# HUMAN RIGHTS IN A GLOBAL AGE

DR. PRAMOD PANDEY
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# CHAPTER 1

# INTRODUCTION TO HUMAN RIGHTS: UNDERSTANDING THE FUNDAMENTALS

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**ABTRACT:**

The essential ideas, concepts, and importance of human rights in society are explored in this research study, which serves as an introduction to the subject. All people have innate human rights, regardless of their country, ethnicity, gender, or other traits. This study looks at the evolution of human rights throughout history, the UDHR, and the worldwide legal framework for defending and advancing human rights. It explores important ideas including the interconnectedness, universality, and indivisibility of human rights as well as the function of governments, organisations, and people in defending human rights. To give a thorough grasp of human rights, an examination of the literature, international treaties, and case studies is done. The research's primary subjects are briefly summarised in the keywords. The results help us understand human rights and how important they are for promoting equality, justice, and dignity in society.

**KEYWORDS:**

Human Rights, International Legal Framework, Justice, Society.

## INTRODUCTION

Greek philosophy and the many global faiths both have their roots in human rights. The idea of human rights first became evident during the Age of Enlightenment in the eighteenth century.

A person arrived to be seen as a free agent with some unalienable basic rights that might be asserted against a government and ought to be protected by it. From that point forward, human rights were recognised as fundamental prerequisites for a life deserving of human dignity. Prior to this time, a number of charters that enshrined rights and liberties had been created, representing significant advancements towards the concept of human rights. The Magna Charta Libertatum from 1215, the Golden Bull from Hungary from 1222, the Erik Klippings Hndfaestning from Denmark from 1282, the Joyeuse Entrée from Brabant (Brussels) from 1356, the Union of Utrecht from 1579 (The Netherlands), and the English Bill of Rights from 1689 were the first. These papers listed rights that may be invoked in response to specific situations (such as challenges to religious freedom), but they did not yet include an overarching philosophical idea of individual liberty. Freedoms were often seen as privileges bestowed upon people or organisations based on their status or position [1], [2].

After the Middle Ages, the idea of liberty progressively decoupled from social class and began to be seen not as a privilege but as a fundamental human right. In this setting, Spanish theologians and jurists were significant figures. The work of Francisco de Vitoria (1486–1546) and Bartolomé de las Casas (1474–1566) should be emphasised among the former. These two individuals established the (doctrinal) basis for the acceptance of human freedom and dignity.by protecting the civil rights of the native peoples who live in the areas that the Spanish Crown has conquered.

Concepts of human rights were developed significantly throughout the Age of Enlightenment. Hugo Grotius (1583-1645), who is regarded as one of the founders of contemporary international law, Samuel von Pufendorf (1632-1694), and John Locke (1632–1704), were all prominent thinkers in Europe throughout the 18th century. For instance, Locke created a thorough understanding of natural rights, with his list of rights including life, liberty, and property. The idea that the sovereign derives his powers from a social contract and the people draw their rights from the same social compact was developed by Jean-Jacques Rousseau (1712-1778). First used in the French Déclaration des Droits de l'Homme et du Citoyen (1789), the phrase "human rights" was coined there [3], [4].

The inhabitants of the British colonies in North America embraced the concepts of human rights. On the premise that all people are created equal, the American Declaration of Independence was written on July 4, 1776. A few unalienable rights were also mentioned, including the rights to life, liberty, and the pursuit of happiness. The Virginia state's Bill of Rights, which was published the same year, also included these concepts. Other American states ratified the Declaration of Independence's clauses, and they also made it into the American Constitution's Bill of Rights. The growing international philosophy of universal rights was represented in the French Déclaration des Droits de l'Homme and du Citoyen of 1789 and the French Declaration of 1793. Both the American and French Declarations aimed to list these rights in a methodical manner.

The individual's right to freedom was central to the traditional rights of the 18th and 19th centuries. However, some individuals still held the opinion that citizens had the right to demand that their government work to better their living circumstances. A number of constitutions written in Europe around 1800 included traditional rights as well as provisions transferring authority to the government in the areas of employment, welfare, public health, and education. These constitutions did this in accordance with the principle of equality outlined in the French Declaration of 1789. In addition, social rights of this sort were explicitly stated in the German Constitution of 1919, the Soviet Union Constitution of 1918, and the Mexican Constitution of 1917.The preservation of minorities' rights in Europe gave rise to several inter-state conflicts in the 19th century. Humanitarian interventions and requests for international protection agreements were sparked by these wars. The Treaty of Berlin, which was signed in 1878, was one of the earliest such agreements.

When the industrialised nations started enacting employment laws towards the end of the 19th century, the necessity for international norms on human rights became apparent. Their competitive position in comparison to nations without labour laws worsened as a result of this legislation, which increased the cost of employment. The states have to communicate with one another because of economic need. This led to the creation of the first conventions, in which governments made promises to one another for the welfare of their own inhabitants. The first international agreement to protect social rights was the Bern Convention of 1906, which forbade women from working nights. The International Labour Organisation (ILO), established in 1919 (see II.1.D), would go on to create a great number of further labour agreements. As strange as it may sound, social rights were first included in international laws even though traditional human rights had been accepted far earlier [5], [6].

The conventional belief that nations had complete freedom to select how to treat their own populations was destroyed by the horrors of World War II. Human rights were included in the scope of international law with the adoption of the UN Charter on June 26, 1945. All UN members specifically pledged to take action to safeguard human rights. A number of clauses in the Charter particularly mention human rights (see II.1.A). A draught of the Universal Declaration of Human Rights (UDHR) was presented less than two years later by the UN

Commission on Human Rights (UNCHR), which was founded at the beginning of 1946. The Declaration was approved by the UNGA on December 10, 1948, in Paris. Later, this day was declared Human Rights Day.

In the 1950s and 1960s, the UN saw considerable increase in membership. When they joined, nations publicly agreed to the commitments included in the UN Charter and, in doing so, endorsed the values and principles outlined in the UDHR. The Proclamation of Teheran (1968), which was approved at the first World Conference on Human Rights, and the Vienna Declaration and Programmed of Action (1993), which were both adopted during the second World Conference on Human Rights, both made specific reference to this commitment. The UDHR has been supported by several international agreements since the 1950s. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) are the two most important of these agreements. The UDHR and these two Covenants make up the International Bill of Human Rights. Several oversight mechanisms, including those in charge of ensuring adherence to the two Covenants, have been established concurrently [7], [8].

## DISCUSION

### Defining Human Right

Human rights are often thought to be those liberties that come with being a person. The idea of human rights is founded on the conviction that every person has the right to exercise their rights without hindrance. Two things set human rights apart from other rights. They are distinguished first by being: Inherent in all people only by virtue of their humanity they do not need rights be, for example, acquired or awarded); Inalienablewithin certain legal parameters; and equally applicable to everyone. Second, nations and their authorities or agents not individuals are responsible for the majority of the obligations arising from human rights. These traits have a crucial implication namely, that human rights themselves must be safeguarded by the law also known as "the rule of law". Additionally, any disagreements over these rights should be brought before a competent, impartial, and independent tribunal for resolution, using procedures that guarantee complete equality and fairness for all parties, and having the issue decided in accordance with specific, pre-existing laws that are known to the public and openly declared.

The necessity to defend the person against the arbitrary use of governmental authority gave rise to the concept of fundamental rights. Therefore, the rights that require governments to abstain from doing particular acts were first the centre of attention. 'Fundamental freedoms' is the common term used to describe this subset of human rights. Human rights act as a guide and benchmark for law since they are seen as a need for living a decent life. Human rights are unique in that they serve as a necessary prerequisite for human growth. This means that they may affect relationships between persons as well as those between them. The'vertical impact' of human rights is the interaction between the person and the state. While establishing guidelines for interactions between people and the state is the main goal of human rights, several of these rights may also have an impact on how people interact with one another. This so-called "horizontal effect" suggests, among other things, that a government not only has a responsibility to avoid from violating human rights, but also has a responsibility to defend the person against violations by others. Thus, the right to life mandates that the state work to safeguard citizens from being killed by other individuals. Similar to this, Article 17(1) and (2) of the ICCPR requires states to shield people against unauthorised invasions of their privacy. The CERD, which requires nations to prohibit racial discrimination against people, is another classic example. In terms of human rights commitments, states may be required to refrain

from particular behaviours such as torture or take certain actions such as holding free elections. The phrase "human rights" refers to a wide range of liberties, from the right to life to the right to one's cultural identity. They include all fundamental prerequisites for a respectable human life. There are several methods to specify and organise these rights. At the international level, a difference has sometimes been drawn between economic, social, and cultural rights and civil and political rights. This difference is made clear in this section. Since alternative categories are also used, they will also be examined; however, it will not be implied that these classifications represent a global agreement. It is also obvious that there is a significant amount of overlap between the different classifications. The Vienna Declaration and Programme of Action (1993), paragraph 5, for example, emphasises that all human rights are universal, indivisible, and interconnected, despite the fact that they have been categorised in a variety of ways. Since all human rights are equal, none are more significant than any other.

'Classic' and'social' rights are two categories that are sometimes utilised. "Classic" rights are often considered as necessitating the state's non-interference negative duty, while "social" rights are seen as necessitating the state's active action positive responsibilities. In other words, social rights require the state to give certain assurances, while traditional rights require it to abstain from doing specific acts. Classical rights are often described by lawyers as a responsibility to attain a certain outcome an "obligation of result", whereas social rights are sometimes described as a duty to supply the means an "obligation of conduct". But as international law has developed, it has become more challenging to distinguish between "classic" and "social" rights. Traditional rights like civil and political rights sometimes need significant governmental commitment. These rights must be respected by the state, but it also has a duty to ensure that individuals may actually exercise them.

As a result, the right to a fair trial, for instance, calls for administrative assistance in addition to qualified judges, prosecutors, attorneys, and police officers. Another example is the expensive process of organising elections. On the other hand, the majority of so-called "social" rights include provisions requiring the state to refrain from interfering with the enjoyment of the right by the person. The right to housing implies the right not to be a victim of forced eviction; the right to food includes the right for everyone to obtain their own food supply without interference; the right to work includes the individual's right to choose his or her own work and also calls for the state to refrain from measures that would increase barriers to employment. The right to the best achievable quality of health entails the duty not to obstruct the supply of healthcare, just as the right to education implies the freedom to create and control educational institutions.

**Civil rights**

The first eighteen articles of the UDHR, which virtually all also serve as enforceable treaty rules in the ICCPR, are commonly referred to as the "civil rights" provisions. From this group, a further set of "physical integrity rights" has been identified, which protect against physical violence against the person, torture and inhuman treatment, arbitrary arrest, detention, exile, slavery and servitude, interference with one's privacy and right to own property, restriction of one's freedom of movement, and the freedom of thought, conscience, and religion. These rights also concern the right to life, liberty, and security of the person. The distinction between "basic rights" and "physical integrity rights" is that the former contains economic and social rights while the latter excludes rights like ownership and the protection of privacy. The right to equal treatment and protection under the law definitely counts as a civil right, even if it isn't strictly speaking an integrity right. Additionally, the manifestation of this right is crucial for the achievement of economic, social, and cultural

rights. The phrase "due process rights" is used to refer to a different set of civil rights. These concern, among other things, the right to a public trial before an impartial and independent tribunal, the "presumption of innocence," the ne bis in idem rule, and the right to legal representation.

It has long been claimed that there are significant distinctions between civil and political rights and economic, social, and cultural rights. These two types of rights have been conceptualised as two distinct ideas, and the distinctions between them have been described as a dichotomy. This point of view holds that civil and political rights are articulated in very specific terms and impose only negative responsibilities that may be put into practise right away since they don't need any resources to be put into place. Economic, social, and cultural rights, on the other hand, are seen to be represented in ambiguous words, imposing only positive responsibilities according to the availability of resources and entailing a gradual fulfilment.

Due to these apparent distinctions, it has been asserted that economic, social, and cultural rights are not justiciable but civil and political rights are. In other words, this perspective contends that economic, social, and cultural rights are 'by their nature' unjusticiable and that only breaches of civil and political rights may be decided by courts or other such authorities. The importance of the legal legitimacy and application of economic, social, and cultural rights6 has grown as they have been reexamined throughout time. We have seen the emergence over the last ten years of a sizable and expanding corpus of domestic court case law pertaining to economic, social, and cultural rights. This case law shows a possible role for innovative and considerate judgements of judicial and quasi-judicial authorities with regard to these rights, both at the national and international levels.

The universality and interdependence of human rights have been discussed at length in several international forums. All human rights are universal, indivisible, interdependent, and linked, as stated in the 1993 Vienna Declaration and Programme of Action. Human rights must be treated fairly, equally, on an equal basis, and with equal priority by the international community. The European Union (EU) and its member states have also made it abundantly clear that they share the belief that both categories of human rights are crucial, in the sense that only when civil and political rights as well as economic, social, and cultural rights are respected is it possible for a person to live a life deserving of human dignity. They said in their Declaration of July 21, 1986, that "the promotion of economic, social, and cultural rights, as well as civil and political rights, is of paramount importance for the full realisation of human dignity and for the achievement of the legitimate aspirations of every individual."

A clear separation between civil and political rights and economic, social, and cultural rights is inaccurate, according to the so-called Limburg Principles on the Implementation of the ICESCR. These guidelines were developed in 1986 by a panel of impartial experts, and the Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights followed in 1997. Together, these texts provide a comprehensive explanation of the ICESCR's state party duties. The 1990 General Comment 3 of the UN Committee on Economic, Social, and Cultural Rights on the nature of States Parties' Obligations in Relation to the ICESCR is comparable in this regard.

The options for petitioning an international organisation with regard to infringement of economic, social, and cultural rights are still quite restricted, despite ongoing international statements on the equality and interdependence of these rights. The international community has been debating whether to adopt an Optional Protocol to the ICESCR that would establish a system of individual and collective complaints for many years, and the Committee on

Economic, Social, and Cultural Rights has dedicated a lot of time and effort to discussing a draught Optional Protocol. States have generally formally endorsed the adoption of an Optional Protocol. The Vienna Declaration and Programme of Action (1993) "encourage[d] the Commission on Human Rights to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights" (Part II, para. 75) in collaboration with the Committee on Economic, Social and Cultural Rights. The UN Commission on Human Rights reaffirmed this promise and backed the Committee's efforts to design an optional protocol that would allow people or organisations to report instances of the Covenant's non-compliance. The Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights had its mandate to "consider options regarding the elaboration of an Optional Protocol to the ICESCR" extended for an additional two years during the 60th session of the UN Commission on Human Rights in 2004.

Adoption of an Optional Protocol to the ICESCR is urgently needed. First off, under the existing system, economic, social, and cultural rights are accorded a lower position and level of protection than civil and political rights. Second, an individual complaints system will clarify the definition and boundaries of economic, social, and cultural rights, assisting efforts to uphold and ensure their enjoyment. Thirdly, the possibility of a worldwide "remedy" may encourage people and organisations to frame some of their demands for economic and social justice in terms of rights. Last but not least, the likelihood of a negative "finding" by international organisations would raise the importance of economic, social, and cultural rights in terms of political concerns of governments, which these rights now mainly lack. The concepts of the indivisibility and interdependence of all human rights would mostly remain hypothetical without the passage of an Optional Protocol.

**Fundamental And Basic Rights**

Such rights like the right to life and the inviolability of the person are considered to be among the fundamental rights. The UN has established broad standards that, in particular since the 1960s, have been outlined in multiple conventions, declarations, and resolutions. These standards bring existing acknowledged rights and policy issues that have an impact on human development into the realm of human rights.

There is a need to define a distinct group within the wide category of human rights due to concern that a broad definition of human rights may cause the concept of "violation of human rights" to lose some of its relevance. Human rights are increasingly referred to be "elementary," "essential," "core," and "fundamental."

A different strategy is to identify a handful of "basic rights" that must have absolute precedence in national and international policy. All of the rights that are related to people's basic material and non-material requirements fall under this category. No human being can live a decent life without these things. Basic rights include the right to life, the right to a reasonable amount of security, the inviolability of the person, the freedom from slavery and servitude, the freedom from torture, the freedom from illegal loss of liberty, the freedom from discrimination, and the freedom from other actions that violate human dignity. Along with the right to adequate sustenance, clothes, housing, and medical treatment, as well as other necessities vital to physical and mental health, they also encompass freedom of thought, conscience, and religion. It is also important to include so-called "participation rights," such as the right to vote which is also a political right; see above and the right to engage in cultural activities. These participation rights are often regarded as fundamental rights since they are necessary prerequisites for the defence of all basic human rights.

