority issues on her mission to Brazil; A/HRC/31/56/Add.1.

BOX 49: CULTURAL RIGHTS

Cultural rights are guaranteed under articles 27 of the UDHR and 15 of the ICESCR, and include

- the right to take part in cultural life;
- the right to enjoy the benefits of scientific progress and its applications;
- the right to benefit from the protection of moral and material interests resulting from any scientific, literary, or artistic production of which the person is the author; and
- the right to the freedom that is indispensable for scientific research and creative activity.

17) Cultural rights

The UN Committee on Economic, Social, and Cultural Rights describes culture as encompassing, amongst other things, “ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives”¹.



Descendance (Aboriginal and Torres Strait Islander Dance Theatre of Australia) performs at a cultural event at UN Headquarters © 2017 UN Photo/Mark Garten

BOX 50: CULTURAL HERITAGE

The right of access to, and the enjoyment of, cultural heritage is essential for the identity and development of individuals and communities. The UN Special Rapporteur in the field of cultural rights writes in her report to the UN Human Rights Council (A/HRC/17/38) that this right includes the right of individuals and communities to, among other things, “know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others”. It also includes “the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation/safeguard policies and programmes”.

Specific groups’ enjoyment of cultural rights – Some groups in society may experience particular challenges with regard to their enjoyment of cultural rights. This can be the case, for example, with minorities, indigenous peoples, or migrants. This is why these groups enjoy special protection in international human rights law.

1 UN CESCR, General Comment no. 21 (2009).

BOX 51: SPECIFIC GROUPS' ENJOYMENT OF CULTURAL RIGHTS

- Articles 31, 43, and 45 of the CMW guarantee the cultural rights of migrant workers and their families.
- Article 27 of the ICCPR as well as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, the Declaration on the Rights of Indigenous Peoples and ILO Convention (no. 169) concerning Indigenous and Tribal Peoples in Independent Countries guarantee the cultural rights of minorities and indigenous peoples.
- Article 5(e/vi) of the CERD, 13 of the CEDAW, 31 of the CRC, and 30 of the CRPD also guarantee the enjoyment of cultural rights.

Limitation to the right to take part in cultural life – States may, and in some cases must, apply limitations to the right to take part in cultural life. Such limitations must pursue a legitimate aim, be compatible with the nature of the right, be strictly necessary in a democratic society, and be proportionate to the aim pursued. States must apply limitations to customs and traditions that infringe human rights. Cultural diversity cannot be invoked to infringe human rights guaranteed by international law, or to limit their scope.

CASE 28: FEMALE GENITAL MUTILATION IN GUINEA¹

Female genital mutilation is a harmful traditional practice. It is one of the most widespread and systematic violations of human rights and an abuse of millions of women's and girls' physical and psychological integrity. Such harmful traditional practices that infringe human rights are not protected under the right to take part in cultural life, even though the protection of cultural traditions is sometimes wrongly used as a justification for this practice.

In April 2016, the UN Human Rights Office released a report saying that, despite being forbidden by national and international law, female genital mutilation and/or excision is on the rise in Guinea. The findings indicate that 97% of women and girls aged 15 to 49 years in Guinea have undergone female genital mutilation and/or excision.

1 UN Human Rights Office; Rapport sur les droits humains et la pratique des mutilations génitales féminines/excision en Guinée; Avril 2016; http://www.ohchr.org/Documents/Countries/GN/ReportGenitalMutilationGuinea_FR.pdf.

“Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.”

The UN Committee on Economic, Social, and Cultural Rights
General Comment No. 13



Part IV:

**Human Rights Protection
of Specific Groups**

Everyone is equally entitled to the enjoyment of their rights, without discrimination on prohibited grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. However, people around the world continue to be excluded, marginalized, distinguished, and restricted in the exercise of their rights.

Some persons and groups face **multiple forms of discrimination**. For example, the marginalisation of Roma children may stem from their ethnicity, socio-economic status, and age combined; female pensioners may face discrimination both on the grounds of age and sex. The combination of several grounds of discrimination is known as **intersectionality**, and it calls for a holistic approach when addressing discrimination.

Part IV focuses on the human rights protection of specific groups who may suffer discrimination or exclusion. Neither the groups listed below nor the references to the human rights instruments that protect their rights are exhaustive.

1) Women

Women's human rights – For social, economic, political, cultural, legal, or religious reasons, women may face additional barriers compared to men in accessing their human rights.

“Sex” and “gender” – The term “gender” refers to socially constructed identities, attributes, and roles for women and men, while “sex” refers to biological differences.

Gender-based discrimination – States have specific obligations to eliminate discrimination against women in political, social, economic, and cultural fields. The term “discrimination against women” means difference in treatment on the basis of sex, which

- intentionally or unintentionally disadvantages women,
- prevents society from recognizing women's rights in both private and public spheres, and
- prevents women from exercising their human rights.

“(…) The term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women

State obligations – The State must respect, protect, and fulfil the human rights of women. Some examples are below:

Respect

Do not compel women to be sterilised as part of a population reduction policy.

Protect

Ensure that girls are not forced to marry.

Ensure women victims of gender-based violence are protected and can seek redress.

Fulfil

Tackle gender stereotypes through educational and awareness-raising activities

Gender stereotypes – A gender stereotype is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, women and men. It is harmful when it limits women’s and men’s capacity to develop their lives and make life decisions or choices. A gender stereotype can be both positive (for example, “mothers are more caring than fathers”) and negative (for example, “women are irrational”). International human rights law obliges States to eliminate discrimination against women and men in all areas of their lives. This includes eliminating harmful and wrongful gender stereotypes.

BOX 52: THE PROHIBITION OF DISCRIMINATION AGAINST WOMEN IN INTERNATIONAL LAW

In order to guarantee that women have equal access to rights with men, the UDHR, the ICCPR and the ICESCR provide for the prohibition of discrimination, including on the basis of sex. Furthermore, States have signed **the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** and committed themselves to take all appropriate measures to ensure women’s exercise and enjoyment of human rights.

CASE 31: REVIEW OF URUGUAY BY THE CEDAW COMMITTEE¹

The CEDAW Committee reviewed Uruguay in 2016. In its concluding observations, the Committee welcomed the measures taken by Uruguay to eliminate discriminatory gender stereotypes, including legislation to combat discrimination against LGBT and intersex persons.

However, the Committee was concerned about

- patriarchal attitudes and discriminatory stereotypes about the roles and responsibilities of women and men in the family and in society, which perpetuate violence and discrimination against women in areas such as education, employment and health;
- the widespread use of gender stereotypes in the media; and
- the racism, prejudice, and social exclusion suffered by Uruguayan women of African descent.

The Committee recommended that the State party

- develop a comprehensive strategy to overcome patriarchal and gender-based stereotypical attitudes,
- build the capacity of public and private media employees on gender equality in order to prevent discriminatory gender stereotypes in the media, and
- design national strategies aimed at raising awareness about discrimination against Uruguayan women of African descent and address the stigma against women on the basis of intersecting forms of discrimination.

1 CEDAW Committee Concluding Observations on Uruguay; CEDAW/C/URY/CO/8-9.

Gender-based violence – Gender-based violence against women is a result of structural, deep-rooted discrimination and inequality and is a human rights violation. Addressing gender-based violence against women is a legal obligation.

- The CEDAW Committee asserted in its General Recommendation No. 19 that violence against women is a form of discrimination and in its General Recommendation No. 35 that the prohibition of gender-based violence against women has evolved into a principle of customary international law, binding all States.¹
- Gender-based violence in forms such as rape, sexual assault and humiliation, or domestic violence, may also amount to torture or cruel, inhuman, and degrading treatment. It causes severe physical and mental trauma, and States have the obligation to protect victims and to prohibit and prevent such violent acts.
- Sexual and gender-based violence is also often used as a tactic of war in conflict situations, as well as in post-conflict societies, due to the general break down of the rule of law. For conflict situations, international humanitarian law states that women must be protected from sexual violence, which may constitute an international crime.



The Independent International Commission of Inquiry on the Syrian Arab Republic issued its report: “I lost my dignity”: Sexual and gender-based violence in the Syrian Arab Republic.
Photo: Syrian women react as they flee their homes in the village of Tal Aswad, 5km north of the town of Afrin © Nazeer al-Khatib AFP

“The term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

UN Declaration on the Elimination of Violence against Women

BOX 53: SEXUAL AND REPRODUCTIVE HEALTH RIGHTS

The sexual and reproductive health of women is linked to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination. States have the obligation to respect, protect, and fulfil rights related to women’s sexual and reproductive health. However, women still face violations of their sexual and reproductive health rights in forms including denial of access to services, subjecting women’s access to services to third party authorization, forced sterilization, forced virginity examinations, and forced abortion.

¹ CEDAW Committee General Comment No. 19, CEDAW/C/GC/19; CEDAW Committee General Comment No. 35, CEDAW/C/GC/35.

BOX 54: WOMEN AND LAND, PROPERTY, AND HOUSING

Women’s rights to access to and control over land, housing, and property are essential to women’s equality and wellbeing. It is especially significant in rural economies, and in terms of women’s economic security, physical safety, and their children’s daily survival. In reality, women disproportionately lack security of tenure for reasons such as discriminatory legislation or cultural and religious practices, including registration of property in a man’s name (the father, husband, or brother). States must take all appropriate measures to address discrimination against women in access to and control over land, housing, and property.

Reference Material

- » UN Human Rights Office and UN Women; “Realizing Women’s Rights to Land and Other Productive Resources; 2013; <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>.
- » UN Human Rights Office, “Women’s Rights are Human Rights”, New York and Geneva 2014, <http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>
- » UN Human Rights Office, Report: Gender Stereotyping as a Human Rights Violation; <http://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx>

CASE 32: NAMIBIA’S COMMUNAL LAND REFORM¹

- In Namibia, women’s access to land has primarily been through their husbands, fathers, or other male relatives. The Communal Land Reform Act of 2002 removed barriers preventing gender equality in the allocation of communal land. In 2007, the Legal Assistance Centre conducted a study and interviewed some traditional leaders, who reported a rising trend in applications for land from single women.
- The study found that the applicants were mainly women over the age of fifty, as younger women were unaware of their rights and faced other obstacles, including cultural and socioeconomic hurdles. For example, some traditional leaders refused to allocate land to single women, claiming that they remain in their parents’ household until they marry and that allowing young, single women to establish their own household “might encourage violence or prostitution, as lots of single men would be likely to visit them”. The study also noted that in some regions, women were particularly encouraged to claim land rights by both the community land board and local traditional authorities.

¹ UN Human Rights Office and UN Women; “Realizing Women’s Rights to Land and Other Productive Resources; 2013; <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>; p. 22.

CASE 32: NAMIBIA'S COMMUNAL LAND REFORM

HUMAN RIGHTS	SDGS
Which rights are relevant to Namibia's Communal Land Reform?	How can ensuring women's access to and control over land, housing, and property advance the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none">• Women's rights• Right to property• Right to equality and non-discrimination	<ul style="list-style-type: none">• SDG 5: Achieve gender equality<ul style="list-style-type: none">• Target 5.A. Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources, in accordance with national laws.

2) Children

The Convention on the Rights of the Child (CRC) applies to all children, defined as anyone under eighteen years of age. Every child shall enjoy the protection of the Convention regardless of their gender, nationality, social origin, religion, disability, or other status. For example, States shall not discriminate in their laws and policies and grant protection to national children but not to migrant children.

Children as rights-holders – Children are entitled to all human rights. Respect for the dignity, life, survival, wellbeing, health, development, participation, and non-discrimination of the child as a rights-holder should be ensured. Children are entitled to special safeguards and care, including appropriate legal protection. The CRC Committee makes it clear in General Comment No. 7 that all children, irrespective of their age, are rights-holders, rather than “objects” in need of assistance.

BOX 55: THE PRINCIPLE OF THE BEST INTEREST OF THE CHILD

- **A right:** The right of the child to have their best interests assessed and made a primary consideration when other interests are also considered in reaching a decision on the issue at stake; and the guarantee that this right will be implemented whenever a decision is made concerning a child.
- **A principle:** If a law is open to more than one interpretation, the interpretation that most effectively serves the child’s best interests should be chosen.
- **A rule of procedure:** Assessing and determining the best interests of the child requires procedural guarantees. Decision-making processes that will affect children must include an evaluation of the possible impacts. Justification of a decision must show that the best interest of the child has been taken into account.

Best interest of the child – The best interests of children must be the primary concern in making decisions that may affect them. As provided in Article 3 of the CRC, this applies to all decisions affecting children made by public or private social welfare institutions, courts of law, administrative authorities, legislative bodies, or parents. The CRC Committee underlines that the child’s best interest is a threefold concept: a right, a principle, and a rule of procedure:¹

Family environment and alternative care – The family is the natural environment for the growth, wellbeing and protection of children. Children should be enabled to remain in or return to the care of their parents, or when appropriate, other close family members or guardians; furthermore, the State should ensure that families have access to forms of support.

- **Alternative care:** Where the child’s own family is unable to provide adequate care for the child, or abandons them, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care. This can be done with or through competent local authorities and duly authorized civil society organizations. The State should ensure children have a stable home where their basic needs can be met, including a safe and continuous attachment to their

1 CRC Committee; General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration; CRC/C/GC/14.

caregivers. States should also progressively eliminate the institutionalization of children (placing them in large residential care facilities), in line with **the UN Guidelines on the Alternative Care of Children**².



Inclusive education: The UN Human Rights Office, with financial assistance from the European Union, enabled the creation of a network of parents of children with disabilities in Moldova, to help achieve inclusive education for their children with disabilities, in conformity with international law.

Photo: Daria Pavlovschi (on the left) is now in the mainstream education system in Moldova.
© Photo: OHCHR\ClaudeCahn

Respect for the views of the child – Children have the right to a say in decisions affecting them and to have their opinions taken into account. This right is guaranteed under Article 12 of the CRC. Children’s ability to form and express their opinions develops with age. The level of a child’s participation in decisions must therefore be appropriate to the child’s level of maturity.

Protection from exploitation, violence, and abuse – Children have the right to be protected from violence, and from both physical and mental harm. This includes protection of children from abuse and exploitation by their families, caregivers, and teachers.

- **Forms of violence:** Millions of children worldwide suffer violence, exploitation, and abuse every day. They are subjected to sexual abuse and exploitation, armed violence, trafficking, child labour, gender-based violence, bullying, cyber-bullying, gang violence, female genital mutilation, child marriage, physically and emotionally violent discipline, and other harmful practices.
- **Vulnerabilities:** Some children are particularly vulnerable because of their gender, race, ethnic origin, socio-economic status, or disability. Orphaned children and those living in institutions and detention are more exposed to violence. Natural disasters, armed conflict, and displacement may expose children to additional risks.



Children make up over 40 percent of the 13.1 million people in Syria that require life-saving assistance, pointed out Panos Moutzis, UN Regional Humanitarian Coordinator for the Syria Crisis

Photo: A group of children gather near a UN car in Douma, Syria. 15 March 2018 © EPA-EFE\ MohammedBadra

2 Guidelines for the Alternative Care of Children; UN General Assembly; 24 February 2010, A/RES/64/142.

BOX 56: ADVANCING THE REALIZATION OF THE SDGS FOR CHILDREN AFFECTED BY ARMED CONFLICT

- Conflict disproportionately affects children and disrupts their enjoyment of their various rights. They are displaced and forced to leave their homes and are often directly targeted by armed forces or groups. Conflict has negative consequences on children's health and nutrition. Many children do not have access to education due to attacks on, or military use of, schools.
- These circumstances create a direct challenge to the realization of the SDGs in countries affected by conflict. This includes **ensuring healthy lives and promoting wellbeing for all at all ages** (SDG 3), **ensuring quality education for all children** (SDG 4), and **promoting peaceful and inclusive societies for sustainable development** (SDG 16).
- The Convention on the Rights of the Child obliges States to respect, protect, and fulfil the civil, political, economic, social, health, and cultural rights of children. Regarding children in armed conflict, the Convention on the Rights of the Child as well as the African Charter on the Rights and Welfare of the Child provide for the State's obligation to respect the rules of international humanitarian law relevant to the child. Children enjoy special protection under international humanitarian law, in particular in the Geneva Conventions and their Additional Protocols. Respect for the rules of international humanitarian law includes protection from assaults including rape and other forms of sexual violence, the obligation to provide aid and care, and the prohibition of attacks against schools. The United Nations International Children's Emergency Fund (UNICEF) works to advance the right of every child to safe shelter, nutrition, protection from disaster and conflicts, and equality, with a focus on the most disadvantaged children.