### Freedoms

Freedoms like the ability to travel freely, the right to be free from torture, and the right to be free from arbitrary detention are commonly used to characterise the prerequisites for a dignified human life. These prerequisites were summed up by American President Franklin D. Roosevelt in his renowned "Four Freedoms Speech" to the US Congress on January 26, 1941:

1. Freedom of speech and expression;
2. Freedom of belief the right of each person to worship God in his or her own way;
3. Freedom from want economic understandings that ensure each nation's citizens live in peace and prosperity; and
4. Freedom from fear a global armament reduction that is so complete that no nation could engage in physical aggression against any neighbour.
5. Roosevelt suggested that access to the basic essentials of life as well as protection against tyranny and arbitrariness are necessary for a dignified human existence.

### Individual and collective rights

Human rights are primarily meant to protect and advance the person individual rights, although certain of these rights may also be used collectively (collective rights). This includes the right to create or join a union, the freedom of organisation and assembly, and the freedom of religion. When human rights are directly tied to belonging to a particular group, like the right of members of ethnic and cultural minority to retain their own language and culture, the collective aspect is much more obvious. It is important to distinguish between two categories of rights, sometimes referred to as collective rights: individual rights enjoyed in collaboration with others and rights of a collective.

## CONCLUSION

Human rights are essential precepts that guarantee the intrinsic worth, equality, and liberties of every person. Human rights have been introduced in this research study, emphasising both its core qualities and social importance. Human rights are based on the idea that everyone has the right to certain unalienable freedoms and rights because of their humanity. The United Nations' 1948 adoption of the Universal Declaration of Human Rights provides a comprehensive foundation for the defence of human rights. It explains the essential liberties and rights, such as civil, political, economic, social, and cultural rights, to which every person is entitled.

The indivisibility, universality, and interdependence of human rights define them. They are linked and interdependent, and the exercise of one right often relies on the satisfaction of others. Individuals, groups, and governments all have a role to play in advancing and defending human rights.

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# CHAPTER 2

# UNIVERSALITY OF HUMAN RIGHTS: EMBRACING THE GLOBAL FRAMEWORK

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**ABTRACT:**

In order to better understand the idea, implications, and difficulties surrounding the worldwide acceptance of human rights as universal principles, this research project examines the universality of human rights. All people have the basic freedoms and rights that are guaranteed to them by the United Nations, regardless of their nationality, ethnicity, religion, or other traits. This study investigates the universality of human rights, with special emphasis on its application and importance across a range of nations, cultures, and legal systems. It looks at how the idea of universality has changed through time, as well as the global agreement on human rights as reflected in the Universal Declaration of Human Rights and other international human rights documents. To comprehend the intricacies and difficulties associated with the universality of human rights, a thorough analysis of the literature, international treaties, and case studies is done. The results lead to a better understanding of the universality of human rights and the need of adopting a global framework to safeguard and advance human rights everywhere.

**KEYWORDS:**

Domestic Affairs,Global Framework, Human Rights,Tripartite Typology.

## INTRODUCTION

The universality concept has proven crucial to how human rights legislation is interpreted during the last fifty years. Prior to the Second World War, the recognition and defence of basic rights had already been somewhat defined, but mostly in national law and particularly in national constitutions. But it was made up of individuals from nations like China, the Soviet Union, Chile, and Lebanon. With just eight abstentions and no votes against, it was also passed without any opposition. As mentioned above, an increasing number of nations gained independence and joined the UN throughout the 1950s and 1960s. By doing this, they supported the values and principles outlined in the UDHR. The 1968 Teheran Proclamation emphasised this dedication. The Proclamation was ratified by 85 governments, more than 60 of which were non-Western Group nations. The Universal Declaration of Human Rights was declared to be "a common understanding of the peoples of the world regarding the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community" Universal Declaration of Human Rights [1], [2].

The Second World Conference on Human Rights in 1993 attended by 171 governments produced the Vienna Declaration and Programme of Action, which reaffirmed and emphasised the significance of the UDHR. In the words of the Declaration itself, it was said that the UDHR "constitutes a common standard of achievement for all peoples and all nations." Intense disagreement has been and continues to exist on the universality of human rights, particularly before, during, and after the 1993 World Conference on Human Rights. The Vienna Declaration asserts that the existence of universal human rights is "beyond question." Additionally, it states that "all human rights are universal," but it also notes the

importance of national and regional particularities as well as distinct historical, cultural, and religious backgrounds.However, the Vienna Agreement notes that this national "margin of appreciation" does not absolve governments of their responsibility to advance and defend all human rights, "regardless of their political, economic and cultural systems." The growing number of ratifications of international human rights agreements is important when thinking about the universality of human rights [3], [4].

**Human Rights and interference in Domestic Affairs**

When third nations publicly denounced human rights infractions, the relevant authorities responded by making mention of "unacceptable interference in internal affairs." When it comes to human rights, this argument has fallen short in more recent years. In terms of how the international community views its obligation to uphold and preserve human rights, the Second World War marked a turning point. The traditional notion of state sovereignty with regard to one's citizens has weakened over time. Human rights are a valid international issue, as stated in the UN Charter, which states that "the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." According to Article 55, "All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth These obligations were repeated during the Vienna World Conference on Human Rights in 1993 as well as in the Sixth and Seventh Principles of the Helsinki Final Act of the Conference on Security and Co-operation in Europe from 1975. Thus, the conventional wide understanding of the concept of national sovereignty has been constrained in two very important and connected ways. First off, the world community increasingly views a state's treatment of its citizens as a real issue. Second, there are now higher international standards that may be used to evaluate domestic legislation, the behaviour of sovereign nations inside their own borders, and the exercise of their internal jurisdiction. These standards were developed by consensus [5]–[7].

Therefore, a state's acceptance of convention-based international human rights standards is important, but it is not the only deciding criterion. According to the UDHR, human rights have evolved into a global issue and are no longer just a state's purview. A legitimate interest of the international community is the promotion and preservation of all human rights, as expressed in the 1993 Vienna Declaration and Programme of Action. In other words, there is a right to intervene when there are abuses of human rights. In this sense, interference may be described as any kind of foreign participation in the internal affairs of other nations, with the exception of "intervention," which refers to involvement including coercion. The difference between interference and intervention is important in terms of human rights because it does not follow that governments may use military force to respond to abuses of human rights only because the principle of non-interference does not apply to such issues. This may be a breach of the UN Charter's (Article 2(4)) ban on the use of force. According to some human rights experts, the UN Security Council should decide that a particular human rights situation threatens global peace and security and, as a result, authorise military action for humanitarian reasons to be carried out under the UN's auspices.

## DISCUSION

**Types of state duties imposed by all human rights treaties: The Tripartite Typology**

A helpful description of the duties imposed by human rights treaties emerged in the early 1980s, blurring the distinction between civil and political rights and economic, social, and cultural rights.Henry Shue specifically argued that there are three sorts of correlative responsibilities for each essential right (civil, political, economic, social, and cultural): "to

avoid depriving," "to protect from deprivation," and "to aid the deprived." The "tripartite typology" has changed since Shue's suggestion was published, and researchers have created typologies with more than three levels. Although there is disagreement on the specific meaning of the various levels, the "tripartite typology" put forward by Shue is now more succinctly characterised as the duties "to respect," "to protect," and "to fulfil." responsibilities to respect: This degree of responsibility often entails that the state abstains from taking any actions that would deny people the chance to exercise their rights or the capacity to do so on their own.At this degree of protection, the state is obligated to stop outsiders from violating a person's human rights. It is generally accepted that governments have a fundamental responsibility to safeguard their citizens by preventing the infliction of irreparable damage. This necessitates governments to: prohibit rights breaches by any person or non-state actor; avoid and remove incentives for third parties to violate rights; and offer access to legal remedies where violations have happened in order to stop new infringements.

**Obligations to be fulfilled:** This level of responsibility calls for the state to take action to guarantee that people living under its control have the opportunity to satisfy fundamental requirements that are acknowledged in human rights documents but cannot be met via individual effort. The responsibility to satisfy also emerges in regard to civil and political rights, even if this is the primary governmental obligation in relation to economic, social, and cultural rights. It is obvious that upholding certain rights, such as the prohibition of torture (which necessitates, for example, police training and preventive measures), the right to a fair trial (which necessitates investments in courts and judges), the right to free and fair elections, or the right to legal assistance, involves a significant financial outlay. According to the research above, there aren't many differences in the nature of governmental duties with respect to various human rights. The apparent gap between civil and political rights and economic, social, and cultural rights is muddled by the three degrees of duty [8], [9].

## DISCUSSION

### Sources of International Human Rights Law

States and peoples have had diplomatic contacts with one another since the dawn of time. Traditions regarding the management of these partnerships have evolved throughout time. These are the customs that constitute contemporary "International Law." In addition to addressing a broad variety of topics including security, diplomatic relations, commerce, culture, and human rights, international law also varies significantly from domestic legal systems in a number of significant ways. There is neither a single legislative body nor a single organisation responsible for upholding international law. As a result, international law is essentially based on self-enforcement by governments and can only be formed with their cooperation. There is no supranational entity that can enforce laws in circumstances of non-compliance; instead, other nations must act individually or collectively to do so.

This consent, which serves as the foundation for international law, may be represented in a variety of ways. An express treaty that imposes responsibilities on the nations parties is the most evident kind. Such "treaty law" makes up a significant portion of contemporary international law. Other than treaties, papers and agreements that may or may not be legally binding serve as standards for state action. Consent may also be inferred from the well-established and recurrent behaviour of states in their interactions with one another. There are several sources of international law, and governments adhere to them to varying degrees. Article 38 of the International Court of Justice Statute lays forth the list of sources of international law that is generally recognised. Which are: The general principles of law acknowledged by civilised nations; c) International conventions, whether general or specific;

d) International custom, as evidence of general practise accepted as law; e) Subsidiary means for determining rules of law, such as judicial decisions and teachings of the most highly qualified publicists.

**International conventions**

Contracts between nations are known as international treaties. They impose reciprocal responsibilities on the nations that are parties to any given treaty states parties and are legally enforceable. Human rights treaties are unique in that they set responsibilities on nations about how they should treat all people under their control.Although there is no hierarchy among the sources of international law, treaties do have considerable sway. Today, more than 40 significant international treaties have been established to preserve human rights. International human rights treaties go by many names, such as "covenant," "convention," and "protocol," but they all have one thing in common: the express consent of the nations parties to be bound by its provisions.Both at the global level within the framework of the United Nations and its specialised agencies, such as the ILO and UNESCO) and under the aegis of regional organisations, such as the Council of Europe (CoE), the Organisation of American States (OAS), and the African Union (AU) (formerly the Organisation of African Unity (OAU)), human rights treaties have been adopted. These groups have made significant contributions to the formulation of a thorough and coherent corpus of human rights legislation.

**Universal Conventions for the Protection of Human Right**

The League of Nations Covenant, which, among other things, sparked the founding of the International Labour Organisation, already gave voice to human rights. A proposal to approve a "Declaration on the Essential Rights of Man" was put out during the San Francisco Conference in 1945, which was convened to draught the United Nations Charter, but it was not reviewed since it needed more thorough examination than was feasible at the time. However, Article 1, Paragraph 3 of the UN Charter expressly states that "promotion and encouragement of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Following this, the notion of establishing a "international bill of rights" was conceived, and this eventually led to the 1948 ratification of the Universal Declaration of Human Rights (UDHR). The Universal Declaration of Human Rights (UDHR), which was approved by a resolution of the United Nations General Assembly (UNGA), is the first comprehensive human rights declaration that the world community has ratified. The UNGA urged the UN Commission on Human Rights to design a legally enforceable human rights convention as soon as possible on the same day it approved the Universal Declaration. The UNGA received two draught conventions in 1954 for review after attempts to reach consensus on a single document were impeded by profound disparities in economic and social ideas.

The International Covenant on Economic and Social Human Rights had already been incorporated into the Covenant of the League of Nations twelve years later, in 1966, which, among other things, resulted in the founding of the International Labour Organisation. A proposal to approve a "Declaration on the Essential Rights of Man" was put out during the San Francisco Conference in 1945, which was convened to draught the United Nations Charter, but it was not reviewed since it needed more thorough examination than was feasible at the time. However, Article 1, Paragraph 3 of the UN Charter expressly states that "promotion and encouragement of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Following this, the notion of establishing a "international bill of rights" was conceived, and this eventually led to the 1948 ratification of the Universal Declaration of Human Rights (UDHR). The Universal

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In order to create human rights duties, the UN Charter supports the adoption of regional instruments, many of which have been significant for the development of international human rights law. In addition to the European Social Charter, which was adopted in 1961, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which was adopted in 1987 (see II.1.C), and the Framework Convention on National Minorities, which was adopted in 1994 (see II.2.C), the Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 (see II.2.C).

Under the direction of the Organisation of American States, the American Convention on Human Rights was adopted in 1969 (see II.1.C). Two protocols have been added to this Convention: the 1990 Protocol to Abolish the Death Penalty and the 1988 Protocol of San Salvador on Economic, Social, and Cultural Rights. Convention to Prevent and Punish Torture (1985), Convention on the Forced Disappearances of Persons (1994), and Convention on the Prevention, Punishment, and Eradication of Violence Against Women (1995) are other Inter-American Conventions. The African Charter on Human and Peoples' Rights was established in 1981 by the Organisation of African Unity, which is now known as the African Union (see II.4.B). The Additional Protocol on the Establishment of the African Court on Human and Peoples' Rights (1998) and the Protocol on the Rights of Women in Africa (2003) both serve as protocols to the UN Charter. The Convention Governing the Specific Aspects of Refugee Problems is among other legal documents from Africa.

**International Custom**

International human rights legislation heavily relies on customary international law. The phrase "general practise recognised as law" appears in the Statute of the International Court of Justice. The "general practise" must be based on an obligation (opinion juris et necessitates) and reflect a wide agreement in terms of substance and application in order to qualify as international customary law. Regardless of whether a state has signed any relevant treaties, customary law is enforceable against all other states apart from those who may have opposed to it when it was formed.One of the key characteristics of customary international law is its potential to give rise to universal jurisdiction or application, allowing any national court to hear extraterritorial claims made under international law under certain situations.

Jus cogens, also known as peremptory norms of general international law, is another category of customary international law. These standards are recognised and acknowledged by the whole international community of states as being norms from which no deviation is permissible. Any pact that clashes with a peremptory requirement is invalid, according to the Vienna Convention on the Law of Treaties (VCLT). Many academics contend that some of the principles outlined in the Universal Declaration of Human Rights which, formally speaking, is only a UNGA resolution and thus not legally binding have evolved into customary international law as a result of subsequent practise and are therefore applicable to all states. It may be difficult to distinguish between conceptions of customary law, treaty law, and basic principles of law in the field of human rights law.

General or guiding principles are used in the implementation of both domestic and foreign law. They are described as "logical propositions resulting from judicial reasoning on the basis of existing pieces of international law" in the context of international law. General legal concepts play a significant role in human rights case law at the international level. The concept of proportionality, which is important for human rights supervisory procedures in determining whether interference with a human right may be justified, is a good illustration of how to apply it. Why do we employ generic principles? No piece of law is equipped to address all issues or every scenario that could occur. Therefore, there is a need for laws or principles that provide the executive and judicial branches and decision-makers the ability to make decisions about the problems at hand. In addition to giving judges general instructions for making judgements in specific situations, general principles of law also serve to constrain the discretionary authority of judges and other members of the administration when making decisions in particular circumstances.

**Subsidiary means for the determination of rules of law**

Legal judgements and the teachings of the most competent publicists are considered "secondary means for the determination of rules of law," in accordance with Article 38 of the Statute of the International Court of Justice. As a result, they cannot be considered official sources strictly speaking, although they are nonetheless recognised as indicators of the status of the law. Regarding judicial decisions, Article 38 of the Statute of the International Court does not only apply to international judgements such as those of the International Court of Justice, Inter-American Court, European Court, and the future African Court on human rights; judgements of national tribunals pertaining to human rights are also considered subsidiary sources of law. Scholarly papers aid in the creation and examination of human rights legislation. The influence is less immediate when compared to official standards established by international organisations. However, influential contributions have come from academics and professionals working in human rights fora, such as the UN SubCommission on the Promotion and Protection of Human Rights, as well as from well-known NGOs, like Amnesty International and the International Commission of Jurists.

Despite not being inherently binding on states parties, certain documents or judgements made by political bodies of international organisations and human rights oversight agencies nonetheless have a significant legal impact. Human rights-related decisions are made by a number of international bodies, which strengthens the body of international human rights norms. These non-binding human rights instruments are known as "soft law," and they may influence how nations conduct themselves as well as build and reflect consensus among states and experts on how to interpret certain criteria. More than 100 resolutions and judgements pertaining to human rights are adopted annually by the UNGA and UN Commission on Human Rights. Such resolutions are also adopted by organisations like the ILO and the Council of Europe's different political organisations. Some of these resolutions, also known as declarations, provide precise requirements for certain human rights that go beyond those set down in existing treaties. Popular examples include the Guiding Principles on Internal Displacement, adopted by the UN Commission on Human Rights in 1999 (Doc E/CN.4/1998/53/Add.2), and the Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, adopted by the UNGA in 1985 (Resolution 40/144, 13 December 1985). Numerous resolutions passed by the UNGA eventually sparked discussions that resulted in treaty norms. Not all resolutions and decisions try to establish standards; instead, many deal with specific circumstances where competing political interests are more prominent. For instance, decisions are made on the nomination of individuals to serve on UN commissions.

Political decisions, such as those made by the Organisation on Security and Co-operation in Europe (OSCE) (formerly the Conference on Security and Co-operation in Europe until 1995), play a unique role and may influence the development of human rights standards. The OSCE has given the so-called Human Dimension of European Cooperation a lot of attention since 1975. OSCE papers often are created in a little amount of time and do not purport to be legally binding. As a result, they have the advantages of flexibility and applicability to recent events that have an impact on states. For instance, the Copenhagen Document of the CSCE Conference on the Human Dimension in 1990 made the most use of the developments that had occurred in Europe after the collapse of the Berlin Wall in 1989. The sections on national minorities in this text served as benchmarks for minorities' protection and as principles for following bilateral treaties. Although this type of document reflects the dynamic nature of international human rights law, some experts are concerned that the political nature of these documents may cause confusion because newer texts may conflict with existing instruments or broaden the focus on human rights by including an excessive number of related issues.

## CONCLUSION

No matter their origins or country, all people have inherent rights and freedoms, according to the fundamental concept of the universality of human rights. This research study has looked at the idea, importance, and difficulties surrounding the universality of human rights. Since they are universal in nature, human rights are important to and applicable to everyone everywhere. A worldwide framework for the defence of human rights was established by the United Nations in 1948 with the adoption of the Universal Declaration of Human Rights. It emphasises the basic liberties and rights to which every person is entitled, irrespective of their background in terms of culture, society, or politics. The inherent dignity, equality, and freedoms of every person are emphasised by the universality of human rights, which represents the common ideals and ambitions of mankind. It acknowledges that human rights are founded on the ideals of justice, fairness, and respect for human dignity rather than being cultural or ideological creations.

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# CHAPTER 3

# DECISIONS OF SUPERVISORY ORGANS: UNDERSTANDING THEIR IMPACT AND IMPLICATIONS

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**ABTRACT:**

This study examines the relevance, consequences, and implications of supervisory organs' actions in relation to organisational circumstances. Organisations' governance and monitoring are greatly aided by supervisory mechanisms like boards of directors, regulatory authorities, and oversight committees. This study looks on the supervisory organs' decision-making procedures and elements that affect such decisions. It examines how their choices affected the organisational operations, plans, and results. To comprehend the intricacies and dynamics involved in the choices made by supervisory organs, a thorough analysis of the literature, case studies, and empirical research are done. The research clarifies the function of supervisory organs in fostering responsibility, guaranteeing compliance, and enhancing organisational success. The research's primary subjects are briefly summarised in the keywords. Discussions of the ramifications and difficulties of supervisory organ decisions emphasise the need of openness, moral concerns, and good communication in decision-making processes.

**KEYWORDS:**

Decision-making, Impact, Organizational Governance, Supervisory Organs, Transparency.

## INTRODUCTION

Nations are adhering to international human rights norms, several supervision institutions for human rights have been formed. These regulatory organisations are often referred to as "treaty bodies" in the context of the UN. They analyse international treaties, provide advice, and, sometimes, reach judgements in disputes that are presented before them. Although these conclusions, judgements, and suggestions may not be legally enforceable in and of themselves, they have a substantial influence on global norms for human rights. Treaty organisations often craft these so-called General Comments or Recommendations in this regard, expanding on the different paragraphs and clauses of their separate human rights treaties. These overarching remarks or suggestions are meant to help the states parties uphold their duties. For their work in this area, the Human Rights Committee and the Committee on Economic, Social, and Cultural Rights are well-known. These general remarks/recommendations seek to offer states parties with authoritative advice by taking into account the changes within each Committee about the interpretation of certain clauses [1].

As a result, they significantly affect how states parties behave. Numerous international agreements that protect a wide variety of human rights bind the majority of governments. What happens when a state is constrained by two international agreements outlining varying degrees of protection for a certain human right? As a general rule, when a state is obligated by many instruments, it must adhere to the most stringent requirement or highest standard. The majority of human rights agreements include specific clauses to this effect. of the ICCPR and Article 5(2) of the ICESCR, for example, both state that "There shall be no restriction upon or derogation from any of the fundamental human rights recognised or existing in any

state party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent. Article 55 of the ECHR states in a similar spirit, "Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be guaranteed under the laws of any High Contracting Party or under any other agreement to which it is a Party [2], [3].

In a similar vein, Article 41 CRC states that nothing in the Convention shall impair any provisions in a state party's domestic legislation or in applicable international law that are more favourable to the fulfilment of a child's rights. The quantity of ratifications and additions to conventions deserves particular consideration in the field of standardisation. Widely approved human rights treaties are more valuable and effective, and they further the universality and equality of all people under human rights legislation. Widespread ratification or accession (with the fewest reservations permitted) makes a significant contribution to ensuring the equitable implementation of human rights norms.

Many academics claim that much of the work involved in creating standards has already been done. Additionally, it has been stated that there has been an excessive proliferation of standards in recent decades and that what is required is a way to better execute the current norms. Even though the fundamental human rights have been broadly stated, more elaboration may be required, for example, due to consistent judgements made by supervisory bodies. Improved legal protection may be required for those who advocate for human rights, such as indigenous peoples and human rights activists. The "Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms" (Resolution 1998/7) was approved by the UN Commission on Human Rights (UNCHR), although it is not a binding agreement. A special working group of the Commission has been debating the rights of indigenous peoples since 1995, but no legally binding text has been reached. These rights include the right to self-determination and the freedom to utilise natural resources. Creating an optional protocol to the ICESCR that establishes a complaints procedure for people whose economic, social, or cultural rights have been violated is another illustration of the need for future standard-setting. Another example is the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, which the United Nations is currently considering [4], [5].

**General Principles Relevant to Human Rights Law**

States are obligated to uphold the provisions of a human rights treaty once they sign it. Furthermore, it is crucial to consider the presence of general principles that are ingrained in international human rights law and that direct the execution of human rights treaties. It is important to make a distinction between a general concept and a human right while attempting to describe it. According to the UN Commission on Human Rights' definition of a human right (Resolution 41/120, December 1986), a human right must meet all of the following criteria: a) be in accordance with the body of existing international human rights law; b) be of fundamental character and derive from the inherent dignity and worth of the human person; c) be sufficiently precise to give rise to identifiable and practicable rights and obligations; and d) provide, where appropriate, realistic and effective remedies.

As such, basic principles serve as the foundation of law and aid in the interpretation of both international law in general and human rights legislation in particular. The principles both provide judges criteria for making judgements in specific circumstances and place restrictions

on the judges' and the executive's discretion in making such decisions. General principles thus play a significant role in the implementation of human rights.

**The rule of law**

A fundamental component of the ideas of democracy and human rights is the rule of law. However, there is no universal agreement on what it means. The word has varying meanings according to various traditions in the Anglo-Saxon world rule of law and Continental Europe) The notion isn't usually clearly specified in official publications. On the other hand, there is broad agreement that the rule of law is a basic value. According to the concept of the rule of law, rights must be maintained by the law, regardless of the wishes of the ruler. Individual liberties and rights must be safeguarded against any abuse of discretion on the part of governmental authorities. The Preamble to the United Nations Charter, which states its goal to save succeeding generations from the scourge of war, and to reaffirm faith in fundamental human rights in the equal rights of men and women, and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from international law can be maintained, contains the principle of the "rule of law." "The rule of law is more than the formal use of legal instruments; it is also the Rule of Justice and of Protection for all members of society against excessive governmental power," according to the definition put out by the International Commission of Jurists. In conclusion, the rule of law dictates that people and subjects be protected from the arbitrary will of their rulers and that the law must constrain the use of a government's authority [6], [7].

## DISCUSSION

**Historical Development**

Since the rule of law is an ancient idea, we must go back to mediaeval England to see how it came to be. Harold II of the Anglo-Saxons was vanquished by William the Conqueror in 1066, and a centralised government was formed. The absolute dominance of the central government across the nation and the rule of law were two characteristics of the political institutions in England at the time. The authority of the King represented the centralised government's dominance. All laws came from him, and he also had the authority to administer justice and exercise jurisdiction. However, this did not imply that the King was above the law; throughout the Middle Ages, it was commonly believed in England and other nations that the world was ruled by laws that either sprang from what was seen as divine authority or from what was generally accepted to be just. The rule of law originally meant something similar.

Attempts to establish absolute control failed in part due to the English people's perception that there was a "higher" law in place, the early creation of parliament, and the nobility's battle to protect its historical rights from the King. The stronger common law courts and parliament were able to sustain the old order of justice while also giving it a purpose that reflected the changes in society and the values of the populace. With this development, the parliamentary supremacy doctrine which had its roots in a conflict with the Crown in the seventeenth century could be reconciled with the rule of law. Similar developments occurred on the European continent, where the fundamentals of the l'Etat de Droit (Rechtsstaat in German) have been created from the period of the Frankish Kingdom (around 500 A.D.). The underlying idea was that the government could only pass a law or binding rule based on what is deemed reasonable and right. The notion suggested, in a substantive sense, that the norms and actions of the government must be focused towards the achievement of justice. This notion needed not just legislation that was based on the greatest possible balance of interests,

but also the acknowledgement of liberties and the presence of an independent court capable of limiting the authority of the executive branch.

**Dynamic Concept**

Since its inception in the early Middle Ages, the definition of the rule of law has undergone a process of development that closely parallels changing perceptions of the functions and goals of a national government. However, it is a dynamic idea in more ways than one. It stands for a variety of concepts that must be implemented and evolved on a case-by-case basis rather than an abstract, immutable set of clear laws. Therefore, it is best to think of the rule of law as a comprehensive collection of laws that all subjects and governments must abide by. These standards' precise substance is influenced by a number of variables, such as popular opinion, political awareness, and the general sense of fairness.

The fact that the rule of law is dynamic does not preclude the development of general principles from it. On the other hand, it is somewhat conceivable to pinpoint the laws and values that, at a certain period, flow from the rule of law. In essence, certain concepts have always been a component of the rule of law. These are universal truths that have withstood the test of time. Here are some of the more significant ones:

1. No one may be punished until a specific violation of an existing law is shown to have occurred before the regular courts of the nation. Several national constitutions, as well as a number of international agreements, uphold this notion. For examples, have a look at Article 7(1) of the ECHR and Articles 22 and 23 of the Rome Statute of the International Criminal Court.
2. Everyone is presumed innocent unless proved guilty the presumption of innocence. This concept is featured in various human rights documents, including Article 6(1) ECHR, and was first mentioned in Article 9 of the Déclaration des Droits de l'Homme et du Citoyen. Every human person should be accorded the same rights and treatment by the same courts. Since certain professional groups, like the military, attorneys, and government employees, are sometimes evaluated by specialised tribunals, this equality is not absolute. The rule of law is not violated by this practise since everyone in these categories is treated equally under the law.

As previously indicated, these three ideas eventually evolved into actual rights.

In general, the perception of the rule of law has steadily changed from being a source of individual rights to a method of defence against excessive political authority. No arbitrary authority is another rule or concept developed from the rule of law. The separation of powers is a part of this idea. It applies to all interactions among the legislative, executive, and judicial branches as well. Discretionary power is unavoidable since the state governs national life in so many different ways. However, this does not imply pure arbitrary power, which is the kind of authority used by individuals who are under no one's supervision or accountability.

Lower state entities must be given authority and power in a regulated manner, and how they exercise that authority must be monitored. A delegate with "carte blanche" obviously violates the law. The aforementioned idea is strongly related to the judiciary's independence. The independence of the judiciary means that the legal profession is also independent and that the judiciary controls both the law and government. The greatest way to ensure that fundamental rights and liberties are upheld is in a society where the legal system is free from outside influence and pressure, and where everyone has the right to a fair trial before an impartial, competent, and independent tribunal.

**Education To Combat Discrimination**

In the fight against prejudice, education is crucial. On the one hand, educating the public is crucial for eradicating misconceptions and fostering tolerance. On the other hand, education and understanding of their rights and the channels for redress increase their protection since most disadvantaged groups often lack legal knowledge and worry about intimidation or reprisal.

**Alteration Of Human Rights Treaty Obligations**

A treaty's text is typically adopted with the agreement of the governments involved in its negotiation or by a majority at an international forum. Only the nations that have agreed to be bound by the treaty and for whom it has become effective are subject to it. States have a number of options for expressing their agreement to be bound. Depending on what the treaty specifies and what the relevant national practise is, they may do so by ratification, acceptance, approval, or accession. A rising number of states now sign conventions first, then send them to their legislatures for approval before ratifying them. The treaty may take a number of years to be ratified once it is adopted. A convention only comes into effect when the required minimum number of states proclaim their willingness to be bound by it. For instance, Article 49 of the ICCPR states that the Covenant takes effect three months after 35 documents of ratification or accession have been deposited. On December 16, 1966, the UNGA enacted the ICCPR; on December 19, 1966, it was made available for signature, ratification, and accession; and on March 23, 1976, or almost 10 years after its adoption, it came into effect.

Different techniques bind states to treaty requirements. In accordance with certain treaties, a state party may be allowed to place restrictions on some of the treaty's terms. A reserve restricts the application of the relevant law or makes it non-binding. In rare circumstances, states may also make a statement outlining how they would interpret a provision or how much they intend to be bound by it. The first topic covered in this chapter is whether or not declarations and reservations are permitted in international human rights treaties. The majority of human rights are also not unalienable; they may be restricted under certain conditions. Numerous human rights treaties provide for the limitation of certain rights in the interests of public morality, public health, public order, or national security. The freedom to travel around, the right to practise one's religion, the right to gather in peace, and the freedom to associate are a few examples of rights that are not unqualified. But any restrictions that a state imposes on rights must adhere to certain criteria that are covered in this chapter. Last but not least, several human rights accords permit a state party to unilaterally derogate momentarily from parts of its commitments during a legal state of emergency that has been officially proclaimed.

Numerous complaints have been made about several laws, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), some of which are obviously incompatible with the treaty's goals. International law is still debating the implications of invalid reservations to human rights treaties and objections to reservations. In light of this circumstance, the independent monitoring bodies including the CEDAW Committee and the Human Rights Committee have expressed an opinion on the legality of reservations, a move that the VCLT does not support. Although there has been discussion over these bodies' competency in this area, it makes sense to assume that their competence is a result of the work they do.

Some conventions let or even demand that states parties declare how much they are obligated by a certain provision. Such claims could be made in relation to a supervisory mechanism's

skill. For instance, the ICCPR's Article 41 provides that a state party may decide whether to acknowledge the Human Rights Committee's authority to hear state complaints about its compliance with human rights obligations. The instruments' provisions for this kind of disclosure don't provide any serious obstacles. However, a state party may also issue interpretive declarations, often known as understandings, wherein it expresses its interpretation of a specific article without intending to change or restrict the treaty's contents. Due to their difference with caveats, these interpretive pronouncements may cause some issues in international law.