BOX 57: HOW DOES ADVANCING THE REALIZATION OF THE SDGS LINK TO THE SITUATION OF CHILD SOLDIERS?

- The recruitment and use of children during conflict is a violation of international human rights law and international humanitarian law. The Convention on the Rights of the Child as well as the African Charter on the Rights and Welfare of the Child stipulate that States are obliged to respect the rules of international humanitarian law relevant to the child. This includes the prohibition of recruiting and using children in armed conflicts. Forced or compulsory recruitment of children for use in armed conflict is also considered among the worst forms of child labour and is prohibited under the ILO Convention on the Worst Forms of Child Labour.
- The recruitment and use of children during conflict also constitutes a major challenge for the realization of the SDGs for ensuring healthy lives and promoting wellbeing for all at all ages (SDG 3); ensuring quality education for all children (SDG 4); promoting economic growth, employment, and decent work for all (SDG 8); and promoting peaceful and inclusive societies for sustainable development (SDG 16).

CASE 33: REINTEGRATION OF CHILD SOLDIERS IN CENTRAL AFRICAN REPUBLIC

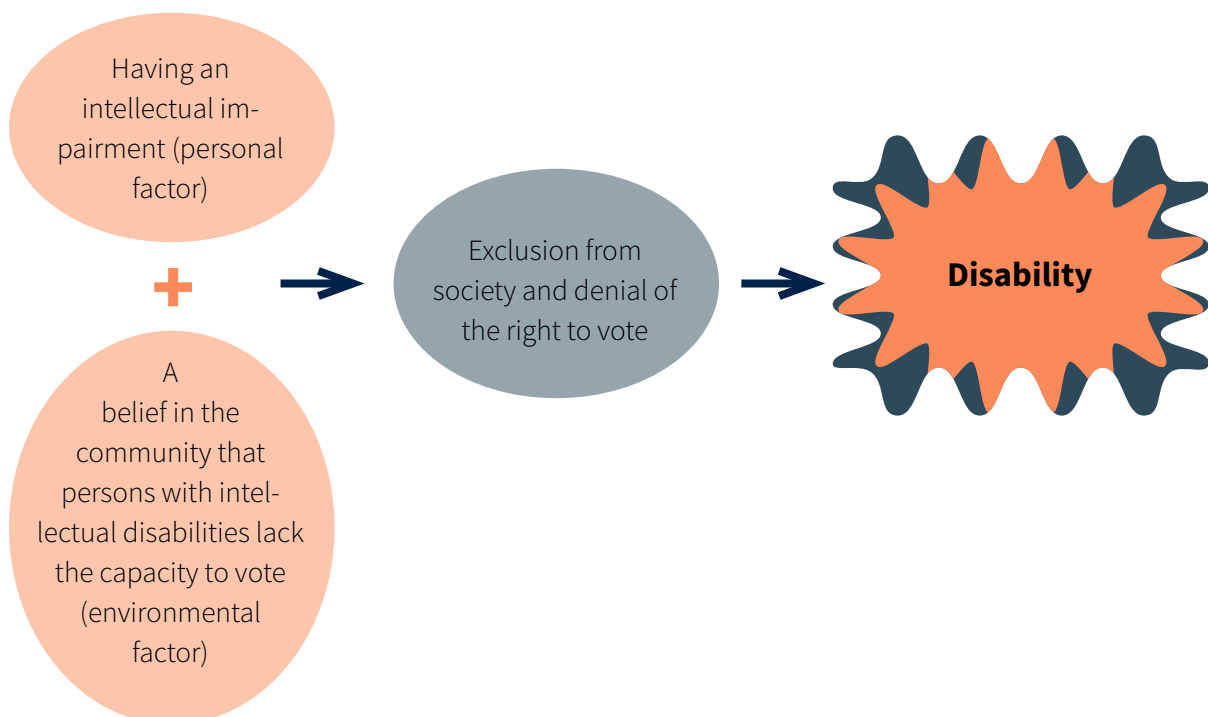
Reintegration of child soldiers into society is a difficult challenge. On 16 June 2007, UNICEF, the Government of Central African Republic, and the Assembly of the Union of Democratic Forces rebel group signed an agreement to support the reintegration of child soldiers. The priorities of the agreement were to help children catch up on education they had missed; to deliver health care; and to provide recreational activities, enhanced protection, and security. Targeting local communities also helped them to understand the experiences and behaviour of child combatants.

- Under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, States have the obligation not to recruit or use children during conflict and to prevent such recruitment by non-State armed groups. However, tens of thousands of children are recruited and used as soldiers in armed conflicts around the world. They may be abducted and beaten into submission, or they may have joined military groups for reasons such as escaping poverty, seeking revenge after witnessing atrocities against their families, or defending their communities. In this manner, poverty is both a root cause for children's involvement in conflict and a consequence of conflict. The Special Representative of the UN Secretary-General for Children and Armed Conflict has pointed to a lack of progress in the realization of SDGs as a root cause behind the involvement of children in conflicts.

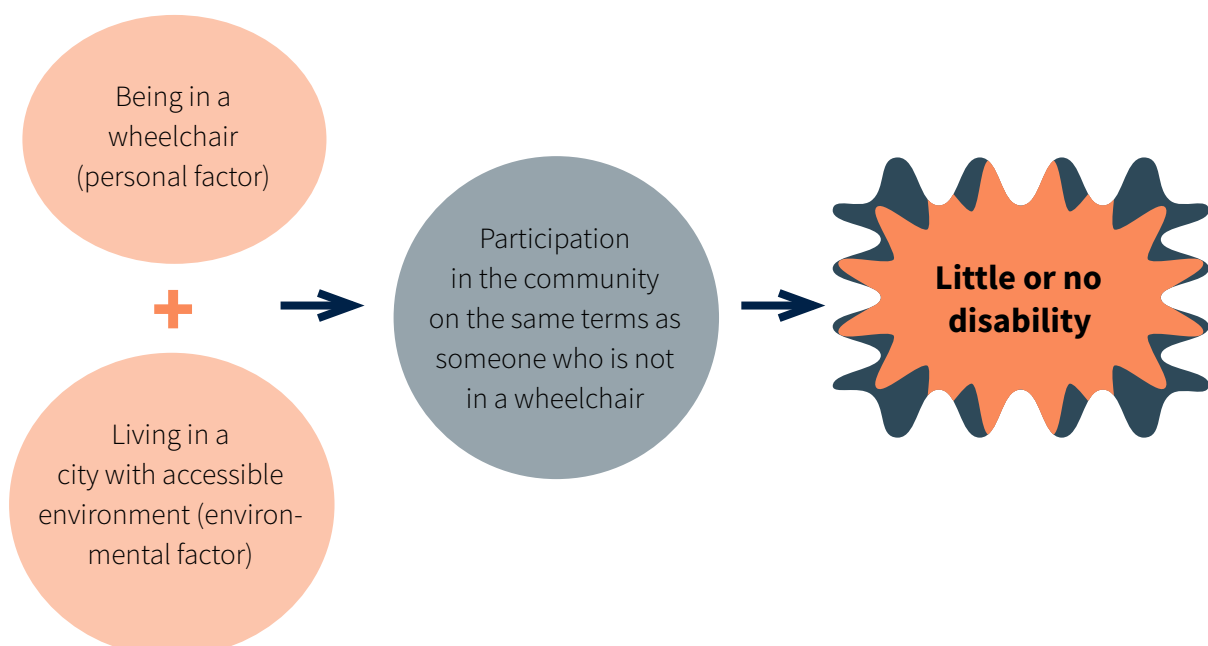
3) Persons with disabilities

Disability is not a condition inherent in the person. It is not, for example, a medical condition that requires the person to be in a wheelchair or to take medication. According to the Convention on the Rights of Persons with Disabilities, disability results from the interaction between an individual's personal condition (such as being in a wheelchair or having a visual impairment) and environmental factors (such as inaccessible buildings or negative attitudes). Combined, these factors lead to disability and affect people's participation in society.

CASE A



CASE B



Personal factors – Personal factors are multilayered. They can be both

- **physical factors:** gender, ethnicity, size, weight, impairment (physical, visual, hearing, intellectual, mental), etc.; and
- **socioeconomic factors:** wealth, class, education level, etc.

Environmental factors – Environmental factors relate to

- **accessibility:** hilly or flat cities, accessibility of buildings (ramps, toilets, braille signs etc.), accessible information (websites, documents in easy-to-read formats), accessible public transport, etc.;
- **legal/policy issues:** existence of protections from discrimination on the basis of disability, or policies that explicitly refer to disability rights, etc.;
- **socioeconomic factors:** rural/urban society, rich/poor society, positive community awareness of disability, openness of society to change, etc.; and
- **services:** inclusive services or segregated services (health, education, youth centres), community-based rehabilitation services, social support services, affordability of services, etc.

BOX 58: PERSONAL AND ENVIRONMENTAL FACTORS AND DISABILITY

Personal and environmental factors can exacerbate disability or alleviate it:

- Someone with a physical impairment who is wealthy might be able to access tertiary education and thus find a job. This might increase participation in society and alleviate disability to an extent. (Personal factor alleviating disability to an extent.)
- A school might be made accessible by including ramp access. (Environmental factor alleviating disability to an extent.) However, if public transport to the school is not accessible, a child with a physical impairment will not be able to make it to school. (Environmental factor exacerbating disability.)

Reference Material

- » UN Human Rights Office; the CRPD Training Guide; Professional Training Series No. 19; http://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf.

Approaches to disability – There are charity based, medical, social, and human rights- based approaches to disability. These approaches influence how disability is perceived, how persons with disabilities are treated, and the kind of measures taken against discrimination on the basis of disability.

Charity approach

- Persons with disabilities are treated as passive objects, rather than as empowered individuals with rights.
- It is often combined with the medical approach. For example, charity houses, homes, foundations and religious institutions will often support medical institutions.

Medical approach

- The focus is on the person's impairment.
- Persons with disabilities are treated as patients.
- Their needs and rights are absorbed into or identified with the medical treatment provided to (or imposed on) them.
- If complete rehabilitation is not possible, they will remain in institutions and will not be able to participate in society.
- The responsibility lies with the medical sector and the State, which usually represent the interests of persons with disabilities (i.e. "their patients").

Social approach

- Disability is the consequence of the interaction of the individual with an environment that does not accommodate his/her differences, which impedes his/her participation in society.
- The person is at the centre, rather than his/her impairment. The values and rights of persons with disabilities are recognized.
- The responsibility lies with the State and the society.
- Persons with disabilities are empowered, in control of their lives and enjoy full participation on an equal basis with others. The burden of disability is not on them but on society.

Human rights based approach

- This approach builds on the social approach and is driven by human dignity and freedom. Persons with disabilities are subjects of rights. The State is the duty-bearer with responsibilities to respect, protect and fulfil these rights.
- It seeks to assist people to help themselves so that they can participate in society, in education, at the workplace, in political and cultural life, and defend their rights through accessing justice.

BOX 59: ADOPTING A HUMAN RIGHTS-BASED APPROACH TO DISABILITY: ENSURING THE RIGHT TO VOTE OF PERSONS WITH VISUAL IMPAIRMENTS

A person with visual impairment has the same right to vote as anyone else in society. However, in order for them to exercise this right, the voting material should be in an accessible format such as Braille, or they should be allowed to take a trusted individual into the voting booth to help indicate their preferred candidate. Otherwise, the person with visual impairment cannot vote.

A human rights approach to disability recognizes the lack of accessible voting material and the inability to have assistance in voting as discriminatory. The State must ensure that such discriminatory barriers are removed. If not, the person should be able to make an official complaint.

General principles of the CRPD – The Convention on the Rights of Persons with Disabilities puts forward general principles for the protection of the rights of persons with disabilities in its article 3.

BOX 60: GENERAL PRINCIPLES OF THE CRPD

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
- Non-discrimination
- Full and effective participation and inclusion in society
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- Equality of opportunity
- Accessibility
- Equality between men and women
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

Discrimination against persons with disabilities – All human rights treaties uphold the principle of non-discrimination, including on the basis of disability. This principle is also the basis for **the Convention on the Rights of Persons with Disabilities**. Persons with disabilities face discrimination and barriers that restrict them from participating daily in society on an equal basis with others.

- Discrimination against persons with disabilities particularly affects their inclusion in the general school system, employment, ability to live independently in the community, freedom of movement, right to vote, participation in sport and cultural activities, enjoyment of social protection, right of access to justice, right to choose medical treatment, and right to enter freely into legal commitments such as buying and selling property.
- Persons with disabilities living in developing countries are often marginalized and forced to live in extreme poverty.



Photo © COE

Respect for the dignity of the person – Persons with disabilities have a right to dignity like everyone else. This means that their experiences and opinions should be valued and formed without fear of physical, psychological, or emotional harm. They must be protected against exploitation, violence, and abuse, including practices such as the forced sterilization of women and girls.

Autonomy in choice – Persons with disabilities have the right to their individual autonomy. This means being in charge of one's own life and having the freedom to make one's own choices, with minimum interference in their private lives and with adequate support if required.

Full and effective participation and inclusion – The organization of society, both in its public and private dimensions, should enable all people to take part fully and effectively. Persons with disabilities should be recognized as equal participants and should, for example, be able to participate in processes and decisions that affect their lives.

CASE 29: ENSURING THE RIGHT TO SANITATION OF PERSONS WITH DISABILITIES IN NEPAL¹

Background: About 2.9 million people live in Nepal; approximately 10% of the Nepalese population lives with some form of impairment. Nepalese law guarantees the protection and promotion of their rights, including special provisions regarding health, education, and social security. However, relevant policies are not always implemented, and conventional attempts to increase the coverage of sanitation continue to marginalize persons with disabilities and exclude their needs.

Project: After studying the barriers to the use of latrines faced by persons with disabilities, Water Aid-Nepal partner NEWAH embarked on the “Sanitation Access for Disabled People Project” in Bāglung district, addressing the different barriers identified:

- The programme **supported families in addressing environmental barriers**, adapting latrine designs to make them more accessible in a manner suited to the terrain and local culture.
- District level **workshops involving persons with disabilities**, their families, and other stakeholders resulted in a District Disabled Support Committee under the leadership of the District Development Committee, to provide institutional support for programmes targeting disabled persons.
- Other advocacy activities have helped make the district, the village development committees, and other **stakeholders more sensitive to the needs of disabled people**.
- **Workshops and media coverage of disability issues** have also increased awareness among the public, influencing national policy and programmes.
- Despite the progress, more work is still needed to increase awareness, monitor services, and adapt sanitation designs.

¹ UN Human Rights Office and UN Women; “Realizing Women’s Rights to Land and Other Productive Resources; 2013; <http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf>; p. 22.

HUMAN RIGHTS	SDGS
The project concerns human rights of persons with disabilities. Which rights are of particular concern?	How do challenges faced by people with disabilities in accessing water and sanitation relate to the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Right to equality and non-discrimination • Right of all persons with disabilities to live in the community • Right to health • Right to adequate housing • Right to water • Right to sanitation 	<ul style="list-style-type: none"> • SDG 6: Ensure clean water and sanitation • SDG 10: Reduce inequality • SDG 11: Make cities inclusive and sustainable

4) Migrants, refugees, internally displaced persons, and stateless persons

Migrants, migrant workers, refugees, asylum-seekers, internally displaced persons, stateless persons, trafficked persons, and other non-citizens are all entitled to the enjoyment of their human rights irrespective of their administrative status.

International migration – There is no formal legal definition of an international migrant.

Who are migrant workers? – According to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the term migrant worker refers to a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national.

Who are internally displaced persons? – Internally displaced persons are persons who have been forced to flee their homes and settle elsewhere for various reasons, including internal conflicts and natural disasters, but who in so doing do not cross an international border. Therefore, they are still subject to the jurisdiction of their State's government. They seek safety in nearby towns, schools, settlements, internal camps, and even forests and fields. Countries with some of the largest internally displaced populations are Colombia, Iraq, and South Sudan.