Regarding the subject of interpretive statements, the VCLT remains quiet. However, the International Law Commission has thoroughly examined the topic and various international human rights organisations have addressed it. The author's motivation for making the statement is one of the key distinctions between a "reservation" and a "interpretative declaration."

While a reservation aims to limit or alter how the treaty's provisions apply to the state author, an interpretive statement only aims to make clear what those provisions mean or cover. As a result, what counts is the state's objective rather than its form, name, or title. As a result, a declaration is considered a reservation if it seeks to limit or alter how a treaty applies to the state.

On the other hand, it is not a reservation if a so-called "reservation" just expresses a state's interpretation of a provision without excluding or changing that provision.

**Restrictions or limitations**

Conventions and other documents may include a variety of limits or restrictions on the rights they provide. Most people agree that very few liberties and rights are "absolute." Nevertheless, such limitations must never be used as a justification for violating or completely eliminating the protected right; rather, they must be utilised to define the right's legitimate boundaries. Generally speaking, there must be a proportional connection between the basis for the limitation and the restriction of the right as such.No further restrictions are allowed when a right is subject to one, and any restriction must adhere to the following minimal standards:

1. The restriction must be necessary; there must be a pressing social need, which is determined case-by-case;
2. The restriction must be based on a law;
3. The restriction must not be interpreted so as to jeopardise the essence of the right concerned; The restriction must be interpreted strictly in the light and context of the particular right;
4. The limitation must be prescribed by law and be compatible with the object and purpose of the instrument;

The restriction must be based on a law. The mere fact that the legislation would be beneficial is insufficient; it must also be compatible with other rights that are protected. The requirement that it be "necessary" in a democratic society is included to various treaties; and The restriction must be justified by the defence of a narrowly defined set of public interests, which typically include one or more of the following justifications: national security, public safety, public order order public, the preservation of health or morals, and the preservation of other people's rights and freedoms.

The majority of these standards were created by academics and prominent human rights organisations via their legal precedents. In this respect, it's crucial to keep in mind the Siracusa Principles about the International Covenant on Civil and Political Rights' limitation and derogation clause. The International Commission of Jurists gathered a group of 31 eminent international law experts, who met in Siracusa, Sicily, in 1984 and approved the Siracusa Principles.

In Advisory Opinion No. 5 on Compulsory Membership in an Association Prescribed by Law for the Practise of Journalism, the Inter-American Court discussed restriction and derogation., any limitation on the exercise of rights protected by human rights treaties must be based on law, non-discriminatory, proportionate, consistent with the nature of the rights, and intended to promote the welfare of society. Finally, it is crucial to emphasise that it is the responsibility of the state parties to demonstrate the legality of any restrictions placed on the exercise of rights. Although the burden of evidence is high, it is compatible with the goal of human rights accords, which is to safeguard the person [8], [9].

## CONCLUSION

Organisational governance, performance, and accountability are greatly influenced by choices made by supervisory organs. The results of this study highlight the importance and ramifications of choices made by supervisory organs in organisational settings. Overseeing and controlling organisations, ensuring compliance with laws, and fostering responsibility are the responsibilities of supervisory organs such boards of directors, regulatory agencies, and oversight committees. Various elements, such as legal requirements, stakeholder interests, ethical concerns, and organisational aims, have an impact on how supervisory organs make decisions. These choices directly affect the operations, plans, and results of the organisation, determining its course and performance.

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# CHAPTER 4

# HUMAN RIGHTS TREATIES: ENHANCING INTERNATIONAL PROTECTION AND PROMOTION

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**ABTRACT:**

This research study examines the relevance, function, and effects of human rights treaties on the global defence and advancement of human rights. Human rights treaties are formal agreements that place enforceable duties on nations to uphold, defend, and fulfil these rights. The development and growth of important human rights treaties, such the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, are examined in this study. It examines the procedures and systems used in treaty implementation, enforcement, and monitoring. To comprehend the intricacies and dynamics of human rights treaties, a thorough analysis of the literature, treaty texts, and case studies is done. The conclusions give insight on the function of treaties in enhancing international human rights norms, promoting state collaboration, and offering people channels to pursue remedy for human rights infringement. The research's primary subjects are briefly summarised in the keywords. The relevance of human rights treaties in fostering a more fair and equitable society is emphasised in the conclusion.

**KEYWORDS:**

Human Rights, International Law, Protection, Promotion, Treaties.

## INTRODUCTION

Due to the fact that human rights legislation is a subset of international law, in general, human rights treaties must be interpreted in accordance with the standards of international law. In general, the Vienna Convention on the Law of Treaties (VCLT) rules of treaty interpretation are regarded as the principles of treaty interpretation under customary international law. However, it is necessary to take into consideration the unique features of these accords while interpreting human rights agreements. The VCLT's Articles 31 to 33 lay forth the guidelines for treaty interpretation. Article 31(1) VCLT, which is the main provision for treaty interpretation, has a number of components. The first clause states that a treaty must be construed "in good faith." This rule emphasises the significance of the good faith concept included in Article 26 VCLT and applies it to treaty interpretation.

It is stipulated that a treaty should be read in line with the customary meaning to be accorded to the treaty's words in their context, that is, upon a systematic examination of the whole instrument. Additionally, this must be done in consideration of the treaty's goals and objectives (teleological interpretation).

According to paragraph 2 of Article 31, when interpreting a treaty, the context also includes any agreements or instruments related to the treaty's conclusion, any later agreements and practises regarding its interpretation, as well as the treaty's text, including its preamble and annexes. In accordance with paragraph 3, all relevant norms of international law that apply in the relations between the parties are to be considered, in addition to the context [1], [2].

In accordance with Article 32 of the VCLT, additional means of interpretation may be used to confirm the meaning obtained by applying Article 31 or to ascertain the meaning when applying Article 31 "leaves the meaning ambiguous or obscure" or "leads to a result which is manifestly absurd or unreasonable." Article 32 states that the treaty's preparations and the circumstances surrounding its completion are among the additional ways of interpretation. It is crucial that the travaux préparatoires are only used as an additional way of interpretation under the VCLT. The International Court of Justice has ruled that treaties should be interpreted and applied in accordance with the applicable legal system at the time of interpretation rather than when the text was drafted or adopted. In the interpretation of human rights treaties, the drafters' intentions typically do not play a significant role. For instance, it is by no means unusual to encounter rulings of the European Court of Human Rights that go against the authors' explicit objectives [3], [4].

**The specific object and purpose of human rights treaties**

It is commonly known that the basis for interpreting human rights treaties is provided by the standards for treaty interpretation. This is clear from the various human rights oversight agencies' jurisprudence. The Human Rights Committee and the regional human rights tribunals have explicitly stated that the VCLT's interpretation guidelines include all relevant international law principles. As was previously mentioned, the VCLT rules are not clear-cut, therefore using them does not completely eliminate treaty interpretation issues. Furthermore, it is necessary to take into consideration the unique features of human rights treaties while interpreting them. The International Court of Justice first acknowledged the unique nature of human rights accords in 1951. The Court held that the parties to such treaties do not have any particular benefits or disadvantages or interests of their own in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, but only a shared interest.

The obligations of states parties are one feature that sets human rights treaties apart from other international treaties. Human rights treaties are agreements between nations that provide certain rights to people who are not themselves parties to the instruments, with the primary responsibility for compliance resting with the state. This strategy may also be seen in the European Court of Human Rights' case law. Federal Republic of Germany v. Wemhoff, the court said that as the Convention is a "law-making treaty," it is "necessary to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty."It is significant to note that there are other interpretational rules that should be taken into account, such as the interpretive principle that mandates that limitation clauses be interpreted and used in a limited manner.

**International Supervisory Mechanisms for Human Rights**

A broad variety of procedures for ensuring adherence to the agreed-upon norms have been developed as a result of the multiple human rights agreements that operate under the auspices of the United Nations and the regional systems in Africa, the Americas, and Europe. This chapter will look at the many processes that have been put in place at the international and regional levels to ensure that human rights accords are being followed.

Two different categories of supervisory systems exist: Treaty-based mechanisms: Control measures included in agreements or conventions relating to human rights that have legal force. These organisations are often referred to as "treaty bodies" inside the UN system, such as the Human Rights Committee and the Committee on the Rights of the Child. Other treaty bodies include the European Court of Human Rights, the Inter-American Court and

Commission of Human Rights, the African Commission and prospective Court on Human and Peoples' Rights, and others.

Non-treaty based mechanisms: Control measures that are not based on commitments derived from legally enforceable human rights treaties. This kind of mechanism often is based on the charter or constitution of an intergovernmental human rights forum, or on decisions made by the assembly or another representative body of the forum in issue. The 1503 process and national mandates are examples of the "charter-based" non-treaty-based procedures that fall under the umbrella of the UN. Another example of a regional body not founded on a treaty is the Council of Europe's European Commission against Racism and Intolerance [5], [6].

## DISCUSSION

### Reporting procedures

A system of regular reporting is included in the majority of human rights accords. States that have ratified them are required to report to a supervisory authority on a regular basis how the relevant treaty is being implemented domestically. States parties are required to "submit reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made in the enjoyment of those rights," as stated, for example, in Article 40 of the ICCPR. Each treaty body at the UN has established broad guidelines for the format and substance of the reports that states parties are required to submit (see HRI/GEN/2/Rev.2) as well as its own set of operating regulations.

The appropriate supervisory body analyses the report, provides comments, and has the option to ask the concerned state for more information. Generally speaking, the various treaty-based mechanisms' reporting processes are designed to help and open up a "dialogue" between the supervisory body and the state party. The state-submitted reports' quality varies. While some reports are credible and show sincere attempts to abide by the reporting standards, others lack this quality. In any event, the reports often represent the state's perspective. The treaty bodies also receive information on a nation's human rights status from non-governmental groups, UN agencies, other international organisations, academic institutions, and the press in addition to the official report. This extra information that the experts may get from the external sources greatly influences the standard of decision-making throughout the reporting process. A broader view on the real situation in the nation is offered by additional information, particularly that supplied by NGOs and UN organisations. NGOs create and submit alternative reports to the treaty bodies in a growing number of nations in an effort to balance the information provided by the state. The Committees and government officials review the reports in light of all the information available. The Committees decide on their concerns and suggestions to the state in question, known as "concluding observations," based on this discussion.

Each ILO member state is required to provide a report on the steps it has taken to implement the terms of the conventions it has ratified on a regular basis. 20 independent legal experts who make up the Committee of Experts on the Application of Conventions initially review these findings in confidential sessions. The comments of the Committee of Experts take the form of either observations which are published in the Committee's report on the Application of Conventions and Recommendations or requests which are written to the governments and deal with more technical issues but are not made public. A tripartite Conference Committee on the Application of Conventions and Recommendations (Committee on Application of Standards) then reviews the Committee's report during the International Labour Conference's annual session. It is important to note that under the ILO framework, member states are also required to submit reports on conventions they have not yet ratified. These reports must

outline the current state of the law and practise with respect to the topics covered by the conventions as well as the challenges that have slowed or prevented ratification. As a result, this reporting process might be referred to as a charter-based reporting process [7], [8].

**Individual complaint procedure**

It seems sense that those, on whose behalf human rights were initially guaranteed, should be allowed to bring legal actions to defend those rights. Such a process, in which a person holds a government directly responsible in front of an international oversight authority, strives to provide a person with extensive protection. A number of international agreements have made it possible for someone who believes their rights have been violated to file a complaint with the body of experts designated by the agreement for quasi-judicial adjudication or with an international court such as the European Court, Inter-American Court, or future African Court on Human and Peoples' Rights. There are three methods that all conventions share, notwithstanding minor procedural differences between the various mechanisms. The following conditions must be satisfied in order for a person to file a case, communication, or petition under a human rights convention: The rights allegedly infringed must be protected by the convention in question, the alleged violating state must have ratified the convention the person is invoking, and only after all domestic remedies have been exhausted may proceedings before the relevant body be commenced.

At the UN level, there are five agreements that provide individual complaint mechanisms: the First Optional Protocol to the ICCPR; the Optional Protocol to the CEDAW; Article 14 CERD; and Article 77 CMW. Only states that have admitted their membership in the applicable optional protocols or acknowledged the authority of the committee created under one of the aforementioned treaties are eligible to file individual complaints against them. For the ICCPR and CEDAW, a state acknowledges the Committees' competence by signing an optional protocol that has been appended to the two conventions. States expressly declare their recognition of the Committees' authority under Articles 22 and 14 in the cases of the CAT and CERD, respectively. Anyone who is subject to a state party's jurisdiction may file a complaint with a committee against a state that meets this requirement, alleging that their rights under the applicable treaty have been infringed. The victim should file a complaint as soon as possible after exhausting all domestic remedies, even if there is no statutory deadline after the date of the alleged breach under the relevant treaties.

Despite certain procedural differences, the design and execution of the many UN treaties are quite similar. The system functions generally in the way that follows: Once a complaint has been made and has complied with certain basic standards, the matter is registered and sent to the state party in question so that it may respond. Depending on the protocol, the state is required to submit its observations within a certain time range. The 'admissibility' stage and the'merits' stage are the two main phases of every case. The formal standards that the complaint must meet before the relevant committee may assess its content are referred to as the "admissibility" of a case. The case's'merits' are what the committee considers when determining whether or not a treaty's rights have been infringed.

The claimed victim is given the chance to react when the state responds to the complaint. The time periods also vary a little bit depending on the operation. The appropriate committee may now make a judgement on the matter. The committee may decide on the matter based on the first complaint if the state party does not reply to the complaint. The judgements of committees cannot be appealed. When a committee finds that a state party has breached one or more treaty rights, it requests information from the state party about the actions it has taken to put the committee's findings into effect within a specified time frame.

Under the European system, Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms has a process for individual complaints. The individual complaint method was formerly optional for state parties under the old system, which was governed by Article 25 of the European Convention. Under the current system, created by Protocol No. 11 (came into effect in 1998), the mechanism is now required for all states parties to the Convention. A group of people or a nonprofit organisation may also file a complaint under the European Convention, as is also allowed under the ICCPR and the American Convention. The petition must be filed within six months of the date the previous domestic jurisdictional decision was made, according to Article 35(1) of the European Convention.At the Inter-American level, petitions may be brought unconditionally before the Inter-American Commission on Human Rights, the body responsible for monitoring the American Convention on Human Rights. By unconditionally, we mean that no separate acceptance of the individual complaint procedure by the state is necessary. Under this approach, the petitioner need not be the victim. After local remedies have been exhausted, the petition must be presented to the Commission within six months.

African Charter outlines the circumstances under which the African Commission on Human and Peoples' Rights may hear complaints from persons under the African system. Private persons, non-governmental groups, and a variety of other bodies may send communications, and the petitioner need not be the victim. Since the Protocol to the African Charter on Human and Peoples' Rights Establishing an African Court on Human and Peoples' Rights came into effect in January 2004, the African Commission, states parties to the Protocol, and, where a state party accepts such a jurisdiction, individuals and non-governmental organisations, may all refer specific complaints to the future African Court. Oral hearings are a standard component of the complaints process in the European and Inter-American systems, in contrast to the complaint procedures under the UN "treaty bodies." Additionally, nations must abide by the rulings of the regional human rights tribunals.

Some 'non-treaty-based processes' also allow for the filing of individual complaints. For instance, in order to identify communications that reveal "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms," the UN Commission on Human Rights established the so-called 1503 procedure in 1970. This procedure enables the UN Commission on Human Rights to examine communications received from individuals and other private groups. It should be made clear that although while this method enables both people and non-governmental organisations to make complaints, it does not provide individual remedy. Instead, "a consistent pattern of gross and reliably attested violations" is what the complaints seek to uncover.

When the UN Commission on Human Rights receives a communication under procedure 1503, it has a number of options for action, including, among others, asking the government in question for more information, appointing a special rapporteur or independent expert to look into the circumstances, bringing the case up in its public procedure, or dropping or continuing to consider it. These processes are all conducted in private. The chair does, however, make a public declaration at the conclusion of the Commission's deliberations naming the nations that have been dropped or kept in the 1503 process. The Commission on the Status of Women has also created a complaint process in a similar spirit. This system is intended to reveal worldwide patterns and trends in women's rights. It was created in response to a number of ECOSOC decisions, and as part of its mandate, the Commission reviews both private and public complaints about the position of women. Similar to the 1503 method, complaints may be made against any nation in the globe in both instances, and immediate recourse for victims of human rights breaches is not provided.

**Inquiries and other Procedures**

Article 20 of the Convention Against Torture (CAT) gives its oversight body, the Committee against Torture, the authority to take specific investigative action on its own initiative in addition to a reporting method, the interstate complaint procedure, and an individual complaint mechanism. When the Committee obtains "reliable information" suggesting "well-founded indications that torture is being practised systematically in the territory of a state party," it may launch an investigation. The Committee is not barred ipso facto from conducting the inquiry because the state refuses to cooperate with the Committee, even if the investigation must be kept private and the Committee must seek the concerned state party's cooperation. However, the Committee must have the express permission of the state in question in order to look into the allegations on its soil. The Committee may publish a synopsis of its conclusions in its annual report when the hearings are over. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was approved by the UN General Assembly in 2002, has being used by the Committee as of July 2004.

The Optional Protocol offers national and international visitation tools to stop torture in detention facilities. The Optional Protocol creates a special "two pillar" visitation procedure to detention facilities. First, the Optional Protocol establishes a Sub-Committee to the UN Committee against Torture, an expert international visiting body. The Sub-Committee, which will receive funding from the UN, will visit each state party on a regular basis and keep in contact with it as well as the national visiting body. Second, in order to conduct visits to detention facilities, governments that ratify the Optional Protocol are required to create or maintain a national visiting committee. In comparison to the Sub-Committee, the national visiting mechanisms will be able to conduct visits in considerably more detail thanks to their superior local expertise and potential for more fruitful follow-up. States that have ratified the UN Convention against Torture are free to do so with regard to the Optional Protocol. The Protocol has not yet been effective. It won't go into effect until 20 states have approved it. In July 2004, four governments have ratified the Protocol.

In order to "examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment," the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (ECPT) was established. The ECPT is authorised to visit any kind of detention facility, including jails, police stations, military barracks, and mental health facilities, in order to observe how prisoners are treated and, where necessary, to provide recommendations to the governments in question. The Committee must perform its duties under absolute confidentially and in coordination with the relevant national authorities. If a state declines to participate or does not implement the Committee's recommendations, the Committee will publish its report. Publication of the Committee's annual report to the Council of Europe's Committee of Ministers. Both routine and one-time inspections by the Committee are permitted to all states parties. If the Committee chooses to conduct an ad hoc visit, it must inform the state in question of its decision to do so.

**The Optional Protocol to Cedaw**

The CEDAW Optional Protocol, which was approved in 1999 and came into effect in 2000, improves the tools for enforcing the rights guaranteed by the convention. 60 nations have ratified the Protocol as of June 2004. The Protocol established a "inquiry procedure" in Articles 8 and 9, which gives the CEDAW Committee the ability to open a private investigation when it receives reliable information indicating serious or repeated violations of

rights outlined in the Convention by a state party. This procedure is in addition to an individual complaint procedure [9], [10].

Additionally, the Committee may visit the territory of the state in question if it is judged essential and with the permission of the state party. Any conclusions, suggestions, or remarks are sent to the state party, who has six months to react. Instead of waiting until the next state report is scheduled to be filed, the CEDAW Committee may react quickly to major breaches that are happening under the control of a state party thanks to the inquiry method. The approach also provides a way to deal with circumstances when individual communications do not accurately convey the systemic character of pervasive abuses of women's rights. It also covers the case in which people or organisations are prevented from submitting messages because of logistical limitations or a fear of retaliation.

**European Commission Against Racism and Intolerance**

It is important to emphasise the European Commission against Racism and Intolerance (ECRI), a non-treaty-based body. It keeps tabs on the condition of human rights in CoE nations and draughts critical reports with suggestions in an effort to advance a conversation with member states about pressing problems. The ECRI has also created a large number of broad Policy Recommendations, whereby broad observations and conclusions are made on certain issues connected to eliminating racism. The reports are then published. There is equal treatment for all CoE nations. Over the course of four years, reports are written on every country.

## CONCLUSION

Human rights treaties are essential for raising international norms for human rights protection and promotion and for creating procedures for accountability. The importance and influence of human rights treaties have been emphasised in this research study. These agreements are formal legal documents that provide nations enforceable commitments to respect, defend, and uphold human rights. They offer a framework for international collaboration and channels for people and communities to file complaints about human rights abuses. The preservation and advancement of human rights are governed by international treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. They outline the liberties and rights to which everyone is entitled, regardless of their ethnicity, race, religion, or other traits.

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# CHAPTER 5

# DETERMINATION OF EFFECTIVENESS IN HUMAN RIGHTS

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**ABSTRACT:**

The evaluation of human rights institutions' performance is a difficult task that calls for ongoing national and international attention. Even more challenging is determining the effect of human rights institutions. The effectiveness of a human rights commission can only be determined by its actions, so it is important to determine whether it has the motivation and resources to carry out the legal mandates placed upon it, whether it has been successful in gaining public support, and how it is able to reach out to the most vulnerable members of society. Additionally, it's critical to evaluate the extent to which its efficiency depends on the relationships it may forge with other organisations in society, both governmental and nongovernmental. In many regions of the globe, human rights campaigning has been a successful weapon for social justice, according to this article, which also gives a hypothesis explaining its efficacy that is based on the difficulties of distilling the concept of "good governance" into a list of quantifiable metrics.

**KEYWORDS:**

Effectiveness, Human rights institutions, Measuring impact, Public legitimacy, Accessibility, Bridges, Good governance

## INTRODUCTION

To prevent infractions and encourage adherence to human rights accords, numerous supervision systems are in place. Such systems ought to perform well in theory. However, there are a lot of issues. First, several nations have either refused to acknowledge the authority of the pertinent treaty-based procedures or have refused to ratify the applicable treaties. Second, certain treaty-based procedures, like the individual complaint procedure, are hampered by their own success. Particularly within the jurisdiction of the European Court of Human Rights, the often-excessive volume of individual complaints has caused a significant delay in the decision-making process. In addition, there are a lot of particular communications processes that are understaffed and underfunded. The lack of legally enforceable decisions is the main weakness of the individual complaints system at the UN. There is still considerable space for improvement, even if the treaty organizations have created certain "follow-up" processes, such as the "Human Rights Committee Special Rapporteur on Follow-up."

On the other hand, the inspection of reports under the treaty-based reporting mechanisms, the most popular supervisory method, also has issues [1], [2]. The reports' worth is based on their amount of investigation, the clarity of their information, and how quickly they were produced and delivered. The importance and timeliness of reports have an impact on how well decisions are made across the system. Sadly, several governments don't appear to take the reporting system seriously, and many of them haven't sent in their reports as required by the numerous treaties. Generally speaking, the human rights accords do not provide for sanctioning lawless nations. Additionally, it poses logistical challenges for many nations to submit reports to all of the key human rights monitoring agencies. The reports now available

are many and often duplicated. States are put under a heavy load as a result, particularly emerging nations, which are required to submit frequent reports. The Secretariat has the same issue as it struggles to keep up with the expanding quantity of reports that are being sought by the different international entities. The sheer number of reports is making it difficult for the supervisory bodies to conduct targeted analyses that provide value. To improve the reporting system, numerous ideashave been made. A suggestion for a global consolidated' report for all treaty organizations is being discussed at the UN. The non-treaty-based processes are also having significant problems.The methodsare political by nature, and the investigation of infractions often takes a while. Additionally, since they only convene annually to act, these groups are not well suited to deal with emergencies. However, one of the techniques used by the charter-based processes, the "mobilization of shame," may be highly powerful.

One may argue that a centralized approach would improve oversight, whether it is for UN treaties specifically or more broadly. Given the variety of human rights commitments and the organizations tasked with oversight, this, however, would not seem to be doable for the time being. The oversight mechanisms are a result of particular decision-making procedures that cannot be easily united. Enhancing the coordination and structure of the operations of the different supervision systems is one of the main responsibilities of the UN's High Commissioner for Human Rights. Finally, it is important to remember that governments must support any improvements to the supervisory systems. It is true to claim that such assistance is often inadequate, and nations are hesitant to promote thorough examination of their human rights records.

In these conditions, NGOs and civil society are essential to bolstering the human rights oversight systems. For instance, the involvement of NGOs in the reporting process may contribute to the timely and accurate submission of reports. NGOs should generally be actively involved in pressuring governments to give human rights monitoring systems greater attention [3].

**Implementation**

'Supervision' and 'application' of human rights are sometimes difficult to distinguish clearly, and there is no standard international language. The phrases "protection," "supervision," "monitoring," and "implementation" are often used in human rights literature to refer to both the systems put in place to check on states' conformity with the criteria and the actual compliance by such governments.

All international measures put in place to keep track of domestic observance of human rights norms are referred to collectively by the term "supervision," which was described in the preceding chapter. The word "implementation" is used in this context to refer to both the actual observance of human rights norms by individual governments as well as any actions done by those states, other nations, and international organizations or other entities to promote respect for human rights and avoid abuses. Sometimes the two phrases overlap, and some organizations use the same procedure for both implementation and oversight. Here are two illustrations:

1. Advisory services within the UN human rights system focus on ensuring that nations are abiding by their human rights commitments (supervision) and helping governments improve respect for human rights (implementation), for instance by offering fellowships and expert advice.
2. The UN Commission on Human Rights gives each state the opportunity to talk about implementation issues in addition to dealing with oversight (for example, by the creation of the role of a country rapporteur.

## DISCUSSION

### Implementation at the national level

The political will of governments to uphold international norms has a significant role in how well human rights legislation is implemented. To guarantee the successful application of international norms and standards, a network of non-state actors and international organizations should collaborate. Numerous different actions might be included in implementation. These primarily consist of initiatives aimed at enhancing state-level compliance, such as modifications to national laws or administrative procedures to conform to human rights standards, the bolstering of the judiciary, population education, the creation of national human rights institutions, the raising of minimum health standards, the amelioration of prison conditions, and increased participation in politics. This section briefly discusses three of the many national-level actions that states are required to take to implement international human rights standards: integrating those actions into domestic law; creating national human rights institutions; and human rights education [4], [5].

States must adopt these requirements into domestic legislation in order to implement international human rights standards. Typically, human rights criteria are not explicitly outlined in international treaties, leaving it up to each state to determine how its domestic commitments will be carried out. International human rights treaties may be implemented domestically using a wide range of techniques. For instance, they have been categorized by scholars as adoption, incorporation, transformation, passive transformation, and reference. States may also use many variations of these techniques. In the broadest sense, two systems may be distinguished. When a treaty is ratified and published in the official gazette, it is automatically incorporated into domestic law in some states (such as France, Mexico, and the Netherlands), whereas in other states (such as the United Kingdom, other Commonwealth countries, and Scandinavian countries), this is not the case. What matters most is whether or not domestic courts and other legal actors apply human rights norms in their decisions, regardless of the method states choose to incorporate international human rights law into their domestic systems. The impact of international human rights law cannot be evaluated in the abstract on the basis of a given country's constitution and legislation alone.

International norms are simpler for domestic courts and legal professionals to adopt if they are integrated into national law. International human rights principles may be used by national courts as a guide for interpreting domestic law even when international human rights treaties have not been fully integrated into domestic law. In other words, national courts and legal practitioners may use global and regional human rights standards when construing and creating domestic legislation, and they may consider international human rights law to be the minimal level of protection that domestic legislation ought to provide. It is crucial to emphasise that all three governmental bodies (judiciary, legislative, and executive) must work together and coordinate their efforts in order for domestic human rights laws to be implemented. For the efficient application of human rights at the home level, training and education in these areas are crucial.

European Convention for The Prevention of Torture and European Committee for The Prevention of Torture and Inhuman or Degrading Treatment or Punishment Each state party has an expert on the Committee, acting in a personal capacity and elected for a four-year term by the CM. The Committee is composed of persons from a variety of backgrounds, including lawyers, doctors, prison experts and persons with parliamentary experience, who enjoy privileges and immunities during the exercise of their functions (Article 16 and Annex). The Committee meets three times a year. While the European Court aims at a solution in legal terms, the Committee aims at prevention of violations in practical terms. The Committee is

non-judicial, also in the sense that it cannot adjudge individual complaints or award compensation. This is the task of the Court, which deals with cases in the field of torture and inhuman or degrading treatment or punishment under Article 3 ECHR. At the heart of the work of the Committee is the principle of co-operation; the Committee's aim is to co-operate with the competent authorities, focusing on assistance to states and not condemnation.

**Charter-Based Procedures**

There is no explicit human rights treaty that supports this oversight mechanism. The processes are ultimately based on the United Nations Charter since they were created by resolutions of the Economic and Social Council (ECOSOC). Nations, making them identifiable as following charter-based rules. The United Nations has received communications (complaints) about human rights breaches from people, organisations, and non-governmental organisations ever since it was founded. In the beginning, the United Nations' member states did not provide the organisation the authority to handle such complaints.

The Economic and Social Council approved ECOSOC Resolution 728 F (XXVIII) on July 30, 1959, which codified the situation as it had developed since 1947. The Commission on Human Rights requested that the Secretary-General of the United Nations compile and provide two lists: the first, a non-confidential list of all communications received that dealt with the fundamental principles involved in the promotion and protection of human rights; and the second, a confidential list provided in a private meeting that provided a brief summary of the content of other communications. A copy of the message was to be sent to the specific state being discussed in it, along with a request for a response, if one was desired. But from the victim's point of view, this treatment only brought about a little solace. In the ECOSOC resolution, the Secretary-General was only instructed to "inform the writers of all communications concerning human rights that their communications will be handled in accordance with this resolution, indicating that the Commission has no authority to take any action with regard to any complaints concerning human rights."

The United Nations and its member nations' attitudes towards handling human rights breaches saw substantial shifts in the 1960s. The ECOSOC was asked by the General Assembly in 1966 to urgently study methods to strengthen the UN's ability to put an end to human rights breaches wherever they may occur. The UN Commission on Human Rights invited its Sub-Commission on Prevention of Discrimination and Protection of Minorities now Sub-Commission on the Promotion and Protection of Human Rights to prepare a report containing information, from all available sources, on human rights violations. It only took eight months after this invitation for the ECOSOC to approve the arrangements set up by the UN Commission on Human Rights. Additionally, it requested that anybody who was aware of any instance of systematic racial discrimination, segregation, or apartheid in any nation particularly in colonial and dependent territories bring it to its notice. Additionally, it granted the Commission on Human Rights' request for authority so that it and its Sub-Commission on Prevention of Discrimination and Protection of Minorities (now Sub-Commission on the Promotion and Protection of Human Rights) could examine communications that contained information relevant to serious violations of human rights in public and conduct in-depth research and investigations into situations that showed a pattern of persistent violations. The process has since been referred to as the "1235 procedure" since it implements the ECOSOC's judgements [6], [7].

The UN Commission on Human Rights and its Sub-Commission were given permission by ECOSOC Resolution 1235 (XLII) on June 6, 1967, to examine systematic human rights

abuses and to look into serious human rights breaches. The 1235 protocol has really developed into an annual public discussion on human rights abuses everywhere in the globe. Non-governmental organisations (NGOs) play a crucial role in this discussion by actively contributing to it and providing crucial information on human rights situations, in addition to government representatives who participate in it as observers or as members of the UN Commission on Human Rights.

The UN Commission on Human Rights gradually developed a practise of appointing special rapporteurs, special representatives, experts, working groups, and other envoys competent to study human rights violations in particular countries or competent to study specific human rights violations all over the world on the basis of the 1235 procedure towards the end of the 1970s and the beginning of the 1980s. The terms "country procedures" and "thematic procedures" have been used to describe these particular specialists and working groups. The resolution establishes a private process to handle complaints about human rights abuses. Under the 1503 process, only communications revealing "a consistent pattern of serious and reliably documented violations of human rights" are eligible for consideration. If the Secretariat determines that there are sound justifications for doing so, such communications or copies of 1503 communications are directed to other processes. The 1503 method is designed to address situations when there are repeated abuses of human rights that have been classified as such, rather than to mainly satisfy individual complainants [8].