Who are stateless persons? – The Universal Declaration of Human Rights underlines that “Everyone has the right to a nationality”. Citizenship is the legal bond between a government and an individual, and an enabler (rather than a pre-requisite) for the enjoyment of human rights. A stateless person, however, is not considered a national by any State under the operation of its law. A person can become stateless for a variety of reasons, including through sovereign, legal, technical, or administrative decisions or oversights¹.

Who are refugees and asylum-seekers? – A **refugee** is someone who has left their country of origin and is unable or unwilling to return there because of a serious threat to their life or freedom, such as conflict or persecution.² Refugees are entitled to protection from forcible return to their country of origin (the principle of non-refoulement) and have other rights and duties, including, but not limited to, those set out in **the UN Convention relating to the Status of Refugees (the 1951 Refugee Convention)**.

An **asylum-seeker** is someone who is seeking international refugee protection or is waiting to receive a final decision on their claim. Not every asylum-seeker will be recognized as a refugee. However, no asylum-seeker can be sent back to their country of origin until their asylum claim has been examined in a fair procedure and with respect to human rights.

Non-refoulement – The principle of non-refoulement means that no one should be returned to a country where they face serious threats to their life and where there is a real risk of torture, or cruel, inhuman, or



Photo: Migrants wait at border between Greece and the former Yugoslav Republic of Macedonia (FYROM) ©EPA/GeorgiLicovski

1 See the UN Convention relating to the Status of Stateless Persons; adopted on 28 September 1954.

2 See Article 1 of the UN Convention relating to the Status of Refugees; adopted on 28 July 1951.

degrading treatment or punishment. This principle is contained both in international human rights law and refugee law.³ It applies to everyone, including persons who have not claimed asylum.

Human rights obligations and commitments – Under international law, States must respect, protect, and fulfil the human rights of migrants. Some examples of how to ensure compliance with international human rights law, in particular with the UDHR, the ICCPR, the ICESCR, the CAT, the CRC, and the CMW, are listed below.

BOX 61: RESPECT FOR THE PRINCIPLE OF NON-REFOULEMENT AND DUE PROCESS RIGHTS

The UN Committee Against Torture provides for authoritative guidance in its General Comment No. 4 on the implementation of the principle of non-refoulement. Accordingly, respect for the principle of non-refoulement also entails respecting the right of each person concerned to

- have their case examined individually;
- have access to a lawyer;
- have access to free legal aid where necessary;
- have access to information regarding the proceedings in a language they understand;
- be referred to an independent medical examination where there is an allegation of previous torture; and
- enjoy the right of appeal against a deportation order to an independent administrative and/or judicial body, along with the suspensive effect of its enforcement.

Medical approach

- Do not arbitrarily detain migrants.
- Do not detain children on the basis of their immigration status or that of their parents.
- Refrain from collective expulsion of migrants.

Social approach

- Regulate recruitment agencies.
- Sanction employers abusing migrants and exploiting their labour.
- Protect migrants from violence and abuse by smugglers.

Human rights based approach

- Consult migrants in the development of relevant public policy.
- Introduce human rights-based alternatives to immigration detention.
- Ensure migrants' safe and adequate access to justice, healthcare, education, housing, and other basic services.

“We reaffirm and will fully protect the human rights of all refugees and migrants, regardless of status; all are rights-holders.”

The New York Declaration for Refugees and Migrants

BOX 62: THE GLOBAL COMPACT ON SAFE, REGULAR, AND ORDERLY MIGRATION

The Global Compact for Migration is the first-ever UN global agreement on a common approach to international migration in all its dimensions. The global compact is non-legally binding. It is grounded in values of state sovereignty, responsibility-sharing, non-discrimination, and human rights, and it recognizes that a cooperative approach is needed to optimize the overall benefits of migration, while addressing its risks and challenges for individuals and communities in countries of origin, transit, and destination. The global compact comprises twenty-three objectives for better managing migration at local, national, regional, and global levels.

HUMAN RIGHTS

International human rights law requires States to protect the civil, political, economic, social and cultural rights of all individuals within their territory and subject to their jurisdiction, irrespective of nationality, place of residence, sex, gender identity, sexual orientation, national or ethnic origin, colour, religion, language, migration status, economic position or any other status.

International human rights law

- Universal Declaration of Human Rights
- 9 core treaties

REFUGEE PROTECTION

Protection under international refugee law applies to persons who meet the refugee definition under international, regional, or domestic laws, or under the mandate of the UN High Commissioner for Refugees.

International refugee law

- UN Refugee Convention and its 1967 Protocol

HUMANITARIAN PROTECTION

Protection under international humanitarian law applies to situations of international and non-international armed conflict.

International humanitarian law

- Geneva Conventions and their Additional Protocols

Respect for the right to life:

Migrants and refugees face particular risks to their lives, including en route at sea or at desert. States and NGOs, in cooperation with international organizations, conduct search and rescue operations to save the lives of migrants.

Respect for the right to liberty

Depriving persons of their liberty must be a measure of last resort, and never arbitrary. States should resort to less coercive measures and put in place human rights-based **alternatives to detention** that allow for asylum seekers, refugees and migrants to reside in the community while their migration status is being resolved or while awaiting removal from the country. Children should never be deprived of their liberty for reasons related to their (or their parents') migration status as it is never in their best interests.

Prohibition of slavery

Migrants and refugees face serious risks of exploitation as free labour and are vulnerable to trafficking and other forms of contemporary slavery.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Migrants and refugees are often subjected to such treatment by State officials, smugglers and traffickers, other migrants and refugees, or others

Respect for due process rights in proceedings

This includes respect for the right of each person concerned to have their case examined individually; to have access to a lawyer, to free legal aid where necessary and to information regarding the proceedings in a language they understand; to enjoy the right of appeal against decisions related to immigration proceedings with the suspensive effect of its enforcement.

Respect for the principle of non-refoulement

No one should be returned to a country where they face serious threats to their life and where there is a real risk of torture, or cruel, inhuman or degrading treatment or punishment.

Ensuring the right to an adequate life and access to education, health, housing, and other basic services for all without discrimination

No one should be denied access to public services that are fundamental for their well-being and development. However, there may exist in practice certain legal, administrative, economic, or other barriers in migrants' access to such services. They may not be aware of their right to access to services, may lack resources, or may be afraid of approaching public service providers for reasons such as fear of their immigration status.

Respect for the right to life:

Migrants and refugees face particular risks to their lives, including en route at sea or at desert. States and NGOs, in cooperation with international organizations, conduct search and rescue operations to save the lives of migrants.

Ensuring access to justice and complaint mechanisms

Migrants should have access to effective remedies against violations of their rights, including against violence, crimes and labour exploitation, without fearing arrest, detention and deportation when they make contact with the police or official authorities.

Migrants in Vulnerable Situations – The vulnerable situations that migrants face can arise from a range of factors that may intersect or co-exist, influencing and exacerbating each other and also evolving or changing over time as circumstances change. Migrants in vulnerable situations have particular human rights protection needs. For example, children in migration, particularly those who are not accompanied by family members, are especially vulnerable, and therefore States must ensure their special protection

VULNERABLE SITUATIONS CAN BE ASSOCIATED WITH	
The reasons for leaving the country of origin	<ul style="list-style-type: none"> • A lack of access to the rights to education, health, decent work, or food and water • Environmental degradation
Situations that migrants encounter during their journey and at destination	<ul style="list-style-type: none"> • A victim of human smuggling • A victim of sexual and gender-based violence en route
A person's identity, condition or circumstances	<ul style="list-style-type: none"> • A person living in poverty • A person living with HIV • A pregnant or nursing woman

Human rights-based governance of migration – Migration can be a positive and empowering experience. However, the lack of human rights-based systems of migration governance at the global, regional, and national level has created a human rights crisis for migrants. This is the case at borders and in the territory of countries of transit and destination. A security-based approach, which prioritizes restrictive measures including systematic use of deprivation of liberty and criminalization of border-crossings, is proven to be harmful. On the other hand, both migrants and the host communities benefit from a human rights-based approach. This includes putting migrants and their rights at the core of migration governance on a non-discriminatory basis, monitoring and assessing the human rights impacts of related policies, ensuring accountability, empowering migrants and allowing for their participation in policy-making that affects them, sensitizing the host communities and working towards social cohesion, as well as inclusion and integration.

Reference Material

- » United Nations; Global Compact on Safe, Orderly and Regular Migration; <https://refugeesmigrants.un.org/migration-compact>
- » UN Human Rights Office; The Economic, Social, and Cultural Rights of migrants in an irregular situation; New York and Geneva 2014; http://www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf.
- » UN Human Rights Office; Recommended Principles and Guidelines on Human Rights at International Borders; http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.
- » UN Human Rights Office; Migrants in transit; <http://www.ohchr.org/EN/Issues/Migration/Pages/Migrantsintransit.aspx>.
- » Global Migration Group; Principles and Guidelines, supported by practical guidance, on the human

rights protection of migrants in vulnerable situation; <http://www.ohchr.org/EN/Issues/Migration/Pages/VulnerableSituations.aspx>.

- » UN Human Rights Office; Migration and Human Rights: improving human rights-based governance of international migration; http://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf.

CASE 30: UNDOCUMENTED CHILDREN’S ACCESS TO EDUCATION IN GERMANY¹

Background: Migrants in an irregular situation are entitled to the enjoyment of human rights and fundamental freedoms like everyone else. However, they face legal, administrative, practical, and various other barriers to accessing their rights. This includes barriers to accessing essential services and to reporting abuse or exploitation to the authorities.

For example, when undocumented migrants become victims of crimes, they may refrain from reporting the crime to the police, for fear that it would lead to their being reported to the immigration authorities, detained, and deported. Undocumented workers may not report exploitation at the work place. Undocumented children may not be able to attend school. Undocumented patients may not go to hospital. This creates a significant gap in their human rights protection.

Firewalls: Implementing a firewall means clearly separating access to services and justice from immigration law enforcement. It is an essential measure, among others, to ensure safe access to essential services. The European Commission against Racism and Intolerance (ECRI) defines firewalls as a way to “prevent, both in law and practice, state and private sector actors from effectively denying human rights to irregularly present migrants by clearly prohibiting the sharing of personal data of, or other information about, migrants suspected of irregular presence or work with the immigration authorities for the purpose of immigration control and enforcement.”²

Firewalls in German municipalities: Several municipalities in Germany, including Frankfurt, Hamburg, and Munich have lifted the obligation to report to the authorities when irregularly present migrant children attend school. This applies to staff working in the education sector.

1 Sergio Carrera and Joanna Parkin, Protecting and Delivering Fundamental Rights of Irregular Migrants at Local and Regional Levels in the European Union; Centre for European Policy Studies, 2011.

2 The Council of Europe; The European Commission against Racism and Intolerance (ECRI) general policy recommendation no. 16 on safeguarding irregularly present migrants from discrimination adopted on 16 March 2016.

HUMAN RIGHTS	SDGS
Which human rights are impacted by the implementation of firewalls in the education sector?	How does implementing firewalls in the education sector advance the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Rights of the child • Right to education • Right to equality and non-discrimination 	<ul style="list-style-type: none"> • SDG 4: Ensure quality education • SDG 10: Reduce inequality

5) Human rights defenders

A human rights defender is a person who acts to address human rights issues on behalf of individuals or groups. They support a whole range of human rights, from the rights to life, food and water; to the rights to the highest attainable standard of health, adequate housing, and education; to the right to non-discrimination.

BOX 63: HUMAN RIGHTS DEFENDERS

Human rights defenders

- promote and protect human rights for all;
- defend human rights at national, regional, and international levels;
- collect and disseminate information on human rights violations;
- support victims of human rights violations;
- work to secure accountability and to end impunity;
- support better governance and government policy; and
- contribute to the implementation of human rights treaties.

BOX 64: THE UN SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

The mandate on the situation of human rights defenders was established by the UN Human Rights Council in 2000 to support the implementation of the UN Declaration on human rights defenders.

The right to defend human rights

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”

Article 1 of the UN Declaration on human rights defenders

BOX 65: THE UN DECLARATION ON HUMAN RIGHTS DEFENDERS

The UN Declaration on human rights defenders provides for a list of rights and protections accorded to human rights defenders. It includes the following rights and protections:

- to seek the protection and realization of human rights at national and international levels;
- to conduct human rights work individually and in association with others;
- to form associations and non-governmental organizations;
- to meet or assemble peacefully;
- to seek, obtain, receive, and hold information relating to human rights;
- to develop and discuss new human rights ideas and principles, and to advocate their acceptance;
- to submit to governmental bodies, agencies, and organizations concerned with public affairs criticism proposals for improving their systems, and to draw attention to any aspect of their work that may impede the realization of human rights;
- to make complaints about official policies and acts related to human rights, and to have such complaints reviewed;
- to offer and provide professionally qualified legal assistance or other advice and assistance in defense of human rights;
- to attend public hearings, proceedings, and trials in order to assess their compliance with national law and international human rights obligations;
- to have unhindered access to and communication with non-governmental and intergovernmental organizations;
- to benefit from an effective remedy;
- to lawfully exercise the occupation or profession of human rights defender;
- to have effective protection under national law in reacting against or peacefully opposing acts or omissions attributable to the State that result in violations of human rights; and
- to solicit, receive, and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).

Human rights challenges faced by human rights defenders – Human rights defenders face widespread challenges to their enjoyment of human rights, in particular to their **rights to life; freedom from torture and other forms of ill-treatment;** and **freedom of expression, assembly, and association.** In some regions of the world they are targeted by State authorities, paramilitary groups, multinational corporations, violent extremists, and many others. A systematic and coordinated strategy of defamation, criminalization, and violence aims to intimidate, marginalize, and silence them.

BOX 66: HUMAN RIGHTS CHALLENGES FACED BY HUMAN RIGHTS DEFENDERS

- Countless human rights defenders have been the victims of killings as a direct response to their human rights work.
- Death threats are used widely as a means of threatening and intimidating them into stopping their work.
- They are sometimes kidnapped and beaten during their captivity. Military personnel, police, and security force officials have subjected them to torture. Arbitrary arrest and detention are common, and are most often conducted without arrest warrants and in the absence of any official charge.
- They are often subjected to criminal or other charges leading to prosecution and conviction.
- Harassment of human rights defenders is commonplace and often goes unreported.
- They are sometimes targeted in defamation campaigns, with slanderous allegations that attack their integrity and morals appearing in State-controlled or State-influenced media.
- Policies, legislation, and procedures described as “security” measures are sometimes applied in such a way as to restrict the work of human rights defenders, and such measures sometimes target the defenders themselves.
- In addition to violations targeting individuals, in some States, there are clear trends illustrating a strategy to restrict the environment in which human rights defenders operate; tactics include closing down organizations, cutting sources of funding, delaying or not registering human rights organizations, obstructing their meetings, and preventing them from travelling to investigate human rights concerns.
- Their offices and/or homes are often the subject of attacks, burglary, and unauthorized searches.

State duties and responsibilities – The UN Declaration on human rights defenders provides that State parties must protect, promote, and implement all human rights. To protect and promote the human rights of rights-defenders, States should

- ensure that there are no legislative obstacles to the work of human rights defenders, including to access to funding; their independence; or their rights to freedom of association, assembly, and expression;
- ensure that there is a strong, independent, well-resourced mechanism (such as a national human rights commission) that can receive information from human rights defenders on violations they are addressing in their work or violations targeting them personally;
- ensure that human rights defenders benefit from the full protection of the judiciary and that violations committed against them are promptly and fully investigated, with appropriate redress being provided;
- emphasize the role and responsibilities of local government authorities in supporting and protecting human rights defenders;
- reflect the concerns of human rights defenders working in other countries in foreign policy and international trade actions; and provide support to defenders fleeing persecution in other countries by facilitating their entry into the State and temporary residence; and
- provide human rights training to security officials, including the police, and ensure that they are supportive of the role of human rights defenders and of their rights.

Reference Material

- » UN Human Rights Office; Fact Sheet No. 29; “Human Rights Defenders: Protecting the Right to Defend Human Rights” <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>.