During the UN Commission on Human Rights' fifty-sixth session in 2000, the 1503 secret communications protocol was updated. A Working Group is chosen annually by the Sub-Commission on the Promotion and Protection of Human Rights from among its members in accordance with ECOSOC Resolution 2000/3 of June 16, 2000. It represents the five regional groupings geographically, and proper rotation is advised. Every year, immediately after the SubCommission regular session, the Working Group on Communications meets to review communications (complaints) received from people and organisations claiming infringement of human rights as well as any official answers. Communications that are obviously unfounded are filtered out by the Secretariat and neither delivered to the relevant countries nor presented to the Working Group on Communications. The Working Group on Situations reviews the specific situations forwarded to it by the Working Group on Communications and decides whether or not to refer any of these situations to the Commission when the Working Group finds reasonable evidence of a pattern of grave human rights violations. This group meets at least one month before the Commission in such cases. The Commission will next have to decide what to do in each incident that has been brought to its notice in this way.

**The mandates of Special Rapporteurs, Representatives, Experts and Working Groups**

The mandates given to special rapporteurs, special representatives, experts, and working groups are either to examine, monitor, and publicly report on the situations with regard to human rights in particular countries or territories known as country mechanisms or mandates or on the most significant manifestations of human rights violations in various regions of the world known as thematic mechanisms or mandates. Special rapporteurs and other mandate holders often travel to different countries while carrying out their duties and reporting their findings to the UN Commission on Human Rights.

These missions are conducted upon the host nation's request. The special rapporteurs are allowed to utilise whatever credible sources they want to in order to write their findings, and a large portion of their research is carried out on the ground as they speak with officials, NGOs, and victims and acquire evidence firsthand wherever possible. Each year, the UN Commission on Human Rights receives reports from the special rapporteurs and working

groups, along with suggestions for further action. The treaty bodies also employ their results in their work, particularly when assessing state reports.

Extra-conventional nation and theme structures lack official complaints processes, in contrast to treaty-bodies. The messages received from different sources (the victims or their families, local or international NGOs) containing complaints of human rights breaches serve as the foundation for the country's and theme mechanisms' activity. Such messages may be delivered in a variety of formats (such as letters, faxes, or cables) and may deal with specific instances or provide information on suspected human rights breaches in specific contexts. Communications intended for extra-conventional mechanisms occasionally contain information indicating that a serious human rights violation is about to be committed (such as an impending extrajudicial execution, concern that a detainee may be tortured, concern that a detainee may pass away from an untreated illness, or information that a "disappearance" has taken place). In these situations, the Special Rapporteur or the Chairperson of the Working Group may send a fax or telegram to the authorities of the state in question, requesting clarifications on the situation and pleading with them to take the necessary steps to protect the rights of the alleged victim. The Special Rapporteurs on extrajudicial, summary, or arbitrary executions and on the issue of torture, as well as the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention, frequently make such appeals, which are primarily of a preventative nature. Other national and topic institutions, however, sometimes adhere to the same process. Occasionally, where the situation justifies it, a number of special rapporteurs and/or working groups may address an appeal together. The requirements for urgent interventions differ depending on the mandate and are outlined in the relevant bodies' working methodologies [9].

A programme called Advisory Services was started in 1953 to help governments improve the state of their citizens' human rights. In order to oversee the technical cooperation programme within the Activities and Programmes Branch of the Office, the OHCHR created an Advisory Services and Field Activities Methodology Team in February 1998. The UN Special Adviser on National Institutions, Regional Arrangements, and Preventive Strategies, in particular, provides assistance for the formation and strengthening of national human rights institutions as part of the technical cooperation programme. The support for national institutions activities can be broadly divided into two categories: facilitating international and regional meetings of national institutions and giving practical advice and assistance to those involved in the creation of new national institutions or the strengthening of existing ones. The High Commissioner's Special Adviser on National Institutions, Regional Arrangements, and Preventive Strategies and/or staff members of the Office have undertaken advisory missions to, among other countries, Cambodia, Canada, Ecuador, Fiji, Guyana, Jamaica, Jordan, Kenya, Mexico, New Zealand, Nepal, the Philippines, Sierra Leone, St. Lucia, South Africa, Sweden, Thailand, and the United Kingdom in recent years.

The UNCHR has taken the initiative to establish a number of Voluntary Funds throughout the years to aid victims of violations, promote human rights, and enable the operation of standard-setting organisations, including: 1981: Voluntary Fund for Victims of Torture. It is being utilised to fund UN member state efforts and NGOs that aid torture victims.

1. **1985:** Indigenous Populations Voluntary Fund. Native American delegates may now attend pertinent meetings thanks to this financing.
2. **1987:** The Voluntary Fund for Advisory Services (now known as the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights) was established. It seeks to supplement and strengthen support for governments that advance human rights. It really evolved from the Advisory Services Programme and

will be put into effect at the request of the relevant government, concentrating on bigger undertakings than were feasible under the original Advisory Services Programme.

3. Voluntary Fund on Contemporary Forms of Slavery, established in 1991. It makes it possible for those who have been affected by slavery practises to appear before the Sub-Commission's Working Group on Contemporary Forms of Slavery and provide testimony.
4. **1993:** The Office of the High Commissioner for Human Rights established the Voluntary Fund to Support the Activities of the Centre for Human Rights [10], [11].

It is an umbrella fund that was set up to handle the Centre for Human Rights' own needs for personnel and technological resources in addition to the growing demand for the activities it conducts. International Decade of the World's Indigenous Peoples Trust Fund. The UNGA created this trust fund to aid in the financing of initiatives that advance the Decade's objectives.

## CONCLUSION

Evaluating the performance of human rights institutions is a difficult endeavour that calls for constant attention across time. A human rights commission's performance can only be evaluated by its activities, therefore it's critical to consider if it has the motivation and resources to carry out its duties, whether it has acquired public support, and how it makes itself available to weaker members of society. Its efficiency also depends on creating linkages with other social institutions. Despite the fact that in many regions of the globe, human rights activism has been a successful weapon for social justice, it is challenging to boil down the concept of "good governance" to a list of quantifiable metrics.

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# CHAPTER 6

# UNITED NATIONS SPECIALIZED AGENCIES AND HUMAN RIGHTS

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**ABSTRACT:**

Specialised UN organisations are essential for advancing and defending human rights all around the globe. This essay briefly describes how specialised organisations are involved in promoting human rights and identifies some of their most significant programmes and projects. In this essay, among other organisations, the United Nations Educational, Scientific, and Cultural Organisation (UNESCO), the International Labour Organisation (ILO), the World Health Organisation (WHO), and the United Nations High Commissioner for Refugees (UNHCR) are discussed. The examination looks at their initiatives in refugee protection, labour rights, health, and education. The article also examines how these organisations cooperate to carry out human rights objectives via alliances with governments, civil society organisations, and other stakeholders. Specialised organisations provide a vital contribution to the expansion of human rights across the world by advocating human rights standards, carrying out research, offering technical know-how, and providing necessary services.

**KEYWORDS:**

Education, Human Rights, ILO, Labor Rights, Health, Refugee Protection, UNHCR, UNESCO.

## INTRODUCTION

Associated with the UN, the Specialised Agencies are operational international entities. They are similar organisations that operate in a variety of fields, including meteorology, international aviation, agriculture, and health.The specialist agencies are connected to the UN by specific agreements, but they are distinct, independent bodies that coordinate their work with the UN. The World Health Organisation (WHO), the Food and Agriculture Organisation (FAO), and the United Nations Human Settlement Programme (UN-HABITAT) are only a few Specialised Agencies of the United Nations that are interested in human rights concerns. Here, the International Labour Organisation (ILO) will be the only UN Specialised Agency that is covered in depth. Short remarks on the UN High Commissioner for Refugees (UNHCR) and the UN Educational, Scientific, and Cultural Organisation (UNESCO) will be included after the relevant section [1], [2].

### International Labour Organisation

In 1919, the International Labour Organisation (ILO) was established. Part XIII of the Treaty of Versailles included the ILO Constitution's original wording, which was revised and enlarged in 1946. In accordance with a deal with the ECOSOC, the ILO was the first "specialised agency" to get that designation from the UN. It focuses on those human rights that are associated with the right to work and working conditions, such as the right to social security, the right to form a union, the right to strike, the right to be free from slavery and forced labour, equal employment and training opportunities. In addition to protecting vulnerable populations, the ILO has created standards for migratory workers, indigenous and tribal peoples, child labour, and the employment of women. The ILO has 177 member nations

as of July 2004.The ILO is unique in that it operates under a tripartite structure, with representatives of workers' and employers' groups serving alongside representatives of governments in its many departments. The International Labour Conference, the ILO's general assembly, serves as the organization's principal organ. Every year, the Labour Conference gets together. Four delegates from each ILO member state attend the conference: two are government officials, one is a worker representative, and one is an employer representative [3], [4].Through the approval of conventions and recommendations, the ILO creates global standards in the areas of labour relations and employee protection. Regarding the various ILO agreements, around 7,200 ratifications have been achieved as of July 2004. ILO member states have the option to ratify the International Labour Conventions. They are international agreements that the governments that have signed are required to abide by. These nations voluntarily agree to implement its provisions, modify their domestic legal systems to comply with the conventions' criteria, and submit to international oversight.

What are referred to be "promotional conventions" have been used to create a number of significant instruments. States that ratify these agreements commit to pursuing their goals within certain time frames and by procedures that will be decided upon in accordance with local conditions and, if they so choose, may be established with support from the International Labour Office. These promotional materials include commonly acknowledged and extensively defined economic and social development goals in fields that are especially well suited for extensive technical cooperation initiatives. By offering assistance to countries in these areas, the International Labour Office actively collaborates with them to identify and put into action the most suitable policies to give effect to the relevant standards [5], [6].

The list of international treaties does not include international labour guidelines. They provide non-binding rules that may separately cover a specific topic, add to the clauses in conventions, or clarify them in more detail. The 185 ILO agreements have been ratified by governments of developing nations in around two-thirds of the cases. The ILO 29 convention, signed in 1930 and ratified by 163 countries as of July 2004, is the most significant treaty in the area of human rights.

1. ILO 87: Freedom of Association and Protection of the Right to Organise (ratified by 142 nations as of July 2004).
2. The right to organise and engage in collective bargaining (ILO 98; 1949; recognised by 154 governments as of July 2004).
3. Equal Remuneration (ILO 100; 1951; approved by 161 nations as of July 2004).
4. Elimination of Forced Labour (ILO 105; 1957; approved by 161 governments as of July 2004).
5. Discrimination in Employment and Occupation (ILO 111; 1958; ratified by 160 States as of July 2004).
6. Minimum Age (ILO 138; 1973; approved by 134 nations as of July 2004).
7. The Worst Forms of Child Labour (ILO 182; 1999; approved by 150 nations as of July 2004).

**Reporting procedures**

According to Articles 19 and 22 of the ILO Constitution, member nations of the organisation are required to submit three different types of reports to the Director-General of the ILO. The reports cover:

Information on the steps taken, no later than twelve or eighteen months after the International Labour Conference adopted the conventions and recommendations, to bring them to the attention of the relevant authorities. These reports must be delivered yearly. Ratification of

conventions or justifications for not doing so. The applicable regulations are intended to ensure more regular reporting for certain The Committee of Experts on the Application of Conventions and Recommendations, an independent body founded in 1927, and the Conference Committee on the Application of Conventions and Recommendations, a body made up of representatives of governments, employers, and workers and established at the International Labour Conference at each of its annual sessions, are tasked with reviewing the aforementioned reports. The supervisory organisations run into issues while analysing national conditions and bringing such situations into compliance with international norms, respectively. Conventions, especially those relating to fundamental human rights reports are needed every two years. The regulations are also in effect during the first several months after ratification, if there are substantial implementation issues, or whenever employers' or workers' groups provide feedback. These reports must be written using the specific templates set by the ILO's Governing Body [7], [8].

For conventions and recommendations that have not been ratified, the Governing Body may periodically request reports on national law and practise that detail the extent to which the state in question has implemented or plans to implement those texts. The reports should also describe any obstacles that may be impeding the ratification of the relevant convention or the implementation of the relevant recommendation. According to Article 23(2) of the Constitution, governments are also required to provide copies of their reports to national employers' and workers' groups. Governments are required to inform the ILO of any remarks made by these groups and are also permitted to add their own views. Governments annually submit more than 2,000 reports.

The ILO Governing Body selects members to serve on the Committee on Freedom of Association. The Committee, which is led by an impartial chairperson, examines the complaints that have been filed by governments, employers' associations, and workers' organisations. Regarding these issues, it is also possible to use the 'direct contacts' process. Since there was no ILO process that allowed for direct interaction with the relevant government, this procedure was devised to improve the efficiency of the ILO's working procedures. In actuality, it may result in a visit in loco at the Committee's request. By using this approach, more than 2,000 concerns have already been resolved (July 2004). The Committee presents its results and recommendations to the Governing Body.

The Governing Body appoints impartial individuals to the Fact-Finding and Conciliation Commission on Freedom of Association. The Commission is charged with the duty of investigating any complaint about suspected violations of trade union rights that may be brought to it by the Governing Body. However, in order to resolve issues by agreement, it may also study the issues in question along with the relevant authorities. The Commission makes decisions on a case-by-case basis throughout its process, which often entails hearing from witnesses and travelling to the relevant countries. All of these complaint procedures include clauses that guarantee the execution of the final judgement. Publication of the judgement is the most crucial clause among them, and it applies to all of them. Even if it doesn't seem extremely harsh legally and officially, it has proven to be a useful tool [9], [10].

## DISCUSSION

### United Nations High Commissioner for Refugees

The UN General Assembly voted to create the post of the High Commissioner for Refugees (UNHCR) in 1950. This office is in charge of ensuring that refugees are legally protected and working to find long-lasting solutions to their dilemma. The High Commissioner has executive responsibility for the legal protection of refugees under the UNHCR's mandate

UNHCR's mission is focused on international protection. In actuality, this entails making sure that a refugee's fundamental human rights are upheld and that no one will be forcibly refouled returned to a nation where they have good cause to fear persecution back. By assisting refugees with their integration into their countries of asylum, with their repatriation to their country of origin if circumstances allow it, or with their resettlement in other countries, the charity seeks long-term or "durable" solutions.

Refugees are given legal protection by UNHCR, which relies heavily on the 1951 Convention Relating to the Status of Refugees. The main legal text establishing who qualifies as a refugee, their rights, and the responsibilities of nations is this Convention. The Convention's geographic and chronological limitations were lifted by the 1967 Protocol. Additionally, UNHCR supports international refugee treaties and keeps an eye on how well governments follow these laws. However, for a variety of reasons, the UNHCR's mandate places restrictions on its supervisory function. In contrast to the global system for defending human rights, there is no formal mechanism in international refugee law to receive individual or interstate complaints, and provisions of the 1951 Refugee Convention requiring states to provide UNHCR with information and data on, among other things, the Convention's implementation, have not been fully implemented. As a result, there is no assessment of national practises that can be utilised to help ensure that nations comply with global norms for refugee protection.

The UN General Assembly established the Executive Committee of the Programme of the High Commissioner for Refugees (ExCom) in 1956 to make up for the absence of oversight procedures. The ExCom has emerged as the primary international platform for creating guidelines for the protection of refugees. The Committee, which consists of 64 nations, convenes in Geneva each fall to assess and approve the agency's activities and budgets and to provide protection-related advice. ExCom offers a venue for extensive discussions among states, the UNHCR, and its various partner organisations while also establishing international standards for the care of refugees. The recommendations made at this yearly intergovernmental gathering serve as a significant worldwide agreement on matters relating to refugees and are persuasively authoritative as standards of refugee protection. ExCom's Standing Committee meets often throughout the year to discuss financial and managerial issues, as well as protection and refugee support initiatives.

**Council Of Europe**

The Council of Europe (CoE), a regional intergovernmental entity, created the European framework for the defence of human rights. 10 nations, including Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom, created the CoE on May 5, 1949 in London. West Germany, Greece, Turkey, and Iceland joined in 1950. Strasbourg, France, serves as its headquarters. The CoE was created to uphold parliamentary democracy, the rule of law, and human rights. It also works to standardise social and legal practises among its member nations and to raise awareness of a common European culture. In order to join the Council of Europe, a state must 'accept the principles of the rule of law and of the enjoyment of human rights and fundamental freedoms by all persons within its jurisdiction, and collaborate honestly and effectively in realising the aim of the Council,' as stated in Article 3 of the CoE Statute.