CASE 34: “CITIES OF REFUGE”: SHELTERING PERSECUTED WRITERS AND ARTISTS¹

In some regions of the world, writers and artists are subjected to systematic censorship, harassment, imprisonment, and even killings, because of their work. The International Cities of Refuge Network (ICORN) is an independent organization of cities and regions that offer shelter to writers and artists who are at risk.

A city of refuge protects and promotes the rights of writers and artists by

- arranging for the relocation and reception of the writer/artist to the city;
- facilitating a legal status for the writer/artist;
- providing the writer/artist and their family with appropriate accommodation;
- providing the writer/artist with an appropriate scholarship/grant for their period of stay; and
- helping the writer/artist to integrate with the local community, both socially and artistically/professionally.

There are more than sixty cities of refuge that promote the freedom of expression and host writers and artists at risk, in Africa, Asia, Europe, Oceania, and the Americas.



Basim Mardan from Iraq:

“My work in an NGO that promoted democracy and human rights, my work as a translator/interpreter with the local government, and finally my name in Al-Qaida hit list and their threatening messages and phone calls were actually the reasons why I felt like I should abandon the ship and seek help somewhere else. Friends from the literary circles, and family members encouraged me to escape the country, but I did not have any idea about how to do it. In 2005, I started corresponding with the International PEN, and after a long and complicated process (...) I was finally able to pack up my bags and leave the battle field.”

1 International Cities of Refuge Network; <https://icorn.org>.

HUMAN RIGHTS	SDGS
Which human rights are impacted by the implementation of firewalls in the education sector?	How does implementing firewalls in the education sector advance the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Rights of the child • Right to education • Right to equality and non-discrimination 	<ul style="list-style-type: none"> • SDG 4: Ensure quality education • SDG 10: Reduce inequality

6) National, ethnic, religious, and linguistic minorities

Article 27 of the ICCPR as well as the **United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities** provide for the rights of national or ethnic, religious, or linguistic minorities. **The International Convention on the Elimination of All Forms of Racial Discrimination** also safeguards minorities' rights, prohibiting "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

The question of which group may or may not be considered a minority under international human rights law is a difficult one as there are various aspects of minority status. The minority identity may be based on national, ethnic, cultural, religious, and linguistic identities collectively enjoyed by groups composed of a certain number of individuals. There are both objective factors (such as the existence of a shared ethnicity, language, or religion) and subjective factors (including the need for individuals to identify themselves as members of a minority) that contribute to an understanding of what a minority is.

Protecting and promoting minority rights – Major concerns related to minority rights include

- survival and existence of minority communities,
- promotion and protection of their identity,
- equality and non-discrimination, and
- effective and meaningful participation.

“We affirm that the ethnic, cultural, linguistic and religious identity of minorities, where they exist, must be protected and that persons belonging to such minorities should be treated equally and enjoy their human rights and fundamental freedoms without discrimination of any kind”

The Durban Declaration (para. 66)

Survival and existence of minority communities – The physical existence of persons belonging to minorities must be protected. This also includes their protection from genocide and crimes against humanity. Their existence, through enjoying a group identity, also requires respect for and protection of their religious and cultural heritage.

Promotion and protection of their identity – Promoting and protecting the identity of minority groups helps to prevent forced assimilation and the loss of cultures, religions, and languages. Diversity and plural identities must be respected, and positive actions must be taken to promote and protect cultural, religious, and linguistic diversity.

Equality and non-discrimination – The right not to be discriminated against is essential in protecting the rights of persons belonging to minorities. Minorities in all regions of the world experience discrimination in their daily lives. To overcome past discrimination or address persisting inequalities, special measures

(also known as “affirmative measures” or “affirmative/positive action”) should be adopted in favour of certain groups, both in law and practice. Effective and meaningful participation – Effective, rather than merely symbolic, participation of persons belonging to minorities in public affairs and in all aspects of the political, economic, social, and cultural life of the country where they live must be ensured. This is essential to preserving their identity and combatting social exclusion. States should put in place mechanisms for minority representation in public institutions, such as in national parliaments and the civil service sector, including the police and the judiciary.

“State Parties shall, when the circumstances so warrant, take (...) special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.”

Article 2 of the Convention on the Elimination of
All Forms of Racial Discrimination

Reference Material

- » UN Human Rights Office, *Minority Rights: International Standards and Guidance for Implementation*, New York and Geneva 2010, http://www.ohchr.org/Documents/Publications/Minority-Rights_en.pdf.

CASE 35: INSCHOOL PROJECT BY THE EUROPEAN COMMISSION AND THE COUNCIL OF EUROPE: “INCLUSIVE SCHOOLS: MAKING A DIFFERENCE FOR ROMA CHILDREN”¹

Background: Roma children are often victims of discrimination in schools. They face segregation, by being grouped together either in separate classrooms, away from other children, or in entirely different schools. They face discrimination by their peers, teachers, and the administration. Systemic discrimination against Roma children in school leads to isolation and high dropout rates.

Project: In 2017, The European Commission and the Council of Europe began implementing a new joint project called “INSCHOOL”, on “Inclusive schools: making a difference for Roma children”. Target schools are in the Czech Republic, Hungary, Romania, Slovak Republic, and the United Kingdom. The project aims at closing the implementation gap between policy documents and actual change in Roma children’s lives. The schools have to re-examine what they teach, how they teach, and how they assess learners’ performance. The project targets the education system and its capacity to respond to the needs of Roma children.

The project consists of four outcomes:

- setting up support mechanisms and resources for pilot inclusive schools,
- providing support to teachers to help them practice inclusive teaching,
- supporting the removal of barriers affecting vulnerable groups, including through legislative changes in the targeted countries, and
- raising awareness of the benefits of inclusive education for the general public as well as for decision makers.

1 Council of Europe and European Union, Inclusive schools: making a difference for Roma children, <https://pjp-eu.coe.int/en/web/inclusive-education-for-roma-children/about-the-project>.

“State Parties shall, when the circumstances so warrant, take (...) special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.”

The UN Committee on the Elimination of All Forms of Racial Discrimination
General Recommendation No. 27

HUMAN RIGHTS	SDGS
<ul style="list-style-type: none"> • The project concerns human rights of Roma children. Which rights are of particular concern? 	<ul style="list-style-type: none"> • How do challenges faced by Roma girls and boys in accessing education relate to the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none"> • Right to equality and non-discrimination • Right to education 	<ul style="list-style-type: none"> • SDG 4: Ensure quality education • SDG 5: Achieve gender equality • SDG 10: Reduce inequality

7) Indigenous peoples

Indigenous peoples live in all regions of the world. Although there is no universally established definition, the following criteria are helpful in determining who indigenous people are:

- self-identification;
- historical continuity with pre-invasion and/or pre-colonial societies that developed in their territories;
- distinctiveness;
- non-dominance;
- a determination to preserve, develop, and transmit to future generations their ancestral territories and identity as a people in accordance with their own cultural patterns, social institutions, and legal system;
- a strong link to territories and surrounding natural resources;
- distinct social, economic, or political systems; and
- distinct language, culture, and beliefs.

Human rights protection of indigenous peoples – Indigenous peoples are equally entitled to protection of their human rights on a non-discriminatory basis under international human rights law. **The United**

Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on 13 September 2007, addresses some (but not all) of the specific human rights challenges faced by indigenous peoples. Development related activities or the extraction of resources by States or private entities such as corporations puts pressure on their lands, territories, and resources, giving rise to countless human rights challenges for indigenous peoples. **The International Convention**



Nepalese indigenous women from the Gurung community
Photo © EPA/NarendraShrestha

on the Elimination of All Forms of Racial

Discrimination also safeguards indigenous peoples' rights, prohibiting "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". Major gaps continue to exist in all parts of the world in terms of indigenous peoples' enjoyment of the full range of human rights.

Self-determination – Indigenous peoples have the right to self-determination, which entails the right to freely determine their political status and freely pursue their economic, social, and cultural development. This does not mean, however, that indigenous peoples have the right to establish their political units, i.e. states or administrative regions.

Rights to lands, territories, and resources – Indigenous peoples’ relationship to their lands, territories, and resources is a defining feature. They have particular **collective rights** to their lands, territories, and resources, including to those traditionally held by them but now controlled by others.

“The close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.”

The Inter-American Court of Human Rights
The case of the Mayagna Awas Tingni Community v. Nicaragua

Reference Material

- » UN Human Rights Office; “Indigenous Peoples and the United Nations Human Rights System”; Fact Sheet No.9; <http://www.ohchr.org/Documents/Publications/fs9Rev.2.pdf>

8) Persons of African descent

As a legacy of both colonialism and the transatlantic slave trade, which existed from the 16th to the 19th centuries and displaced millions of Africans, **racism, racial discrimination, xenophobia, and related intolerance** against persons of African descent still persist today. Not only descendants of the transatlantic slave trade, but those who have more recently migrated to the Americas, Europe, Asia, and within Africa itself, suffer racial discrimination as well.

“(...) We recognize that people of African descent have for centuries been victims of racism, racial discrimination and enslavement and of the denial by history of many of their rights, and assert that they should be treated with fairness and respect for their dignity and should not suffer discrimination of any kind.”

“(...) We recognize that in many parts of the world, Africans and people of African descent face barriers as a result of social biases and discrimination prevailing in public and private institutions and express our commitment to work towards the eradication of all forms of racism, racial discrimination, xenophobia and related intolerance faced by Africans and people of African descent.”

The Durban Declaration and Programme of Action

International human rights framework – All persons of African descent shall enjoy, in equality and without discrimination, all human rights and fundamental freedoms. Their enjoyment of human rights, like everyone else’s, is safeguarded by international law and standards.

BOX 67: INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RELATED TO THE PROHIBITION OF RACIAL DISCRIMINATION AGAINST PERSONS OF AFRICAN DESCENT

Key international human rights instruments related to the prohibition of racial discrimination against persons of African descent are

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- General recommendation No. 34 of the Committee on the Elimination of Racial Discrimination on racial discrimination faced by people of African descent;
- Documents of the UN Working Group of Experts on People of African Descent;
- The Durban Declaration and Programme of Action and the Durban Review Conference Outcome Document; and
- The Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance.

Human rights situation of persons of African descent – Persons of African descent continue to face a variety of human rights issues today:

- structural and institutional racial discrimination, xenophobia, and related intolerance;
- inequality, marginalization, and stigmatization;
- low levels of participation and underrepresentation in political and institutional decision-making processes;
- a lack of adequate representation in the administration of justice;
- barriers to and inequality in the enjoyment of key human rights such as access to quality education, health services, and housing, which results in the intergenerational transmission of poverty;
- inequality in access to labour markets;
- disproportionate presence in prison populations;
- racial profiling;
- limited social recognition and undervaluing of people of African descent's ethnic and cultural diversity and their contribution to society; and
- intolerance of religions of African origin.

Reference Material

- » UN Human Rights Office; “People of African Descent”; <http://www.un.org/en/events/african-descentdecade/assets/pdf/PAD-final%20for%20NY.pdf>.

State duties and responsibilities

States should ensure that people of African descent have the full enjoyment of all human rights and fundamental freedoms. They should, among other things

Adopt national legal frameworks and policies

- Adopt and strengthen national legal frameworks and policies on human rights of people of African descent.
- Take special measures and affirmative actions to promote full and effective equality for people of African descent.

Ensure equality before the law

- Ensure equality before the law, notably in the enjoyment of the right to equal treatment in the administration of justice, including before the tribunals.

Prohibit racial profiling

- Design, implement and enforce effective measures to eliminate “racial profiling”.

Realize the right to development

- Adopt or increase the effectiveness of legislation that prohibits all discriminatory practice in employment and the labour market.

Realize the right to education

- Adopt or increase the effectiveness of legislation that prohibits all discriminatory practice in employment and the labour market.

Prohibit discrimination in employment and the labour market

- Adopt or increase the effectiveness of legislation that prohibits all discriminatory practice in employment and the labour market.

Sensitize the society

- Increase their visibility by ensuring the collection of disaggregated data and research.
- Sensitize the wider society about their human rights, culture and contribution to the development of societies and their history.

9) Lesbian, gay, bisexual, transgender, and intersex persons

What is sexual orientation? – **Heterosexual** persons are attracted to individuals of a different sex from themselves. **Gay** and **lesbian** persons are attracted to individuals of the same sex as themselves. **Bisexual** persons may be attracted to individuals of the same or different sex.

What is gender identity? – A person's gender identity is often consistent with the biological sex assigned at birth. For transgender people, there is an inconsistency between their sense of their own gender and the sex they were assigned at birth. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.

Who are intersex persons? – An intersex person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither, and can have any sexual orientation or gender identity.



An activist waves a rainbow flag, an international symbol for the rights of gay, lesbian, bisexual and transgender people. © Flickr/See-ming Lee

BOX 68: HOMOPHOBIA, BIPHOBIA, AND TRANSPHOBIA

- Homophobia is an irrational fear of, hatred, or aversion to lesbian and gay people. Biphobia and transphobia refer to these attitudes to bisexual and transgender people respectively. They are forms of prejudice and stigma.

State obligations to protect the human rights of LGBT and intersex persons – The Universal Declaration of Human Rights states that “all human beings are born free and equal in dignity and rights”. Lesbian, gay, bisexual, transgender, and intersex persons, like everybody else, are entitled to human rights protection provided for in international law. However, their human rights situation remains a matter of concern in many parts of the world.

To address these issues, States are encouraged to take steps to, among other things

- protect LGBT and intersex persons from hate-motivated violence committed by State officials, as well as by private individuals when authorities know or should know that there is an imminent threat to the person's life or limb;
- where such violence occurs, conduct effective investigation and prosecution in cases where State authorities, individuals, or other entities may be responsible; and treat homophobia and transphobia as aggravating factors for the purposes of sentencing;
- prevent torture and cruel, inhuman, and degrading treatment or punishment against LGBT and intersex persons;
- ensure that the law does not discriminate against LGBT and intersex persons, for example by

- criminalizing consensual, same-sex relationships or the expression of gender identity;
- tackle discrimination based on sexual orientation and gender identity; and
- guarantee the enjoyment of human rights by LGBT and intersex persons, including the freedom of expression, association, and peaceful assembly.

CASE 36: DIAL 100 HOTLINE IN BRAZIL FOR REPORTING VIOLENCE AGAINST LGBT PERSONS¹

Dial 100 is a 24-hour hotline service provided by the Brazilian Human Rights Secretariat (SDH) for members of the public to report instances of violence, discrimination, and other human rights violations. In 2011, the service established a specific hotline module for reporting violence and discrimination against LGBT people. In 2012, SDH received 3,084 reports of violence against LGBT people and more than 9,900 reports of general rights violations related to the LGBT population – an increase compared with previous years.

Reported violations predominantly related to gay men and lesbians. However, the report also highlighted the invisibility of the trans population in violence statistics – a significant challenge, particularly given the number of trans women being killed in Brazil, a pattern documented by civil society organizations.

During the 2014 São Paulo Gay Pride Parade, the President of Brazil encouraged people to use the hotline to report human rights violations. This type of initiative provides a visible and accessible alternative platform for members of the LGBT population, who may be reluctant to reveal their identity or engage directly with law enforcement officers, to obtain information and report homophobic or transphobic crimes.

¹ United Nations; “Living Free and Equal”; <http://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>, p. 37.

Reference Material

- » United Nations; “Living Free and Equal”; <http://www.ohchr.org/Documents/Publications/Living-FreeAndEqual.pdf>.

10) Older persons

Older persons are not a homogenous group, and they face a variety of challenges to the enjoyment of their human rights. Some may continue to lead active lives as part of their community, while many others face homelessness, lack of adequate care, or isolation.

BOX 69: HUMAN RIGHTS CHALLENGES FACED BY OLDER PERSONS

Older persons are entitled to protection and enjoyment of their human rights like everybody else. However, in practice, they face some challenges, mainly

- discrimination, often on multiple grounds, such as age-related discrimination combined with discrimination based on gender, socio-economic status, ethnicity, or health status;
- poverty, characterized by homelessness, malnutrition, unattended chronic diseases, lack of access to safe drinking water and sanitation, unaffordable medicines and treatments, and income insecurity;
- violence and abuse, including physical, emotional, and sexual, as well as financial exploitation; and
- a lack or insufficiency of specific measures and services, resources, and facilities.

Adopting a human rights-based approach – As the global population is ageing, a variety of challenges emerge, which require strategies at the national and global levels. All such questions should be approached from a human rights perspective, in developed and developing countries alike.¹ Identifying the challenges older people face to enjoying human rights is central to these efforts.

UN Principles for Older Persons – International obligations to older persons are implicit in most core human rights treaties, including the ICCPR, the ICESCR, the CEDAW, and the CRPD. Furthermore, the UN Principles for Older Persons provide for the following principles for Governments to incorporate into their national programmes: independence, participation, care, self-fulfillment, and dignity.

1 Report of the Secretary-General to the General Assembly; Follow-up to the Second World Assembly on Ageing; A/66/173.

BOX 70: THE UN PRINCIPLES FOR OLDER PERSONS

The UN General Assembly adopted the United Nations Principles for Older Persons on 16 December 1991 (resolution 46/91). Accordingly, States should incorporate the following principles relating to human rights of older persons, into their national programmes:

- **Independence:** Older persons should be able to enjoy independent access to adequate food, water, shelter, clothing, and healthcare through the provision of income, family, and community support and self-help. They should have access to educational programmes and the opportunity to work. An environment that is safe and adaptable should be made available.
- **Participation:** Older persons should remain integrated in society and participate actively in the formulation and implementation of policies that directly affect their well-being. They should be able to enjoy their freedom of association.
- **Care:** They should benefit from family and community care and protection and have access to healthcare and to social and legal services to enhance their autonomy, protection, and care.
- **Self-fulfilment:** They should be able to pursue opportunities for the full development of their potential with access to the educational, cultural, spiritual, and recreational resources of society.
- **Dignity:** They should be able to live in dignity and security and be free of exploitation and physical or mental abuse.



Photo by Bruno Aguirre on Unsplash

CASE 37: THE ENJOYMENT OF HUMAN RIGHTS BY OLDER PERSONS IN GEORGIA¹

Ms. Rosa Kornfeld-Matte, the UN Independent Expert on the enjoyment of all human rights by older persons, visited Georgia to assess the human rights situation of older persons in that country. Following her mission, she said there were reports that various forms of violence against and abuse of older persons, including by family members, occurred frequently, and she called on the Government to improve detection and prevention.

She said many older persons remained among the persistent poor. She said, “I welcome the Government’s recognition that the current pension is insufficient, but I am concerned that the proposed pension reform misses key elements of solidarity and may not effectively address the risk of old-age poverty, particularly among women.”

The Independent Expert welcomed the recent adoption of the National Action Plan for the implementation of the State Policy Concept on Population Ageing in Georgia as a step toward transforming the main policy directions into concrete actions for older persons.

¹ The UN Independent Expert on the enjoyment of all human rights by older persons; “Inclusiveness of older persons in Georgia must be a priority”; Tblisi 22 March 2018; <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22881&LangID=E>.

HUMAN RIGHTS	SDGS
<p>The Independent Expert assessed the human rights situation of older persons in Georgia. Which rights are of concern in her assessment?</p>	<p>How do the human rights challenges faced by older persons in Georgia relate to the realization of the SDGs? Consider the SDG targets and indicators.</p>
<ul style="list-style-type: none"> • Right to freedom from torture and other cruel, inhuman, or degrading treatment • Right to equality and non-discrimination • Right to an adequate life • Right to food • Right to water and sanitation • Women’s rights 	<ul style="list-style-type: none"> • SDG 1: End poverty • SDG 3: Ensure healthy lives • SDG 5: Achieve gender equality • SDG 10: Reduce inequality

11) Youth

Youth is a time of transition – from childhood to adulthood, and from dependence to the independence of adulthood. The United Nations, for statistical purposes, defines ‘youth’, as those persons between the ages of fifteen and twenty-four, without prejudice to other definitions by Member States. Young people have rights, and they enjoy the protection of international human rights law like everyone else. All States must promote and ensure the full realization of all human rights and fundamental freedoms for youth.

“The Human Rights Council (...) calls upon all States to promote and ensure the full realization of all human rights and fundamental freedoms for youth, including, where appropriate, by taking measures to combat age discrimination, neglect, abuse and violence, and to address issues related to barriers to social integration and adequate participation, bearing in mind that the full enjoyment of human rights and fundamental freedoms by young people empowers them to contribute as active members of society to the political, civil, economic, social and cultural development of their countries”

The UN Human Rights Council Resolution (A/HRC/RES/35/14)
on youth and human rights

BOX 71: HUMAN RIGHTS CHALLENGES FACED BY YOUTH

Young persons face particular challenges to the enjoyment of their rights. On 25 and 26 July 2013, the UN Human Rights Office organized a meeting of experts on the rights of youth.¹ In the expert meeting, gaps in human rights protection for young people were discussed, including

- **Multiple discrimination against young people:** Young women, young migrants, young persons with disabilities, and young LGBT persons are often subjected to multiple forms of discrimination.
- **Youth employment:** In many countries, unemployment rates for those under twenty-five is significantly higher than the rest of the population. Young people also have fewer guarantees of employment and often do not receive equal pay for equal work.
- **Right of young people to participate in public affairs:** The right to participate in public affairs includes the right to vote and be elected. However, the minimum age for voting and standing for office may be discriminatory against young people. Many countries are decreasing the minimum age in order to increase youth participation in public affairs.
- **Right to education of young people:** In many countries, education is no longer mandatory for those aged fifteen or older. Accessing the right to education is a challenge for young people, particularly for those who face discrimination on multiple grounds, such as young people with disabilities or young women. High tuition fees also constitute a significant barrier to education.

1 The UN Human Rights Office; Expert meeting on the human rights of youth; Executive summary and outcomes; 25-26 July 2013; <https://www.ohchr.org/Documents/Issues/Youth/ExecutiveSummary.pdf>.

12) Persons living with HIV/AIDS

What is HIV? – HIV (human immunodeficiency virus) is a virus that harms the defense system of the body. It infects cells of the immune system and damages their function, leading to immune deficiency. Today, a variety of antiretroviral medicines have been developed, and they can stop

HIV from multiplying and prevent the development of AIDS and other long-term effects of HIV infection. Persons living with HIV have the same life expectancy as HIV-negative persons if they start antiretroviral therapy at an early stage.



What is AIDS? – Over time, persons living with HIV may develop AIDS (acquired immune deficiency syndrome). The virus severely damages the immune system so that the body cannot fight off infections and illnesses that it normally would fight. Since the first cases of HIV were reported in the early 1980s, 78 million people have become infected with HIV, and 35 million have died from AIDS-related illnesses. HIV/AIDS is a global epidemic that affects all countries, and **States have agreed in the 2030 Agenda to end the AIDS epidemic by 2030**. This can only be achieved from **a holistic and human rights-based approach**.

Human rights and HIV/AIDS – Persons living with and affected by HIV/AIDS shall enjoy all human rights, in equality and without discrimination. Gaps in human rights protection are linked to the spread of HIV and its impact on individuals and communities around the world.

Gaps in human rights protection fuels the spread and exacerbates the impact of the virus, while at the same time the virus undermines progress in the realization of human rights.

“(…) the promotion and protection of, and respect for, the human rights and fundamental freedoms of all, including the right to development, which are universal, indivisible, interdependent and interrelated, should be mainstreamed into all HIV and AIDS policies and programmes.”

The UN Political Declaration on HIV and AIDS

BOX 72: PROMOTION AND PROTECTION OF THE HUMAN RIGHTS OF PERSONS LIVING WITH HIV

States have obligations to promote and protect the human rights of persons living with HIV. HIV-positive persons face particular challenges to the enjoyment of their human rights. These include

- the right to life;
- the right to liberty and security of the person;
- the right to the highest attainable standard of mental and physical health;
- the right to equality and non-discrimination;
- the right to freedom of movement;
- the right to seek and enjoy asylum;
- the right to privacy;
- the right to freedom of opinion and expression, including the right to freely receive and impart information;
- the right to freedom of association;
- the right to marry and found a family;
- the right to work;
- the right to education;
- the right to an adequate standard of living;
- the right to social security, assistance, and welfare;
- the right to share in scientific advancement and its benefits;
- the right to participate in public and cultural life; and
- the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.

Increased vulnerabilities – Certain groups are more vulnerable to contracting the HIV virus because they are unable to realize their human rights. For example

- **People living in poverty** are often unable to access the information, education, and services necessary to ensure sexual and reproductive health and prevention of infection, as well as to HIV care and treatment.
- **Gender inequality** fuels the HIV/AIDS epidemic. **Women and girls** are vulnerable to infection if they lack access to information, education, and services necessary to ensure sexual and reproductive health and prevention of infection¹.
- Individuals who are denied **the right to freedom of association** and **access to information** may be more vulnerable, as they are prevented from discussing HIV-related issues and participating in AIDS service organizations and self-help groups.

1 United Nations Programme on HIV/AIDS; Women and girls and HIV; 7 March 2018; http://www.unaids.org/sites/default/files/media_asset/women_girls_hiv_en.pdf.

BOX 73: DISCRIMINATION AGAINST AND STIGMATIZATION OF PERSONS LIVING WITH HIV/AIDS

The human rights of persons living with HIV are often violated because of their presumed or known HIV status. In addition to dealing with the health consequences of the virus, they often lose access to various other rights because of stigmatization and discrimination. This contributes to the vulnerability of others to infection, since HIV-related stigma and discrimination discourages people living with HIV from contacting health and social services.

Persons living with HIV face stigmatization and discrimination, which obstructs their access to treatment and may affect their employment, housing, and other rights.

Human rights-based approach – The protection and promotion of all human rights is essential in preventing the spread of HIV and mitigating its social and economic impact. Individuals and communities should be able to realize their rights, be protected from discrimination, be treated with dignity, and have access to treatment, care, and support in an open and supportive environment.

For example, discrimination against and stigmatization of groups such as **injecting drug users, sex workers, and men who have sex with men** drives these communities underground. An effective strategy should be able to reach these populations with prevention efforts and address the human rights violations to which they are subjected, including discrimination and stigmatization.

BOX 74: HUMAN RIGHTS-BASED APPROACH TO HIV/AIDS

A human rights-based approach to HIV/AIDS

- reduces vulnerability to HIV infection by addressing its root causes,
- reduces the negative impact of HIV on people living with or affected by it, and
- increases individuals' and communities' ability to respond to the epidemic.

HIV/AIDS and development efforts – The overwhelming burden of the epidemic today is borne by developing countries. HIV/AIDS reduces growth, weakens governance, discourages investment, erodes productivity, impacts social protection systems, and destroys human capital, thereby undermining countries' efforts to reduce poverty and improve living standards.

Reference Material

- » United Nations Programme on HIV/AIDS and United Nations Human Rights Office; “Handbook on HIV and Human Rights for National Human Rights Institutions”; <http://www.ohchr.org/Documents/Publications/HandbookHIVNHRIs.pdf>.
- » United Nations Programme on HIV/AIDS; “HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses”; Report on the Study of the African Commission on Human and Peoples' Rights; http://www.unaids.org/en/resources/documents/2018/HIV_Law_AfricanHumanRightsSystem.



Part V:

Universal or

Cross-cutting issues

1) Human rights in conflict situations

International human rights law offers protection for rights and freedoms at all times, in peace and war. However, some, but not all, human rights provisions may be suspended or their application modified during armed conflict (more information in Box 79). International humanitarian law, on the other hand, regulates the conduct of armed conflict, and thus applies only in times of armed conflict. It consists of rules prohibiting illegal conduct in international and non-international armed conflicts, such as deliberately targeting civilians or civilian objects (e.g. hospitals and schools). During armed conflict, international human rights law and humanitarian law apply together and complement each other.

BOX 75: ARMED CONFLICT

International armed conflicts are the result of the use of armed forces between two or more States, while non-international armed conflicts are those involving either government armed forces fighting organized groups of armed dissidents or organized armed groups fighting each other within the territory of the same state.

In non-international armed conflicts, only common article 3 of the four Geneva Conventions, which outlines some minimum standards that every party to a conflict is bound to apply, is applicable, as well as Additional Protocol 2 and some treaties on the use of weapons in the protection of cultural property. It is also recognized though that rules of customary international law, such as the principles of distinction between those who take direct part in hostilities and those who do not, as well as the principles governing the conduct of hostilities, are applicable as well.

Both international human rights law and humanitarian law aim to preserve human dignity. Violations of human rights and of international humanitarian law during armed conflict undermine the protection of the rights of civilians, persons who are no longer participating directly in hostilities, or active participants in the conflict. When international humanitarian law is violated, States are under obliged to prosecute alleged offenders. National jurisdictions as well as various international criminal tribunals can prosecute alleged offenders for violations of international humanitarian law under some circumstances.

BOX 76: INTERNATIONAL HUMANITARIAN LAW

International humanitarian law is based on

- The Geneva Conventions and their Additional Protocols;
- The Hague Conventions and their Additional Protocols;
- other treaties governing the means and methods of waging war, such as those banning blinding laser weapons, landmines, and chemical and biological weapons; and
- Customary law.

“(…) Calls upon all States to respect the human rights of civilians in armed conflicts.”

“(…) Stresses the importance of combating impunity in order to prevent violations of international human rights law and international humanitarian law perpetrated against civilians in armed conflicts, and urges States, in accordance with their international obligations, to bring perpetrators of such crimes to justice.”

The UN Human Right Council Resolution 9/9
on the protection of the human rights of civilians in armed conflict

BOX 77: VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW AMOUNTING TO INTERNATIONAL CRIMES UNDER INTERNATIONAL CRIMINAL LAW

Certain categories of international human rights and humanitarian law violations may amount to international crimes under international criminal law. These encompass, for instance, genocide, crimes against humanity, and war crimes.

In a general sense, genocide, crimes against humanity, and war crimes all consist of acts such as killing, torture, and rape, which are criminal acts under national law.

What sets them apart as international crimes is the context in which the act is committed, be it

- an international or non-international armed conflict (war crime);
- a widespread or systematic attack on a civilian population (crime against humanity); or
- actions with the intent to destroy, in whole or in part, an ethnic, racial, national, or religious group (genocide).



International Committee of the Red Cross (ICRC) is an independent and neutral organization ensuring humanitarian protection and assistance for victims of war and armed violence. It responds to emergencies and promotes respect for international humanitarian law and its implementation.

Photo: View of destructions in downtown Homs, Syria. 25.2.2016. © Jerome Sessini/Magnum Photos for ICRC

Armed conflict impedes the enjoyment of all human rights: civil, political, social, economic, and cultural. At the same time, the lack of enjoyment of human rights is also one of the conditions conducive to armed conflict. The negative impact of an armed conflict on the enjoyment of human rights is dire and widespread. It is more severe for specific groups that are in particularly vulnerable situations, such as children, women, persons with disabilities, or persons belonging to national or ethnic, cultural, religious, and linguistic minority groups. Due to armed conflicts, for instance, millions of children worldwide are unable to go to school, and therefore deprived of their right to education.

BOX 78: VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

A humanitarian law violation is the failure of a party to an armed conflict to act in a manner consistent with its legally binding obligations under International Humanitarian Law. Some examples of humanitarian law violations are

- willful killing or murder of civilians;
- rape and other sexual violence;
- attacks against civilians;
- denial of humanitarian relief;
- use of human shields;
- attacks against civilian objects or other protected objects;
- indiscriminate use of anti-personnel landmines; and
- unlawful deportation, forced transfer or displacement of civilians.

CASE 38: REVIEW OF THE DEMOCRATIC REPUBLIC OF CONGO BY THE CRC COMMITTEE¹

After considering the State party report of the Democratic Republic of the Congo (DRC), the Committee on the Rights of the Child urged the DRC Government to take all measures to ensure that children were able to complete compulsory schooling and to take concrete action to address the reasons behind non-completion, including persisting zones of insecurity, displacement of families, lack of transport, and destruction of school infrastructure.

¹ CRC Committee Concluding Observations on the Democratic Republic of Congo; 10 February 2009; CRC/C/COD/CO/2.