Because of this, the CoE for a long time only included Western parliamentary democracies. However, after the political developments in Central and Eastern Europe, the majority of those nations indicated interest in joining the CoE. For instance, Bulgaria joined in 1992 and Hungary joined in 1990. The CoE has 45 member nations with a combined population of 800

million as of July 2004. The Holy See, Japan, Mexico, the USA, Canada, and Canada have observer status. Although there are 25 nations that make up the European Union, which is separate from the Council of Europe (see Part VI), no nation has ever entered the EU without first being a member of the Council of Europe. When Romania joined in 1993, a discussion over the CoE's level of strictness in enforcing its membership requirements began. Later on, this argument has persisted in reference to, among other nations, the Russian Federation and Ukraine.

A key component of the Council's acquis is the recognition of the ECHR and its processes. The word "acquis" in the European context, particularly in the European Union and the Council of Europe, signifies that any country that joins such an international institution must accept the body of law that organisation has accepted or acquired. This is true for all case law and conventions to which all member nations are party. Other major treaties include the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Framework Convention for the Protection of National Minorities, all of which reflect the Council's commitment to human rights.

**The Committee of Ministers**

Each member state of the Council of Europe has a foreign minister who serves on the Committee of Ministers (CM). The Committee, the CoE's executive body, convenes in Strasbourg twice a year. Depending on the topic, the Permanent Representatives (deputies of the foreign ministers) meet once or twice a month, if not more often. The Council's policy-making body, the CM, determines the working schedule and intergovernmental cooperation as well as the organization's budget. Prior to 1 November 1998, the Committee had the authority to determine whether an ECHR breach had occurred in certain situations. It no longer serves this purpose as a result of Protocol No. 11 of the ECHR, but in line with Article 46, the Committee still has an essential role in ensuring that the Court's rulings are carried out.

All matters are sent to the Committee by the Court. Cases involving member states that disobey a ruling are often brought to the CM's notice. Peer pressure is a crucial tool in the mobilisation of shame in connection to breaching members, even if the CM cannot impose verdicts. In addition to formulating policy, the CM has organised the Council of Europe Summits since 1993, which bring together the heads of state or government of the Council's member states to talk about crucial topics pertaining to the organization's work and future. Two summits have been place to this point (July 2004) the first in October 1993 and the second in October 1997.

The Secretary General (SG), who is chosen by the Parliamentary Assembly for a five-year term, is the CoE's senior official. The Committee of Ministers compiles the list of candidates. For ratifications of and admission to the ECHR as well as all other treaties more than 190 signed by the CoE, the Secretary General serves as the custodian. The Secretary General is tasked under Article 52 of the European Convention with ensuring that the provisions of the Convention are effectively implemented in national legislation. In accordance with Article 52 of the Convention, the Secretary General may also seek reports from governments on a particular topic. Although the SG has twice requested such reports, it may be believed that Article 52 won't be used very often for the time being. In addition, the Secretary General participates in a number of additional CoE oversight procedures. She or he is in charge of the CoE Secretariat, which supports the Court, Parliamentary Assembly, and Council of Ministers with a workforce of 1,300.

The Council of Europe created the office of Council of Europe Commissioner for Human Rights in 1999. The Commissioner's job is to support the effective observance and full enjoyment of human rights, to find any potential flaws in member states' legal systems and practises, and to work with them to address such flaws. The Commissioner has given the protection of human rights during times of crisis particular focus since entering office in October 1999, especially with regard to the situations in Chechnya and Georgia. Additionally, the Commissioner travels often to member states and pays particular attention to the plight of those who are most at risk, including refugees, children with mental illnesses, women in jail, and members of the Roma community. Additionally, the Commissioner hosts seminars on certain themes, such as the rights of the elderly and those of immigrants crossing the border of a member state. In addition, the Commissioner keeps in constant touch with NGOs and groups of professionals engaged in keeping an eye on circumstances that result in or may result in human rights abuses, including ombudsmen, judges, and journalists. Additionally, the Commissioner releases an annual report.

**The European Court of Human Rights**

The European Convention's Protocol No. 11 created the permanent European Court of Human Rights. By making it completely mandatory, this Protocol aimed to streamline the process, cut down on the duration of the procedures, and improve the judicial nature of the system.

A single, full-time Court took the place of the previous, part-time Court and Commission on November 1, 1998, when Protocol No. 11 came into effect.

The Commission handled the cases it had previously ruled admissible for a one-year transitional period (until October 31, 1999). In addition, the Committee of Ministers' decision-making function was eliminated.

The number of judges on the Court is equal to that of the signatory nations (45 as of July 2004). The number of judges from the same country may be of any number. For a six-year term, judges are chosen by the Parliamentary Assembly of the Council of Europe. To guarantee that one half of the judges' terms of office are renewed every three years, the terms of one half of the judges elected in the first election ended after three years. According to Article 21, the Court's members must be of good moral character and serve alone. According to Articles 27(1) and 28, the Court appoints committees of three judges to decide whether cases are admissible or not, or to strike them from the list if the judgement can be made without further review. The Court convenes in chambers of seven justices to decide whether a matter is admissible or deserves review (Articles 27(1) and 29). The Court may convene a Grand Chamber of seventeen judges in instances involving "serious questions affecting the interpretation or application of the Convention and the Protocols thereto" or "a serious issue of general importance.

**Contentious Jurisdiction**

The European Court deals with both individual and interstate disputes under its contentious jurisdiction. According to Article 34 of the ECHR, the individual complaint procedure allows the Court to "receive applications from any person, non-governmental organisation, or group of persons claiming to be the victim of the rights set forth in the Convention or the protocols thereto by one of the High Contracting Parties." According to Article 33, the European Court may also hear claims filed by states parties against other states parties who are believed to be breaking European Convention rules.

**Cases being brought before the European system are multiplying quickly.**

For instance, 4,200 petitions were submitted in 1988, 18,000 in 1998, 35,000 in 2002, and more than 39,000 applications were submitted in 2003. While many concerns have come from those living in nations that have just joined the Convention including Poland, the Ukraine, and Russia, older members are also the target of a steady stream of complaints. Only 10 distinct cases were determined by the previous, non-permanent Court in the first ten years after 1961. However, between 1960 and 1998, around 900 cases were determined, compared to 844 cases in 2002 and 703 cases in 2003. In some ways, the system is now a victim of its own success. Due to the large quantity of cases, it may take the Court up to six years to rule on a case. One of the key causes of the supervisory system's change was this delay. It is anticipated that the caseload will be handled even more efficiently with the implementation of the 14th Protocol in May 2004. Since 1945, 18 state complaints have been made in relation to interstate concerns. The European Court made a decision on the last complaint on May 10, 2001.

The European Social Charter established two human rights organisations, the Governmental Committee and the Committee of Independent Experts, to monitor state adherence to the Charter (see below). Nine experts are selected to the Committee of Independent Experts for a period of six years. The ILO body of Experts and this body were meant to have very similar roles. Its primary duty is to examine the national reports submitted by states parties and determine whether their national laws and practises are compliant with the European Social Charter. The Committee adopts findings and sends them to the Governmental Committee after evaluating the reports. Members of the worldwide employers' and workers' associations as well as representatives from the states parties make up the Governmental Committee. Its primary responsibility is to provide recommendations to individual states parties about instances of non-compliance with the European Social Charter for the Committee of Ministers.

## CONCLUSION

In order to advance human rights objectives, essential problems pertaining to education, labour rights, health, and refugee protection are addressed by United Nations specialised agencies. These organisations, such as UNESCO, ILO, WHO, and UNHCR, work with a range of stakeholders to advance human rights principles, carry out research, provide technical know-how, and provide crucial services. Their initiatives help enhance human rights generally over the world. Specialised organisations may successfully safeguard and advance human rights through collaborating with governments, civil society organisations, and other players. There are still issues, however, such a lack of resources and the need for better agency cooperation. To make sure that human rights are protected and upheld for everyone, it is crucial for these organisations to maintain their dedication to human rights, develop their collaboration, and respond to new concerns.

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# CHAPTER 7

# A BRIEF STUDY ON EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE

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**ABSTRACT:**

The Council of Europe has a specialized organization called the European Committee for the Prevention of Torture (CPT) that works to stop torture and other cruel, inhumane, or degrading treatment and punishment. This essay gives a general summary of the CPT's mission, responsibilities, and efforts to uphold human rights. The examination focuses on the CPT's monitoring visits to detention facilities, its function in raising awareness and putting preventative measures into action, and its collaboration with member nations. The report also looks at the CPT's methodology and the importance of its recommendations for avoiding torture and improving detention conditions. The CPT's dedication to accountability and openness, as well as its collaboration with other international and national organisations, are emphasised. In addition, the document addresses the CPT's difficulties in ensuring that its recommendations are implemented effectively and dealing with member states' concerns about non-cooperation.

**KEYWORDS:**

Detention, Human Rights, Monitoring, Prevention, Recommendations, Torture, Transparency.

## INTRODUCTION

According to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), there should be no tolerance for torture or other cruel, inhumane, or degrading treatment or punishment. The Committee has the ability to visit any location where individuals are being held by a public authority in order to carry out its mandate of investigating how those who are deprived of their liberty are being treated. The Committee may then come up with suggestions to improve safeguards against torture and other cruel, inhumane, or humiliating treatment or punishment. These visits typically occur regularly, although according to Article 7(1), ad hoc visits may be scheduled at short notice if the Committee determines they are required. NGOs are crucial informational resources for the Committee. Confidential information is acquired during visits, reported thereafter, and discussed with the state in question [1], [2].

The report is only made public, however, if the state specifically demands it. If the state is unwilling to cooperate, the Committee may also decide by a two-thirds vote to issue a public statement about the situation (Article 10(2)). An expert from each state party serves on the Committee in their own capacity and is chosen by the CM for a four-year term. In accordance with Article 16 and the Annex, the Committee is made up of individuals from a range of backgrounds, including those with legislative experience, medical professionals, attorneys, and specialists in prisons. Three times a year, the Committee convenes. The Committee seeks to avoid infringement in the real world, while the European Court seeks a judicial resolution. The Committee is non-judicial in that it lacks the authority to hear individual complaints or provide restitution. This is the duty of the Court, which, in accordance with Article 3 of the ECHR, deals with instances involving torture and cruel or degrading treatment or

punishment. The Committee's activity is based on the idea of cooperation; it seeks to engage with the relevant authorities while emphasising help to governments rather than criticism [3], [4].

**Other Relevant Human Rights Organs**

In accordance with the Framework Convention for the Protection of National Minorities, the Committee of Ministers is advised by the Advisory Committee on MinoritiesThe European Commission against Racism and Intolerance (ECRI) is another human rights organisation. This Commission was established as a result of a resolution made at the Council of Europe's first summit of heads of state and government in October 1993. The choice was made in response to the Balkan region's human rights atrocities that were racially and ethnically motivated. In addition, several violent racist events in multiple cities throughout Western Europe prompted the need for a prompt international response. With the defence of human rights at the forefront, the Commission's objective is to fight racism, xenophobia, anti-Semitism, and intolerance throughout the larger European region. A typical non-treaty-based supervisory structure is the Commission. It keeps tabs on the situation in each CoE nation and, in about four-year cycles, draughts reports with suggestions for each CoE member state. The reports are intended to foster communication with the state in question and long-term progress in the fight against racism and intolerance. The ECRI has also created a large number of broad Policy Recommendations, whereby broad observations and conclusions are made on certain issues connected to eliminating racism.

The Steering Committee for Equality between Women and Men (CDEG), an international organisation tasked with protecting, inspiring, and leading the Council of Europe's effort to advance gender equality, should also be mentioned. It answers directly to the Committee of Ministers, from whom it gets directives and to whom it submits reports and suggestions.The ECHR established a list of civil and political rights and freedoms as well as the procedures that the European Court and the Committee of Ministers must take to guarantee that the European Convention is upheld by state parties[5], [6]. After receiving a complaint in the instance of a person, the court must determine whether the complaint is acceptable. The process comes to an end and an appeal is not permitted if a panel of three judges rules that a petition is not acceptable or chooses to dismiss the matter without further examination. Otherwise, a panel of seven judges will decide the admissibility issue. A person may file a complaint with the European Court in their native tongue. The following requirements must be met in order for a case to be considered admissible: a) all domestic remedies must have been exhausted in accordance with "the generally recognised rules of international law" (Article 35(1)); b) the case must have been brought before the court within six months of the date the final decision was made; c) the alleged human rights violations must be covered by the ECHR or one of the Protocols ratified by the state in question (Articles 34 and 35(3));

On the basis of the plaintiff's written information, many petitions are found to be inadmissible; for example, complaints that are not intended for a state but rather for a person are not allowed. Most cases brought before the European Court are ruled to be inadmissible. If the complaint is found to be acceptable, a chamber of seven judges examines the matter with the assistance of the parties' representatives and, if necessary, launches an inquiry (Article 38(1.a)). It is suggested that the concerned state make comments. The Chamber then makes an effort to establish a "friendly settlement" between the plaintiff and the state on the grounds that the ECHR's Article 38(1.b) is being followed. According to Article 38(2), this process step is secret. According to Article 39, the Court "shall strike the case out of its list employing a decision which shall be confined to a brief statement of the facts and the solution reached" if a peaceful settlement is reached [7], [8].

If a mutually agreeable resolution cannot be achieved, the Chamber organizes a public hearing (Article 40(1)), which results in a determination of the case's merits. The aggrieved person may also get fair recompense from the court. A party to the case may ask that the matter be referred to the Grand Chamber if it is dissatisfied with the Chamber's decision (Article 43(1)). If the case "raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto or a serious issue of general importance," a panel of five judges of the Grand Chamber will grant the request (Article 43(2)). After that, the Grand Chamber will render a (final) ruling in the matter (Articles 43(3) and 44), with distinct views permitted a judgement must be sent to the Committee of Ministers "which shall supervise its execution." The Committee of Ministers investigates the violation discovered in each instance and determines the steps the state must take to abide by the ruling. If necessary, the state may also be required to take actions such as reopening domestic processes to address the applicant's effects of the violation, in addition to providing compensation.

If necessary, more broad actions, including changing the law, could be needed to stop future infractions. The European Convention on Human Rights will be modified by Protocol No. 14, which was approved on May 13 by the Committee of Ministers of the Council of Europe. The Protocol's aim is to guarantee the European Court of Human Rights' medium- to long-term effectiveness. The drastic rise in the number of individual petitions presented to the Court has necessitated the step. The Protocol outlines a series of actions that will allow the Court to handle individual petitions promptly. Rather than a committee of three judges, a single judge will make decisions on cases that are inadmissible with the help of rapporteurs. Additionally, instead of the current seven-judge Chamber, recurring cases arising from the same structural flaw at the national level will be accepted and resolved by a committee of three judges. Except in situations where respect for human rights as defined in the ECHR and its Protocols demands further analysis of the application, a new admissibility criterion will allow the Court to rule that individual petitions are not admissible if the petitioner has not sustained serious damages. Last but not least, the Protocol stipulates that the Committee of Ministers may file a case with the Court against a state that has disobeyed a ruling [9], [10].

## DISCUSSION

### Proportionality

The concept of proportionality demands that, when a state infringes on an individual's rights, a just balance be struck between the needs of the community as a whole and the need for the preservation of the person's basic rights. The European Court ruled in James v. the United Kingdom that "there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised"; this idea of a fair balance is not respected if the person in question has had to bear an individual or disproportionate burden as a result of the state's interference.

It might be claimed that the "test of proportionality" has evolved into the status of a general concept under the European Convention since it has been used in multiple decisions before the European Court. The Court often merely conducts a cursory analysis, focusing on whether a measure is excessive or not. The Court concludes that the state has breached the Convention where the burden placed on the person is deemed to be excessive or unreasonable. When interpreting the limitation provisions of Article 14, and Article 1 of Protocol I, the Court first and mainly utilises the proportionality test. The standard is not consistently followed; for instance, the Court is tougher when interpreting Articles 8 to 11 than when interpreting Article 1 of Protocol I (property). The Court of Justice of the European Union's case law places a strong emphasis on proportionality.