HUMAN RIGHTS	SDGS
Which human rights are directly relevant to the above recommendation?	How can implementing the recommendations of the CRC Committee advance the realization of the SDGs? Consider the SDG targets and indicators.
<ul style="list-style-type: none">• Rights of the child• Right to education• Right to development• Right to liberty and security	<ul style="list-style-type: none">• SDG 4: Ensure quality education• SDG 16: Promote peace, justice, and strong institutions

Reference Material

- » UN Human Rights Office; “Fact Sheet No.13, International Humanitarian Law and Human Rights”; <http://www.ohchr.org/Documents/Publications/FactSheet13en.pdf>.
- » UN Human Rights Office; “International Legal Protection of Human Rights in Armed Conflict”; New York and Geneva 2011; http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.
- » UN Human Rights Office; “Protection of economic, social and cultural rights in conflict”; <http://www.ohchr.org/Documents/Issues/ESCR/E-2015-59.pdf>.

2) Human rights, terrorism, and counter-terrorism

Terrorism destabilizes Governments, undermines societies, jeopardizes peace and security, and threatens economic and social development. This has serious implications for the enjoyment of human rights by all. States have the obligation to ensure the right to life of persons under their jurisdiction. This includes protecting them from harm caused by terrorist activity. States must take appropriate measures and exercise due diligence to prevent, punish, investigate, or redress such harm. Victims of terrorism and their families should be provided with proper support and assistance.

States are obliged to take measures to protect individuals from harm caused by terrorist activity. In a number of States, however, such measures have raised serious human rights concerns. The promotion and protection of human rights is essential to the countering of terrorism. **States must ensure that the counter-terrorism laws and practices they adopt comply with their international human rights obligations**, including by regularly reviewing them. Such measures are permissible only when they have a legal basis, and when they are necessary and proportionate to the legitimate aim pursued.

There are challenges to the enjoyment of human rights in the context of terrorism and counter-terrorism. **At the same time, the lack of enjoyment of human rights is also one of the conditions conducive to terrorism.** The United Nations' Global Counter-Terrorism Strategy provides a list of conditions conducive to terrorism, such as prolonged conflicts; occupation; subjugation; absence of democracy and rule of law; poverty; violations of human rights; ethnic, national and religious discrimination; political exclusion; socio-economic marginalization; inequality; insecurity; and collective punishment.

“Acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society.”

The UN General Assembly Resolution 49/60
on measures to eliminate international terrorism

BOX 79: HUMAN RIGHTS CHALLENGES IN THE CONTEXT OF TERRORISM AND COUNTER-TERRORISM

A wide range of human rights issues arise in the context of terrorism and counter-terrorism. In 2016, the UN High Commissioner for Human Rights submitted a report (A/HRC/34/30) to the UN Human Rights Council, on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms. The report looks into the impact of terrorism on various rights, including

- the right to life;
- the right to security, liberty and integrity of person;
- freedom of movement;
- the right to a nationality;
- due process rights, including the right to a fair trial;
- the right to privacy;
- freedom of opinion and expression;
- freedom of religion or belief;
- freedom of peaceful assembly and association;
- the right to work;
- the right to health;
- the right to education; and
- the right to participate in cultural life.

Terrorism and counter-terrorism have a widespread negative impact on the enjoyment of all human rights. Many States resort to illegal practices while countering terrorism and in doing so violate international human rights law. Such practices include unlawful or disproportionate use of force causing death or serious harm, torture and other ill-treatment, forced disappearances, violations of the right to a fair trial, or mass surveillance programmes that violate the right to privacy. Forced evictions and demolitions negatively affect the enjoyment of the right to housing, especially in high-security zones, and often lead to displacement and deepen poverty, resulting in additional human rights violations. Where prisoners or detainees are denied equal access to healthcare and treatment, their right to health is violated. Overall, because of policy priorities adopted by States to counter terrorism, they may fall short in their commitment to adequately fulfil economic, social, and cultural rights. As terrorism targets peace, development, and the enjoyment of human rights and fundamental freedoms, human rights must be at the heart of strategies addressing terrorism and the conditions that give rise to it.

BOX 80: DEROGATION FROM INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

In a limited set of circumstances that are explicitly worded in the International Covenant on Civil and Political Rights (such as a public emergency which threatens the life of the nation), States may take measures to derogate from certain human rights obligations. These measures must be exceptional and temporary, subject to regular review by independent organs, and consistent with State's other obligations under international law. They must not involve discrimination solely on the grounds of race, colour, sex, language, religion, or social origin; and they must comply with the principles of necessity and proportionality. In any case, there are human rights and fundamental freedoms, from which derogation is prohibited, even in public emergencies. These non-derogable rights are identified in Article 4 of the ICCPR and include, among others, the right to life; freedom from torture; freedom from enslavement or servitude; and freedom of thought, conscience, and religion.

Reference Material

- » UN Human Rights Office; "Human Rights, Terrorism and Counter-Terrorism"; Fact Sheet No. 32.
- » Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism; A/HRC/12/22.

3) Transitional justice

Countries emerging from devastating conditions of conflict and repression that are trying to re-establish the rule of law and address large-scale and systematic past human rights abuses face a variety of serious challenges. Such challenges include broken institutions, exhausted resources, diminished security, and a distressed and divided population. Transitional justice refers to the processes and mechanisms by which societies address large-scale past human rights violations and ensure accountability, justice, and reconciliation. It consists of both judicial and non-judicial processes and mechanisms. Truth seeking, justice, reparation for victims, and the guarantee that past abuses won't recur are central to transitional justice.

Transitional justice processes should integrate a gender perspective and a victim-centered approach. When performing its broad mandate, the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence also incorporates these approaches.

“For the United Nations, transitional justice is the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice processes and mechanisms are a critical component of the United Nations framework for strengthening the rule of law.”

The Guidance Note of the UN Secretary-General
on the United Nations Approach to Transitional Justice

Reference Material

- » Guidance Note of the UN Secretary-General; “United Nations Approach to Transitional Justice”; March 2010; https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf.
- » UN Human Rights Office; “Transitional Justice and Economic, Social and Cultural Rights”; New York and Geneva 2014; <http://www.ohchr.org/Documents/Publications/HR-PUB-13-05.pdf>.

BOX 81: A COMPREHENSIVE APPROACH TO TRANSITIONAL JUSTICE

On 30 September 2016, the UN Human Rights Council adopted Resolution 33/19 on human rights and transitional justice, emphasizing the importance of a comprehensive approach to transitional justice. Such an approach should “incorporate the full range of judicial and non-judicial measures, including, among others, individual prosecutions, reparations, truth-seeking, institutional reform, the vetting of public employees and officials, memorialization initiatives, and processes to achieve shared narratives or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide remedies to victims, promote healing and reconciliation, establish independent oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law”.

BOX 82: TACKLING IMPUNITY THROUGH TRANSITIONAL JUSTICE MECHANISMS

States have the responsibility to thoroughly investigate and prosecute those responsible for gross human rights violations and violations of international humanitarian law, including genocide, war crimes, and ethnic cleansing. This is essential for deterrence and for preventing recurrence of such violence. Transitional justice provides for a full range of judicial and non-judicial mechanisms to address such violations of human rights, including individual prosecutions at national, regional or international courts; truth-seeking through truth commissions; and reparations for victims. Even if the specific context of each situation differs, all transitional justice mechanisms and processes must comply with international human rights law and standards.

Transitional justice is framed in four tenets: truth, justice, reparations for victims, and prevention, and provides for a full range of mechanisms and measures: truth-seeking mechanisms such as truth commissions; judicial mechanisms (national, international, or hybrid); reparations; and institutional reform, including vetting.

TRUTH

Ensuring the right to know the truth about past abuses and the fate of disappeared persons

JUSTICE

Investigating gross violations of human rights and humanitarian law; prosecuting alleged perpetrators; punishing those found guilty

REPARATIONS

Ensuring the right to reparations for victims of gross violations of human rights and international humanitarian law

PREVENTION

Preventing the reoccurrence of such atrocities in the future

CASE 39: THE REPORT OF THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION¹

“The heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoration of the rule of law.”²

After considering the State party report of the Democratic Republic of the Congo (DRC), the Committee on the Rights of the Child urged the DRC Government to take all measures to ensure that children were able to complete compulsory schooling and to take concrete action to address the reasons behind non-completion, including persisting zones of insecurity, displacement of families, lack of transport, and destruction of school infrastructure.

Background: On 7 July 1999, the Lomé Peace Agreement was signed, ending the eleven-year civil war in Sierra Leone. As part of the agreement, the Sierra Leone Truth and Reconciliation Commission was established, with the objective of creating “an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, (...) to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered”. The Commission was composed of seven members, four men and three women, of whom four were Sierra Leoneans and three were foreigners. It operated for two years, from November 2002 to October 2004, and presented its final report to the President of Sierra Leone on 5 October 2004 and to the United Nations Security Council on 27 October 2004.

Findings: The Commission shared its findings in its final report with a set of recommendations, which also includes a list of names of victims as well as the perpetrators responsible for violations of human rights and humanitarian law. Some of the report’s findings are listed below:

- The central cause of the war in Sierra Leone was corruption and nepotism. The overwhelming control of the executive over the country’s assets; the lack of government accountability; the lack of independence and effectiveness of institutions meant to uphold human rights, such as courts and civil society; and colonialism and the subversion of traditional systems also had an effect.
- Women and girls were raped, forced into sexual slavery, tortured, and subjected to cruel and inhumane acts. Children aged between ten and fourteen years were especially targeted for forced recruitment.
- Forced displacements, abductions, arbitrary detentions and killings, plundering, and looting were the most common violations.
- Successive governments abused the death penalty and misused emergency powers against political dissidents.

1 The final report of the Sierra Leone Truth and Reconciliation Commission; <http://www.sierraleonetr.com/index.php/view-the-final-report/download-table-of-contents>.

2 The Report of the UN Secretary General on the rule of law and transitional justice in conflict and post-conflict societies; S/2004/616.

Recommendations: The Commission also made recommendations and called for the establishment of a monitoring mechanism to oversee their implementation. Its recommendations concerned, inter alia

- fighting corruption,
- creating a new Constitution through consultative and participatory processes,
- strengthening democracy and the institutions of accountability,
- holding free and fair elections,
- ensuring independence of the judiciary,
- strengthening the role of Parliament,
- tightening control over security forces,
- decentralizing political and economic power, and
- encouraging meaningful participation of youth and women in political decision-making.

Reparations: The Lomé Peace Agreement and the Truth and Reconciliation Commission called for reparations for both direct and indirect victims (“indirect victims” being defined in the report as “the dependents or relatives of the direct victim”). Given the relatively limited economic resources of Sierra Leone and the difficulty of providing monetary reparations to all victims, the Commission recommended that the Government provide for different forms of reparations, such as health care, pensions, education, skills-training and microcredit/projects, and community and symbolic reparations. It further emphasized that reparations should benefit the most vulnerable, such as amputees, the war-wounded, victims of sexual violence, children, and war widows.

4) Equality and non-discrimination

Equality and non-discrimination are essential elements of human dignity, and they are fundamental principles of international human rights law. The Universal Declaration of Human Rights affirms that all human beings are born free and equal in dignity and rights. The ICCPR and the ICESCR both have anti-discrimination clauses (Article 2), and this cross-cutting principle exists in a wide range of international human rights instruments. Accordingly, any differential treatment in access to human rights must be reasonably and objectively justified. It must be provided for by law, pursue a legitimate aim, and be necessary and proportionate to the aim pursued.

However, people all around the world continue to be excluded, marginalized, distinguished, and restricted in the exercise of their rights based on grounds of race; colour; national, ethnic, or social origin; language; sex; religion; political or other opinion; descent; birth; caste; age disability; health status; migration status; sexual orientation; or gender identity. People often experience multiple forms of discrimination.

“Discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.”

The UN Committee on Economic, Social, and Cultural Rights
General Comment No. 20

In times of economic or political crisis or instability, inequalities are further heightened, and groups that are historically and traditionally discriminated against face even more barriers to the enjoyment of their rights.¹

“State parties must (...) adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.”

The UN Committee on Economic, Social, and Cultural Rights
General Comment No. 20

1 See Section D for human rights protection of specific groups.

BOX 83: DIRECT AND INDIRECT DISCRIMINATION

Both direct and indirect forms of differential treatment can amount to discrimination under international human rights law. Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to prohibited grounds of discrimination. Indirect discrimination refers to laws, policies, or practices that appear neutral, but have a disproportionate impact on the exercise of human rights as distinguished by prohibited grounds of discrimination.

BOX 84: DISCRIMINATION IN THE PRIVATE SPHERE

Discrimination frequently takes place in families, workplaces, and other sectors of society. For example, private landlords may deny access to housing on the basis of ethnicity, marital status, disability, or sexual orientation. Or some families may refuse to send girl children to school. States have a duty to protect individuals and groups of individuals from discrimination in the private sphere under international human rights law.

BOX 85: SPECIAL MEASURES

International human rights law provides that States should adopt special measures (also known as affirmative measures or affirmative/positive actions) in favour of certain groups, to overcome past discrimination or address persisting inequalities. These measures should be taken both in law and practice, to allow, for example, persons with disabilities to access the job market, or women to participate in decision-making processes.

5) The right to development

Development should not be understood as a primarily economic process aimed at and measured by economic growth. Rather, it should be a comprehensive economic, social, cultural, and political process. It should aim to constantly improve the wellbeing of all individuals and peoples and fulfil all human rights for everyone. A human rights-based approach to development should be adopted, and development should be based on people's free, active, and meaningful participation in development and in the fair distribution of its benefits.

“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

“The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”

Article 1 of the UN Declaration on the Right to Development

The right to development has been recognized as a self-standing human right since the adoption of the Declaration on the Right to Development by the United Nations General Assembly in 1986. It incorporates specific entitlements, including the right to participate in, contribute to, and enjoy economic, social, cultural, and political development. Its enjoyment is closely linked to various other civil, political, economic, social, and cultural rights. The UN Committee on Economic, Social, and Cultural Rights also emphasized “the close relationship and the complementarity” between the Covenant on Economic, Social, and Cultural Rights and the Declaration on the Right to Development.

BOX 86: KEY ELEMENTS OF THE RIGHT TO DEVELOPMENT

According to the UN Declaration on the Right to Development, the key elements of the right to development are the following:

- **People-centered development:** “The human person” is the central subject, participant, and beneficiary of development (art. 2).
- **A human rights-based approach:** Development should be carried out in a manner “in which all human rights and fundamental freedoms can be fully realized” (art. 1).
- **Participation:** “Active, free and meaningful participation” of individuals and populations should be ensured in development (art. 2).
- **Equity:** The “fair distribution of the benefits” is central to development (art. 2).
- **Non-discrimination:** “Distinction as to race, sex, language or religion” is prohibited (art. 6).
- **Self-determination:** The full realization of the right of peoples to self-determination should be ensured, including full sovereignty over their natural wealth and resources (art. 1).

Rights-holders: The human person should be the active participant in and beneficiary of the right to development. The right to development also belongs to ‘all peoples’ and the ‘entire population’. Therefore, it is both an individual and a collective right.

Duty-bearers: States and the international community, as well as all those whose actions and/or omissions have an impact on human rights and the environment, have a duty to ensure the enjoyment of the right to development.

“Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”

Principle 1 of the Rio Declaration on Environment and Development

CASE 40: EMPOWERING HERDER COMMUNITIES IN MONGOLIA¹

As a result of the large number of licenses, the use of outmoded and environmentally destructive gold mining technology, inadequate environmental impact assessments, a failure to rehabilitate mining sites, and inadequate monitoring and enforcement of environmental regulations, environmental and associated human rights issues have become one of Mongolia’s most pressing national concerns.

1 Human Rights-Based Approach Portal; “Integrating a Human Rights-Based Approach (HRBA) into Programming: Mongolia”; Source document: UNESCO, “Undertaking the Human Rights Based Approach: Lessons for Policy, Planning and Programming. Documenting Lessons Learned for the Human Rights-Based Approach to Programming: An Asia-Pacific Perspective”; https://hrbportal.org/wp-content/files/HRBAP_mongolia.pdf.

Mining activities in Mongolia have created serious water pollution problems, have diminished surface waters, and have caused the destruction of pastureland. Overall, the root impediments to rights access could be attributed to shortcomings in mining legislation, which does not take into account the rights of residents in mining exploitation zones. Another concern has been the limited access to justice during public interest litigation. The herder communities suffer the most, and they lack the resources and power to participate in the decision-making process that affects their preferred livelihood.

The United Nations Development Programme (UNDP) and Ev Aran (an NGO) ran a pilot project to reinforce human rights-based approach (HRBA) concepts while targeting extractive mining practices in rural areas of Mongolia. They partnered with herder communities, civil society organizations, media, public advocates, Mongolia's national human rights institution, local government, the judiciary, and law enforcement agencies. The project aimed to achieve a demonstrated level of empowerment of herder communities affected by environmentally destructive mining practices. It sought to educate the judiciary on environmental law, run public litigation programmes and social campaigns to highlight the issue, and provide advocacy for change in partnership with the National Human Rights Commission.

Adopting an HRBA, the project included stakeholder consultations, field missions, community dialogue, non-formal legal education, media campaigns, evidence-based advocacy, public interest litigation, judiciary workshops, and a handbook on environmental law. Their efforts included

- engaging the national human rights institution for evidence-based advocacy,
- implementing non-formal legal education for rights holders to improve negotiation skills,
- inviting journalists to join field missions as part of the media campaign,
- producing a handbook on environmental law for the judiciary to promote Public Interest Litigations,
- supporting access to information by communities with limited electricity and broadcasting infrastructure, and
- enabling rights holders to participate in public discussions on human rights and the environment.

HUMAN RIGHTS	SDGS
<p>The project identified the rights advanced throughout the process. Which rights might be relevant to the project?</p>	<p>How does advancing the human rights of herder communities in Mongolia relate to the realization of the SDGs? Consider the SDG targets and indicators.</p>
<ul style="list-style-type: none"> • The right to live in a safe and healthy environment • The right to participate in the development process • The right to freedom of movement • The right to freedom of expression and information • The right of access to justice 	<ul style="list-style-type: none"> • SDG 1: End poverty • SDG 6: Ensure clean water and sanitation • SDG 10: Reduce inequality • SDG 11: Make cities inclusive and sustainable • SDG 12: Ensure sustainable consumption and production • SDG 15: Protect and sustainably use terrestrial ecosystems

BOX 87: THE RIGHT TO DEVELOPMENT AND THE 2030 AGENDA

The 2030 Agenda, as described in its Preamble, is “a plan of action for people, planet and prosperity” in which “all countries and all stakeholders, acting in collaborative partnership, (...) are resolved to free the human race from the tyranny of poverty and want and to heal and secure our planet” while leaving no one behind. The key principles in the Declaration on the Right to Development, including participation, non-discrimination, self-determination, individual and collective responsibility, international cooperation, and equity, are reaffirmed throughout the 2030 Agenda. The Sustainable Development Goals outline development objectives that are rooted in human rights commitments, including the right to development.

Reference Material

- » UN Human Rights Office; “Frequently Asked Questions on the Right to Development”; Fact Sheet No. 37.
- » UN Committee on Economic, Social and Cultural Rights; “Statement on the importance and relevance of the right to development”, adopted on the occasion of the twenty-fifth anniversary of the Declaration on the Right to Development; E/C.12/2011/2, paras. 1 and 7.

6) Business and human rights

Business enterprises have an increasingly growing reach into and impact on people's lives. This impact can be positive, for example through the creation of employment and support of livelihoods, the contribution to sustainable development, or the active promotion of human rights through their business practices. But it can also be negative, for example if it subjects workers to indecent working conditions, makes use of child labour, or causes environmental degradation.

The State is the primary duty-bearer with regard to protecting individuals and groups of individuals within their territory and/or jurisdiction from human rights violations by third parties, including business enterprises. They are required under international human rights law to take appropriate measures to prevent, investigate, punish, and redress human rights abuses through effective policies, legislation, regulations, and adjudication.

Where the State owns, controls, or provides substantial support and services to a business enterprise, it is required to take additional protective measures against human rights abuses affecting individuals and groups.

Business enterprises of all sizes, sectors, operational contexts, ownerships, and structures, however, also have roles and responsibilities when it comes to respecting human. These roles and responsibilities derive from existing international human rights frameworks, in particular the International Bill of Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

BOX 88: UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

In June 2011, the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights: Implementing the "Protect, Respect and Remedy" Framework. It was developed by the Special Representative of the UN Secretary-General on human rights and transnational corporations and other business enterprises.

The Guiding Principles are directed at States and business enterprises. They clarify their duties and responsibilities to protect and respect human rights in the context of business activities. They also seek to ensure access to an effective remedy for individuals and groups affected by such activities.

BOX 89: ACCESS TO REMEDY WHEN HUMAN RIGHTS VIOLATIONS OCCUR IN BUSINESS OPERATIONS

When human rights violations occur in business operations, States must ensure that those affected have access to effective remedies. They should provide complimentary judicial and non-judicial grievance mechanisms. Other than State-based grievance mechanisms, there should also be non-State-based grievance mechanisms dealing with business-related human rights harms. Business enterprises should also establish or participate in such mechanisms, both for due diligence, and for addressing and remediating adverse impacts of their operations on individuals and communities.

STATE DUTY TO PROTECT HUMAN RIGHTS

Laws that require business enterprises to respect human rights

Laws on the creation/operation of business enterprises that enable respect for human rights

Effective guidance to business enterprises on how to respect human rights

Encouraging/requiring business enterprises to communicate how they address their human rights impacts

Protection against human rights abuses by business enterprises that are owned or controlled by the State or that receive support from it

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights

A policy commitment to meet their responsibility to respect human rights

Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute

Human rights due diligence

“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”

Guiding Principle 17 of the UN Guiding Principles on Business and Human Rights

BOX 90: GLOBAL STANDARDS FOR BUSINESSES IN TACKLING DISCRIMINATION AGAINST LGBTI PEOPLE

In September 2017, the UN High Commissioner for Human Rights launched the global standards for businesses in tackling discrimination against LGBTI people. These standards highlight good practices from around the world, and set out actions that business enterprises can take to respect the rights of lesbian, gay, bisexual, transgender, and intersex individuals.

The five standards are the following:

- Respect the human rights of their LGBTI workers, customers, and members of the public.
- Eliminate workplace discrimination against LGBTI employees.
- Support LGBTI employees at work.
- Prevent discrimination and related abuses against LGBTI customers, suppliers, and distributors – and insist that suppliers do the same.
- Stand up for the human rights of LGBTI people in the communities where companies do business.

Reference Material

- » UN Human Rights Office; Guiding Principles on Business and Human Rights: Implementing the “Protect, Respect and Remedy” Framework; https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- » UN Human Rights Office; “Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People: Standards of Conduct for Business”; <https://www.unfe.org/wp-content/uploads/2017/09/UN-Standards-of-Conduct.pdf>.

CASE 41: HUMAN RIGHTS ABUSES IN THE PALM OIL SECTORE¹

In 2016, Amnesty International, international human rights NGO, investigated the human rights impact of business enterprises in the palm oil sector. It raised concerns regarding the role of international corporations in human rights violations that take place in the context of their business operations.

Its investigation found that the palm oil business has led to extensive deforestation, destruction of the rainforests and considerable harm to wildlife species, as well as to labour rights abuses against workers. Such abuses include

- **unsafe working conditions, such as exposure to toxic chemicals;**
- **exploitation of workers;**
- **child labour;**
- **discrimination against women workers; and**
- **forced labour.**



1 Amnesty International; "Palm Oil: Global brands profiting from child and forced labour"; <https://www.amnesty.org/en/latest/news/2016/11/Palm-Oil-Global-brands-profiting-from-child-and-forced-labour/>.

7) Human rights and environmental issues

All human beings depend on the environment in which they live. The full enjoyment of a wide range of human rights, including the rights to life, religion, property, culture, development, health, food, water, and sanitation, is contingent on a safe, clean, healthy, and sustainable environment. Consequently, environmental degradation has negative impacts on the dignity and wellbeing of, and the enjoyment of human rights by, individuals and groups of individuals. At the same time, the exercise of other freedoms, including the access to information, participation in decision-making, and access to justice, is vital to the protection of the environment.

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”

Principle 1 of the Stockholm Declaration
(Declaration of the UN Conference on the Human Environment)

BOX 91: THE RIGHT TO THE ENJOYMENT OF A SAFE, CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT

The right to a healthy environment has been recognized in many regional instruments and national constitutions. However, no international human rights instrument has been adopted so far to recognize this right. On 5 March 2018, former UN Special Rapporteur on human rights and the environment, John H. Knox, called upon the UN Human Rights Council to consider supporting the recognition of the right to a healthy environment in a global instrument.

In the Stockholm Declaration on the Human Environment (1972) and the Rio Declaration on Environment and Development (1992), States affirmed the links between human rights and dignity and the environment. In recent years, these links have been increasingly recognized in international and domestic laws, judicial decisions, and academic studies.

A safe, clean, healthy and sustainable environment is necessary for the enjoyment of human rights. Failure to conserve natural resources and biodiversity can undermine human rights.

The rights to information, meaningful participation in decision-making, and access to justice in environmental matters are essential to good environmental decision-making.

The right to a safe, healthy and ecologically-balanced environment is a human right in itself. It should be recognized as such also at global level.

Environmental protection secures sustainable availability of critical natural resources and ecosystem services, and therefore supports human rights.

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

Principle 10 of the Rio Declaration

BOX 92: HUMAN RIGHTS AND CLIMATE CHANGE

Climate change has led to an increase in the frequency of extreme weather events and natural disasters, rising sea-levels, floods, heat waves, droughts, desertification, water shortages, and the spread of tropical and vector-borne diseases.

Climate change directly and indirectly hinders the full and effective enjoyment of a range of human rights by people throughout the world, including the rights to life, water and sanitation, food, health, housing, self-determination, culture, and development.

The negative impacts of climate change are disproportionately borne by persons and communities already in disadvantaged situations owing to geography, poverty, gender, age, disability, and cultural or ethnic background, among other factors.

States and other duty-bearers (including businesses) can ensure that climate change-related agreements, policies, and actions are aimed at

- mitigating climate change and preventing its negative human rights impacts;
- ensuring that all persons have the necessary capacity to adapt to climate change;
- ensuring accountability and effective remedies for human rights harms caused by climate change;
- mobilizing maximum available resources for sustainable, human rights-based development;
- facilitating international cooperation;
- ensuring equity in climate action;
- guaranteeing that everyone enjoys the benefits of science and its applications;
- protecting human rights from business harms;
- guaranteeing equality and non-discrimination; and
- ensuring meaningful and informed participation.

“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”

The Paris Agreement

BOX 93: HUMAN RIGHTS AND TOXIC WASTE

The generation, management, handling, distribution, and final disposal of hazardous substances and wastes may have adverse impacts on the enjoyment of human rights, including the right to food, adequate housing, health, and water. Noting this, the UN Human Rights Council created the mandate of *Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*.

In HRC resolution 21/17, the Special Rapporteur was requested to provide information on the adverse effects that the improper management and disposal of hazardous substances and waste may have on the full enjoyment of human rights. More specifically, the Special Rapporteur was asked to look into

- human rights issues involving transnational corporations and other business enterprises in connection with their management and disposal of hazardous substances and waste;
- the human rights implications of waste-recycling programmes and the transfer of polluting industries, industrial activities, and technologies;
- the support and assistance offered to victims of related human rights violations;
- the ambiguities in international instruments that allow the movement and dumping of hazardous substances and wastes, and any gaps in the effectiveness of international regulatory mechanisms; and
- human rights violations committed against human rights defenders owing to their related activities.

CASE 42: NEED FOR STRONGER PROTECTION OF PEOPLE AT HIGH RISK FROM HAZARDOUS SUBSTANCES IN THE REPUBLIC OF KOREA¹

Baskut Tuncak, the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes, visited the Republic of Korea from 12 to 23 October 2015. After his visit, he submitted a report to the UN Human Rights Council.

He noted the positive steps taken by the Government to mitigate the adverse impacts of hazardous substances and wastes on human rights, including the adoption of international human rights and environmental treaties, as well as domestic laws, implementing regulations, policies, and programmes.

However, he raised concerns about the negative impact of hazardous substances and wastes on the enjoyment of human rights, including the health consequences of exposure to hazardous substances and wastes, amounting to numerous injuries and deaths. He assessed the impacts of these substances on people at high-risk, who include consumers, workers, children, and communities living close to hazardous substances. He particularly highlighted the consequences suffered by older persons, pregnant women, new mothers, and very young children.

1 Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on its mission to the Republic of Korea; A/HRC/33/41/Add.1.

Reference Material

- » UN Environment Programme; “Factsheet on Human Rights and the Environment”; <https://wedocs.unep.org/bitstream/handle/20.500.11822/9933/factsheet-human-rights-environment.pdf?sequence=1&isAllowed=y>.
- » Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; A/HRC/37/59.
- » UN Human Rights Office; “Understanding Human Rights and Climate Change”; Submission to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change; <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf>. UN Human Rights Office; “Key Messages on Human Rights and Climate Change”; http://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf

Part VI:

The 2030 Agenda for

Sustainable Development



In September 2015, 170 States gathered at the UN Sustainable Development Summit in New York to adopt the 2030 Agenda with the objective of transforming the world. The Agenda covers a set of seventeen Sustainable Development Goals (SDGs) and 169 targets, and it serves as the overall framework to guide global and national development action.

“This Agenda is a plan of action for people, planet and prosperity. It also seeks to strengthen universal peace in larger freedom. We recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development.

All countries and all stakeholders, acting in collaborative partnership, will implement this plan. We are resolved to free the human race from the tyranny of poverty and want and to heal and secure our planet. We are determined to take the bold and transformative steps which are urgently needed to shift the world on to a sustainable and resilient path. As we embark on this collective journey, we pledge that no one will be left behind.”

Preamble of the 2030 Agenda for Sustainable Development

BOX 94: THE MAIN ELEMENTS OF THE 2030 AGENDA

The 2030 Agenda for Sustainable Development consists of

- the seventeen Sustainable Development Goals (SDGs) and 169 targets to be achieved by all countries by 2030;
- the Means of Implementation (Mol) that stipulate the resources and partnerships that are needed to implement the goals and targets; and
- the Follow-Up and Review (FUR) processes and mechanisms at the national, regional, and global levels that will monitor and guide the progress made in reaching the goals and targets.



SDGs are universal. The Sustainable Development Goals follow the Millennium Development Goals (MDGs), which were established following the Millennium Summit of the United Nations in 2000. However, the MDGs applied only to developing countries, while the SDGs are universal and applicable to all countries. This is because all countries have progress to make toward sustainable development. To achieve this, they face both common and unique challenges.

SDGs are transformative. The 2030 Agenda offers a paradigm shift from the traditional model of development to a people and planet-centered, human rights-based, and gender-sensitive sustainable development. Such development is for “people, planet, prosperity, peace and partnership”.

SDGs are comprehensive. The SDGs envisage a wide range of social, economic, and environmental objectives. The Agenda also sets the goals of achieving “more peaceful, just and inclusive societies which are free from fear and violence” through democratic governance, rule of law, access to justice and personal security, and an enabling international environment. The SDGs cover issues related to all human rights, including civil, political, economic, social, and cultural rights, as well as the right to development.

SDGs are inclusive. The 2030 Agenda pledges to leave no one behind. It envisages “a world of universal respect for equality and non-discrimination” both between and within countries. To ensure this, the Agenda is grounded on international human rights law, and reaffirms State responsibility to respect, protect, and promote human rights without discrimination.

BOX 95: SDG INDICATORS AND DATA DISAGGREGATION

To ensure that no one is left behind and that progress and development is equally shared, the people that are “most left behind” and suffering from a lack of access to human rights and development must be specifically targeted in development efforts. This requires collecting disaggregated, high quality, and timely data across multiple dimensions. For example, data regarding “child labour in the poorest quintile in urban areas” should be collected for better targeting. Such an approach helps to ensure that no one is left behind, as it gives particular attention to those traditionally most left behind due to age, socioeconomic status, gender, ethnicity and geography, or other grounds.

The United Nations High-level Political Forum on Sustainable Development is the main global platform on sustainable development and has the central role in the follow-up and review of the 2030 Agenda at the global level. According to the Agenda, States are encouraged to “conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven”. These national reviews provide a basis for reviews at the global level. Reviews by the United Nations High-level Political Forum on Sustainable Development are voluntary and state-led. Both developed and developing countries undertake these reviews. Furthermore, they provide a platform for partnerships, including through the participation of relevant stakeholders.



An example of a State report. The Netherlands submitted its report on the implementation of the Sustainable Development Goals to the UN High-Level Political Forum on Sustainable Development Goals (www.sustainabledevelopment.un.org)

Sustainable Development Goals and Human Rights

The 2030 Agenda is a human rights-based agenda. It is both grounded in international human rights law and aimed at realizing the human rights of all.

The SDGs “seek to realize the human rights of all”. (Preamble)

“We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity.” (Paragraph 8)

“The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome Document.” (Paragraph 10)

“We reaffirm our commitment to international law and emphasize that the Agenda is to be implemented in a manner that is consistent with the rights and obligations of States under international law.” (Paragraph 18)

“We reaffirm the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law. We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.” (Paragraph 19)

Human rights and the SDGs are mutually reinforcing. Implementing human rights treaty obligations facilitates the realization of the SDGs in the same way that a human rights-based approach to development facilitates access to human rights for all.

Human rights are inextricably linked to the 2030 Agenda. The principle of “leaving no one behind” is cross cutting and applies to all SDGs and targets and reflects the human rights principles of equality and non-discrimination. The principles of accountability, participation, and non-discrimination are strongly reflected in the 2030 Agenda, and they are also the principles of a human rights-based approach to development.




Core international human rights and labour standards are reflected in more than 90% of the 169 SDG targets. Concrete links between specific SDG targets and specific articles of core international human rights instruments illustrate how closely related these are.

Human rights and the SDGs are mutually reinforcing



Sustainable Development Goals	Related human rights *
 <p>1 NO POVERTY</p>	<p>End poverty in all its forms everywhere</p> <p>Targets include eradicating extreme poverty; implementing social protection measures; and ensuring equal access of men and women to economic resources.</p> <ul style="list-style-type: none"> • Right to an adequate standard of living [UDHR art. 25; ICESCR art. 11; CRC art. 27] • Right to social security [UDHR art. 22; ICESCR art. 9; CRPD art. 28; CRC art. 26] • Equal rights of women in economic life [CEDAW arts. 11, 13, 14(2)(g), 15(2), 16(1)]
 <p>2 ZERO HUNGER</p>	<p>End hunger, achieve food security and improved nutrition, and promote sustainable agriculture</p> <p>Targets include ending hunger and malnutrition; improving agricultural production, sustainable and resilient food production; correcting trade distortions, and ensuring functioning food commodity markets.</p> <ul style="list-style-type: none"> • Right to adequate food [UDHR art. 25; ICESCR art. 11; CRC art. 24(2)(c)] • International cooperation, including ensuring equitable distribution of world food supplies [UDHR art. 28; ICESCR arts. 2(1), 11(2)]
 <p>3 GOOD HEALTH AND WELL-BEING</p>	<p>Ensure healthy lives and promote well – being for all at all ages</p> <p>Targets include reducing maternal mortality; ending preventable child deaths; ending or reducing AIDS other diseases; universal health coverage, affordable essential medicines, sexual and reproductive health care; vaccine research, and access to medicines.</p> <ul style="list-style-type: none"> • Right to life [UDHR art. 3; ICCPR art. 6], particularly of women [CEDAW art. 12] and children [CRC art. 6] • Right to health [UDHR art. 25; ICESCR art. 12], particularly of women [CEDAW art. 12]; and children [CRC art.24] • Special protection for mothers and children [ICESCR art.10] • Right to enjoy the benefits of scientific progress and its application [UDHR art. 27; ICESCR art. 15(1)(b)] • International cooperation [UDHR art. 28, DRtD arts. 3-4], particularly in relation to the right to health and children's rights [ICESCR art. 2(1); CRC art. 4]
 <p>4 QUALITY EDUCATION</p>	<p>Ensure inclusive and equitable quality education and promote life-long learning opportunities for all</p> <p>Targets include universal access to free, quality pre-primary, primary and secondary education; improving vocational skills; equal access to education; expanding education facilities, scholarships, and training of teachers.</p> <ul style="list-style-type: none"> • Right to education [UDHR art. 26; ICESCR art. 13], particularly in relation to children [CRC arts. 28, 29]; persons with disabilities [CRC art. 23(3), CRPD art. 24]; and indigenous peoples [UNDRIP art. 14] • Right to education of women and girls in the field of education [CEDAW art. 10] • Right to work, including technical and vocational training [ICESCR art. 6] • International cooperation [UDHR art. 28; DRtD arts. 3-4], particularly in relation to children [CRC arts. 23(4), 28(3)], persons with disabilities [CRPD art. 32], and indigenous peoples [UNDRIP art. 39]
 <p>5 GENDER EQUALITY</p>	<p>Achieve gender equality and empower all women and girls</p> <p>Targets include eliminating discrimination and violence against women and girls; valuing unpaid care and domestic work; ensuring the full participation of women; access to reproductive health care; and equal access of women to economic resources.</p> <ul style="list-style-type: none"> • Elimination of all forms of discrimination against women [CEDAW arts. 1-5] and girls [CRC art. 2], particularly in legislation, political and public life (art. 7), economic and social life (arts. 11, 13), and family relations (art. 16)] • Right to decide the number and spacing of children [CEDAW arts. 12, 16(1)(e); CRC art. 24(2)(f)] • Special protection for mothers and children [ICESCR art. 10] • Elimination of violence against women and girls [CEDAW arts. 1- 6; DEVAW arts. 1-4; CRC arts. 24(3), 35] • Right to just and favourable conditions of work [ICESCR art. 7; CEDAW art. 11]
 <p>6 CLEAN WATER AND SANITATION</p>	<p>Ensure availability and sustainable management of water and sanitation for all</p> <p>Targets include ensuring universal and equitable access to safe, affordable drinking water, sanitation and hygiene for all; reducing pollution; increasing water-use efficiency; and promoting participatory management of water and sanitation services.</p> <ul style="list-style-type: none"> • Right to safe drinking water and sanitation [ICESCR art. 11] • Right to health [UDHR art. 25; ICESCR art. 12] • Equal access to water and sanitation for rural women [CEDAW art. 14(2)(h)]

<p>7 AFFORDABLE AND CLEAN ENERGY</p> 	<p>Ensure access to affordable, reliable, sustainable and modern energy for all</p> <p>Targets include ensuring universal access to affordable, reliable and modern energy services.</p>	<ul style="list-style-type: none"> • Right to an adequate standard of living [UDHR art. 25; ICESCR art. 11] • Right to enjoy the benefits of scientific progress and its application [UDHR art. 27; ICESCR art. 15(1)(b)]
<p>8 DECENT WORK AND ECONOMIC GROWTH</p> 	<p>Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all</p> <p>Targets include promoting sustained economic growth; improving resource efficiency in production and consumption; full and productive employment and decent work for all; eradicating forced and child labour and trafficking; protecting labour rights including those of migrant workers; and increasing access to financial services.</p>	<ul style="list-style-type: none"> • Right to work and to just and favourable conditions of work [UDHR art. 23; ICESCR arts. 6, 7, 10; CRPD art. 27; ILO Core Labour Conventions and ILO Declaration on Fundamental Principles and Rights at Work] • Prohibition of slavery, forced labour, and trafficking of persons [UDHR art. 4; ICCPR art. 8; CEDAW art. 6; CRC arts. 34-36] • Equal rights of women in relation to employment [CEDAW art. 11; ILO Conventions No. 100 and No. 111] • Prohibition of child labour [CRC art. 32; ILO Convention No. 182] • Equal labour rights of migrant workers [CMW art. 25]
<p>9 INDUSTRY, INNOVATION AND INFRASTRUCTURE</p> 	<p>Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation</p> <p>Targets include affordable and equitable access to quality infrastructure; employment generating industrialisation; access to financial services and markets; innovation and technology transfer, and increasing access to ICT.</p>	<ul style="list-style-type: none"> • Right to enjoy the benefits of scientific progress and its application [UDHR art. 27; ICESCR art. 15(1)(b)] • Right to access to information [UDHR art. 19; ICCPR art. 19(2)] • Right to adequate housing, including land and resources [UDHR art. 25; ICESCR art. 11] • Equal rights of women to financial credit and rural infrastructure [CEDAW art. 13(b), art. 14(2)]
<p>10 REDUCED INEQUALITIES</p> 	<p>Reduce inequality within and among countries</p> <p>Targets include promoting higher growth rates for the bottom 40 per cent; promoting social, economic and political inclusion; reducing inequalities in opportunities and outcomes; ensuring social protection for all; securing participation in economic decision making; facilitating migration, and reducing transaction costs for migrant remittances.</p>	<ul style="list-style-type: none"> • Right to equality and non-discrimination [UDHR art. 2; ICESCR art. 2(2); ICCPR arts. 2(1), 26; CERD art. 2(2); CEDAW art. 2; CRC art. 2; CRPD art. 5; CMW art. 7; DRTD art. 8(1)] • Right to participate in public affairs [UDHR art. 21; ICCPR art. 25; CEDAW art. 7; ICERD art. 5; CRPD art. 29; DRID art. 8(2)] • Right to social security [UDHR art. 22; ICESCR arts. 9-10; CRPD art. 28] • Promotion of conditions for international migration [CMW art. 64] • Right of migrants to transfer their earnings and savings [CMW art. 47(1)]
<p>11 SUSTAINABLE CITIES AND COMMUNITIES</p> 	<p>Make cities and human settlements inclusive, safe, resilient and sustainable</p> <p>Targets include ensuring access to housing, basic services and public transport for all; participatory planning of human settlements; safeguarding cultural and natural heritage; and strengthening resilience to disasters.</p>	<ul style="list-style-type: none"> • Right to adequate housing, including land and resources [UDHR art. 25; ICESCR art. 11] • Right to participate in cultural life [UDHR art. 25; ICESCR art. 15; ICERD arts. 5, 7; CRPD art. 30; CRC art. 31] • Accessibility of transportation, facilities and services particularly of persons with disabilities [CRPD art. 9(1)], children [CRC art. 23], and rural women [CEDAW art. 14(2)] • Protection from natural disasters [CRPD art. 11]
<p>12 RESPONSIBLE CONSUMPTION AND PRODUCTION</p> 	<p>Ensure sustainable consumption and production patterns</p> <p>Targets include achieving sustainable management and efficient use of natural resources; improving waste management; promoting sustainable public procurement; ensuring access to information; and building capacity for sustainable development.</p>	<ul style="list-style-type: none"> • Right to health including the right to safe, clean, healthy and sustainable environment [UDHR art. 25(1); ICESCR art. 12] • Right to adequate food and the right to safe drinking water [UDHR art. 25(1); ICESCR art. 11] • Right of all peoples to freely dispose of their natural resources [ICCPR, ICESCR art. 1(2)]

<p>13 CLIMATE ACTION</p> 	<p>Take urgent action to combat climate change and its impacts</p> <p>Targets include strengthening resilience and adaptation to climate change and natural disasters, including in marginalised communities; implementation of the Green Climate fund.</p>	<ul style="list-style-type: none"> • Right to health including the right to safe, clean, healthy and sustainable environment [UDHR art. 25(1); ICESCR art. 12; CRC art. 24; CEDAW art. 12; CMW art. 28] • Right to adequate food & right to safe drinking water [UDHR art. 25(1); ICESCR art. 11] • Right of all peoples to freely dispose of their natural wealth and resources [ICCPR, ICESCR art. 1(2)]
<p>14 LIFE BELOW WATER</p> 	<p>Conserve and sustainably use the oceans, seas and marine resources for sustainable development</p> <p>Targets include reducing marine pollution; conserving coastal ecosystems, coastal marine areas and fish stock; securing market access for small scale fishers; protection of marine biodiversity.</p>	<ul style="list-style-type: none"> • Right to health including the right to safe, clean, healthy and sustainable environment [UDHR art. 25(1); ICESCR art. 12; CRC art. 24; CEDAW art. 12; CMW art. 28] • Right to adequate food & right to safe drinking water [UDHR art. 25(1); ICESCR art. 11] • Right of all peoples to freely dispose of their natural wealth and resources [ICCPR, ICESCR art. 1(2)]
<p>15 LIFE ON LAND</p> 	<p>Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss</p> <p>Targets include the sustainable management of freshwater, mountain ecosystems and forests; combatting desertification; halting biodiversity loss; combatting poaching and trafficking of protected species.</p>	<ul style="list-style-type: none"> • Right to health including the right to safe, clean, healthy and sustainable environment [UDHR art. 25(1); ICESCR art. 12; CRC art. 24; CEDAW art. 12; CMW art. 28] • Right to adequate food & right to safe drinking water [UDHR art. 25(1); ICESCR art. 11] • Right of all peoples to freely dispose of their natural wealth and resources [ICCPR, ICESCR art. 1(2)]
<p>16 PEACE, JUSTICE AND STRONG INSTITUTIONS</p> 	<p>Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels</p> <p>Targets include reducing all forms of violence; ending violence against and trafficking of children; promoting rule of law and justice for all; reducing illicit financial and arms flows, corruption and bribery; developing effective institutions; participation in decision making at all levels; legal identity for all.</p>	<ul style="list-style-type: none"> • Right to life, liberty and security of the person [UDHR art. 3; ICCPR arts. 6(1), 9(1); ICPED art. 1] including freedom from torture [UDHR art. 5; ICCPR art. 7; CAT art. 2; CRC art. 37(a)] • Protection of children from all forms of violence, abuse or exploitation [CRC arts. 19, 37(a)], including trafficking (CRC arts. 34-36; CRC-OP1) • Right to access to justice and due process [UDHR arts. 8, 10; ICCPR arts. 2(3), 14-15; CEDAW art. 2(c)] • Right to legal personality [UDHR art. 6; ICCPR art. 16; CRPD art. 12] • Right to participate in public affairs [UDHR art. 21; ICCPR art. 25] • Right to access to information [UDHR art. 19; ICCPR art. 19(1)]
<p>17 PARTNERSHIPS FOR THE GOALS</p> 	<p>Strengthen the means of implementation and revitalize the global partnership for sustainable development</p> <p>Targets include strengthening domestic and international resources; debt sustainability; technology transfer and capacity building; promoting trade; enhancing policy and institutional coherence; respecting countries' policy space; promoting multi-stakeholder partnerships; measurements for progress, disaggregated data.</p>	<ul style="list-style-type: none"> • Right of all peoples to self-determination [ICCPR, ICESCR art. 1(1); DRtD art. 1(1)] • Right of all peoples to development, & international cooperation [UDHR art. 28; ICESCR art. 2(1); CRC art. 4; CRPD art. 32(1); DRtD arts. 3-5] • Right of everyone to enjoy the benefits of scientific progress and its application, including international cooperation in the scientific field [UDHR art. 27(1); ICESCR art. 15(1)] • Right to privacy [UDHR art. 12; ICCPR art. 17], including respect for human rights and ethical principles in the collection and use of statistics [CRPD art. 31(1)]

(*) This table is intended for illustrative purposes only. The listing of relevant rights is not exhaustive. Under international human rights law, and under the 2030 Agenda for Sustainable Development, data for all targets needs to be collected and disaggregated by the prohibited grounds of discrimination under international human rights law, including the respect, protection and promotion of human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status. Obligations regarding international assistance and cooperation also apply to all Goals.

Human rights mechanisms and institutions provide systematic contributions and guidance for integrated human rights-based approaches to implementing, following up on, and reviewing the 2030 Agenda. This includes the substantial expertise provided by the UN Human Rights Council and its mechanisms as well as by the UN Human Rights Treaty Bodies. The available expertise of the UN Human Rights Office, the UN Development Group, the UN Development Programme, and UN Country Teams are also invaluable for implementing human rights obligations as well as setting goals and targets in the 2030 Agenda.

List of international human rights instruments

1948: Universal Declaration of Human Rights (UDHR)

1965: International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

1966: International Covenant on Civil and Political Rights (ICCPR)

1966: International Covenant on Economic, Social and Cultural Rights (ICESCR)

1979: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

1984: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

1986: Declaration on the right to development (DDD)

1989: Convention on the Rights of the Child (CRC)

1990: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)

1993: Declaration on the elimination of violence against women

2000: Optional Protocol to the Convention on the Rights of the Child

2006: Convention on the Rights of Persons with Disabilities (CPRD)

2006: International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED)

2007: United Nations Declaration on the Rights of Indigenous Peoples



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