**Subsidiarity**

More than 25 years ago, in Handyside v. the United Kingdom, the European Court of Human Rights established the subsidiarity concept, a cornerstone in the interpretation of the European Convention. The guiding concept demonstrates how national and international levels share responsibilities for defending human rights. The Court makes the point that there are certain areas where national authorities must be allowed true discretionary powers and that the Court is required to respect such powers up to a certain degree. The Court may only assume a purely supervisory function due to the complexity and sensitivity of the problems involved in policies balancing the interests of the general public. The state is principally responsible for ensuring that the rights and freedoms guaranteed in the Convention be enjoyed, as the Court has reiterated. The Strasbourg supervisory system is meant to supplement competent national human rights protection; it will never be a sufficient replacement for it. The Court is not a court of appeal in Europe. It steps in when national protection fails but it cannot take the place of it. The safeguarding of national human rights is of utmost significance since, despite the Convention's concern for people, it can only adjudicate on the complaints of those select few who present their cases in Strasbourg.

**Margin of appreciation**

The theory of the margin of appreciation, which stipulates that a state's legislative or judicial power is given a specific margin in the interpretation of human rights legislation in the course of its duties, is closely tied to the idea of subsidiarity. When recognising complicated issues and weighing opposing considerations of public and private interests, state authorities are often seen to be in a better position than the international court in a democratic society. As was the case with proportionality, the Court applies the margin of appreciation in different ways. Depending on the situation, the issue, and the background, the margin of appreciation will have a different range. This could seem complicated, but when one examines the European case-law, a logical logic can be shown. A smaller margin of appreciation is relevant when discussing topics like freedom of speech when there is a consensus among Europeans over what limits are acceptable. The Court gives a far greater margin of appreciation in the situation of the preservation of morality, a term that may vary greatly from one nation to another. The margin of appreciation for the stringent interpretation of the freedom of religion and the strict interpretation of the property right will also vary. Property rights may be open to a broad range of interpretations depending on political agendas and other factors, such as tax laws, given the significant cultural variations across nations. One may see how several components interact to determine the margin of appreciation. This generates some diversity on its own. The margin of appreciation also helps define the roles that the national courts and authorities and the supervision system should play in each situation.

The ESC is a so-called "à la carte" convention; states parties may pick which provisions they agree to be bound by and are not required to adopt all of them. However, Article 20 requires each state party to see Part I of the ESC as a statement of the objectives it would pursue via all relevant methods, both national and international. A "package" of at least 10 articles (or the 45 numbered paragraphs of Part II, into which the articles are divided) must also be formed by the states parties, who must also consider themselves bound by at least five of the seven articles of Part II listed (Articles 1, 5, 6, 12, 13, 16 and 19). Before the Charter may be ratified, this package must be accepted by the state parties. States parties may subsequently declare that they are also bound by any additional articles or paragraphs.

The Charter includes a monitoring system that is similar to the ILO's system (see II.1.D). Every state party is required to provide a regular report to the Secretary General of the CoE

on the execution of the responsibilities they have agreed to every two years for hard-core articles and every four years for non-hard-core articles. This report is examined by the Committee of Independent Experts, which then presents its conclusions to the Governmental Committee together with the country reports. The members of this committee are drawn from the international employers' and workers' groups as well as the state parties. The Governmental Committee chooses the circumstances that necessitate making recommendations to the state parties based on social, economic, and other policy concerns. The findings of the Committee of Experts serve as the foundation for the periodic arrangement of social policy discussions, and the Committee of Ministers, in collaboration with the Parliamentary Assembly, offers recommendations to States that do not comply with the Charter's provisions.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was approved by the CoE on November 26, 1987 (ETS No. 126), strengthening the European system of human rights oversight. The Convention was adopted by 45 states in July 2004.A European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was founded. The Committee has the ability to visit any location where individuals are being held by a public authority in order to carry out its mandate of investigating how those who are deprived of their liberty are being treated. The Committee may then come up with suggestions to improve safeguards against torture and other cruel, inhumane, or humiliating treatment or punishment. In theory, these inspections happen regularly, however, the Committee has the authority to schedule ad hoc visits with little to no warning if required.

The information obtained during visits, the report that follows, and the discussions with the state in question are all private. The report is only made public, however, if the state specifically demands it. In the event that the state is unable to assist, the Committee may alternatively decide by a two-thirds vote to issue a public statement about the matter. An expert from each state party serves on the Committee in their own capacity and is chosen by the CM for a four-year term. In accordance with Article 16 and the Annex, the Committee is made up of individuals from a range of backgrounds, including those with legislative experience, medical professionals, attorneys, and specialists in prisons. Three times a year, the Committee convenes. The Committee seeks to avoid infringement in the real world, while the European Court seeks a judicial resolution. The Committee is non-judicial in that it lacks the authority to hear individual complaints or provide restitution. This is the duty of the Court, which, in accordance with Article 3 of the ECHR, deals with instances involving torture and cruel or degrading treatment or punishment. The Committee's activity is based on the idea of cooperation; it seeks to engage with the appropriate authorities while emphasising help to governments rather than criticism.

The absence of clauses establishing the Convention's substantive scope makes the ECPT unique. It lacks a definition of torture and doesn't include any specific mention of torture or other inhumane or humiliating treatment or punishment, unlike the CAT. The Convention leaves the ECHR and the European Court in charge of these matters as well as the evaluation of individual complaints. By providing non-judicial machinery for the prevention of torture, the Convention aims to increase the protection of those who are denied their liberty. Therefore, the treaty simply establishes a monitoring system.

According to Article 8(2) ECPT, a party shall grant the Committee access to its territory and the freedom to move around without hindrance, as well as full information about the locations where people who are deprived of their liberty are being held, as well as unrestricted access to all locations where people are deprived of their freedom, including the

freedom to move around in prisons, police cells, mental health facilities, and military facilities. The Committee must consider relevant national legislation and professional ethics when requesting such material.The topic of national minorities has taken on increased significance in light of the collapse of the Berlin Wall and the resurgence of ethnic strife in Europe. Through the CoE, a number of projects and cooperation programmes were launched during the course of the 1990s, and two conventions were successfully ended.

On February 1, 1998 (ETS No. 157), the Framework Convention for the Protection of National Minorities came into effect. It is the first global agreement on the universal protection of national minorities that is also legally obligatory. The title of the Convention makes clear that it is primarily programmatic and discretionary in character and that its purpose is to lay out the principles that governments commit to upholding in order to secure the protection of national minorities. Since the duties are those of the state and not of a person or a group, the states have some latitude in deciding how to put the principles into practise. There were 35 states that were parties to the Convention as of July 2004. The analysis of state reports serves as the foundation for the Convention's monitoring. The Committee of Ministers, which serves as the Convention's primary monitoring body, is helped in its duties by an advisory committee of independent experts. The Advisory Committee adopts judgements about the application of the Convention, and the Committee of Ministers adopts its findings, often in the form of a resolution, based on the reports. Additionally, the Committee of Ministers has the authority to advise the states in detail.

**Implementation**

The topic of national minorities has taken on increased significance in light of the collapse of the Berlin Wall and the resurgence of ethnic strife in Europe. Through the CoE, a number of projects and cooperation programmes were launched during the course of the 1990s, and two conventions were successfully ended. National Minorities came into effect. It is the first global agreement on the universal protection of national minorities that is also legally obligatory. The title of the Convention makes clear that it is primarily programmatic and discretionary in character and that its purpose is to lay out the principles that governments commit to upholding in order to secure the protection of national minorities. Since the duties are those of the state and not of a person or a group, the states have some latitude in deciding how to put the principles into practise. There were 35 states that were parties to the Convention as of July 2004. The analysis of state reports serves as the foundation for the Convention's monitoring. The Committee of Ministers, which serves as the Convention's primary monitoring body, is helped in its duties by an advisory committee of independent experts. The Advisory Committee adopts judgements about the application of the Convention, and the Committee of Ministers adopts its findings, often in the form of a resolution, based on the reports. Additionally, the Committee of Ministers has the authority to advise the states in detail.

**Precautionary Measures**

The Rules of Procedure state that "in serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, adopt precautionary measures to prevent irreparable harm to persons." Even though the Convention does not expressly grant the Commission the authority to request interim measures, the broad powers granted to it by Article 41 have been interpreted in this way. (Article 25(1) Inter-American Commission Rules of Procedure). When three criteria are met that the situation is urgent, the circumstances could cause irreparable damage, and the facts seem to be true action may be done. The authority provided to the Chairman of

the Commission, who may act even while the Commission is not in session, ensures the prospect of a prompt response. The Commission may take action on its own initiative or at a petitioner's request. As with other instances submitted to the Commission, it should be highlighted that the petitioner need not be the victim or his agent and may instead be, for instance, an NGO with knowledge of the matter. This is crucial in refugee situations since many potential victims of refoulement can reside in isolated rural regions. The preventive measures of the Commission are not legally obligatory, unlike the convention-based, judicially enforceable remedies that the Court may use, but they do put the offending government "on notice" and convey the gravity of the situation.

The Commission may also use the authority granted to it by Article 63(2) where the relevant state is a party to the Convention, which allows it to The Rules of Procedure state that "in serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, adopt precautionary measures to prevent irreparable harm to persons." Even though the Convention does not expressly grant the Commission the authority to request interim measures, the broad powers granted to it by Article 41 have been interpreted in this way. (Article 25(1) Inter-American Commission Rules of Procedure). When three criteria are met that the situation is urgent, the circumstances could cause irreparable damage, and the facts seem to be true action may be done.

The authority provided to the Chairman of the Commission, who may act even while the Commission is not in session, ensures the prospect of a prompt response. The Commission may take action on its own initiative or at a petitioner's request. As with other instances submitted to the Commission, it should be highlighted that the petitioner need not be the victim or his agent and may instead be, for instance, an NGO with knowledge of the matter. This is crucial in refugee situations since many potential victims of refoulement can reside in isolated rural regions. The preventive measures of the Commission are not legally obligatory, unlike the convention-based, judicially enforceable remedies that the Court may use, but they do put the offending government "on notice" and convey the gravity of the situation.

## CONCLUSION

By monitoring detention facilities and preventing torture and other cruel, inhumane, or degrading treatment, the European Committee for the Prevention of Torture (CPT) is a key player in the defence of human rights. Through its monitoring visits, the CPT collects first-hand data and provides member nations with suggestions in an effort to enhance detention conditions and stop human rights violations. Its legitimacy and efficacy are enhanced by the CPT's openness and accountability. However, the CPT has difficulties in ensuring that its recommendations are put into practise and in handling instances of member nations' lack of collaboration. For the CPT to successfully carry out its mission, continued engagement and collaboration with member nations, as well as enhanced alliances with other international and national organisations, are essential. The CPT significantly contributes to the overall protection of those who are deprived of their liberty within the Council of Europe member states by continuing to work to prevent torture and advance human rights.

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# CHAPTER 8

# IMPORTANCE OF SUBSTANTIVE HUMAN RIGHTS

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**ABSTRACT:**

To protect human dignity, advance freedom and equality, ensure social justice, and defend the rule of law, substantive human rights are essential. This essay emphasises the role of substantive human rights in building an inclusive and fair society. The study places a strong emphasis on important issues including defending human dignity, advancing freedom and liberty, preventing discrimination, promoting social justice and wellbeing, upholding the rule of law, and fostering international collaboration. A comprehensive spectrum of inalienable civil, political, economic, social, and cultural rights are included in substantive human rights. These rights provide a foundation for people to live in dignity, free from prejudice and mistreatment. They promote international harmony and cooperation and help build transparent, inclusive societies. The report emphasises the critical part that substantive human rights play in creating a society where each person's rights are recognised and upheld.

**KEYWORDS:**

Accountability, Dignity, Equality, Freedom, Human Rights, Non-Discrimination, Rule Of Law, Social Justice

## INTRODUCTION

The transparent approach, which highlights the indivisibility of substantive rights and illustrates the interdependence and interaction between human rights, was selected. Human rights have traditionally been addressed by first talking about the civil and political rights, then by talking about the economic, social, and cultural rights. This kind of classification, however, raises concerns since it implies a hierarchy of human rights, favouring civil and political rights above others. The French Revolution's slogan "Liberté, Egalité, Fraternité" and President Franklin D. Roosevelt's "Four Freedoms" freedom of speech and expression, freedom of religion, freedom from want, and freedom from fear are two of the more well-known previous attempts to develop a clear-cut and logical framework for human rights. Twelve categories of rights make up the human rights framework that is described below. A circular model is used to display the twelve rights. The circular model tries to demonstrate how interconnected and nonhierarchical substantive rights. For instance, one cannot enjoy their right to cultural life without their right to equality or their right to participation [1], [2].

Furthermore, without a guarantee of the right to due process, the right to property cannot be fully secured. The many individual complaints made to international oversight bodies referencing not just the infringement of one human right but often multiple others, such as the right to a fair trial and the right against discrimination, serve as a stark example of how interdependent human rights are. Based on the rights listed in the Universal Declaration of Human Rights, the circular model's twelve rights are there. Substantive rights necessary for an individual's protection are the components of the circle. Care was taken while defining these rights to strike a healthy balance between the different categories of rights, and the most closely linked rights were grouped together. It is obvious that it is difficult to simplify a

complicated web of interconnected rights. Thirteen, fourteen, or even forty rights might be used in place of the standard twelve [3], [4].

**The Right to Equality and Non-Discrimination**

Standards and monitoring are the two main subjects under which each right is considered. Standards outline the specifics of each right as they have been acknowledged in the main international and regional documents on human rights. In the case-law of the international supervisory organisations, we provide instances of the protection given to each of the rights under monitoring. Domestic case-law is also explored in relation to various economic, social, and cultural rights, such as the right to the greatest possible quality of health and the right to an acceptable standard of living. This is due to the fact that there is only a small amount of international case law on specific elements of these subjects, and discussion of important rulings at the domestic level may help to further promote the justiciability of these rights.

**The Rights to Due Process**

Due process is defined here broadly as the right to be handled fairly, quickly, and successfully by the administration of justice. Due process rights set restrictions on laws and court cases in order to ensure basic justice and fairness. The rules used by courts of justice in line with recognised and sanctioned legal concepts and processes, as well as protections for the protection of individual rights, are understood to be subject to due process in this context. A fair trial, the presumption of innocence, and the independence and impartiality of the judiciary are only a few of the many criteria that apply to the administration of justice. The numerous regulations are often divided up into multiple articles in conventions. Four aspects of due process are covered as this manual focuses on a range of conventions: quality in terms of the administration of justice; quality in terms of the protection of the parties' rights; efficiency; and effectiveness. The first three aspects are examined under the title of "fair trial," while effectiveness is discussed under the heading of "right to an effective remedy," since due process rights are usually understood among human rights experts to focus on the right to a fair trial and the right to an effective remedy [5], [6].

The judiciary's independence, which includes, among other things, independence from the government and the legislative, is the most crucial element. If there is no such independence, going to court is hardly much use. For a court to be deemed "independent," certain criteria must be met according to the UN Basic Principles on the Independence of the Judiciary: a) conditions of service and tenure; b) methods of appointment and discharge; and c) level of stability and logistical protection against outside pressure and harassment. In various regions of the globe, issues relating to judges' independence come in a variety of types and quantities, ranging from wage negotiating plans to actual disappearances. Tribunals must be "established by law," according to the main agreements. The establishment of a tribunal should be established by legislation passed by the legislature, not at the executive branch's whim. Special court cases are only permitted in rare instances.

The judge must have no personal stake in the outcome of the case. The appearance of impartiality is crucial, both in the subjective sense there shouldn't be any appearance of impartiality and the objective sense which examines whether the judge provided procedural guarantees sufficient to exclude any reasonable doubt of partiality. The concept of competence has not been expressly developed in international treaties or legal precedent. However, certain significant components have indirectly been incorporated into the case-law of global supervisory organisations. Supervisory agencies have noted, for instance, that the statute legislation must meet fundamental requirements like predictability and accessibility. In addition, it has been acknowledged that case law must be applied consistently for court

rulings to be valid. Equal treatment of all parties is required throughout the trial process in order to ensure that they have a procedurally equal position and are in an equal position to present their arguments. This is known as equality of arms. It implies that each side must be given a fair chance to present their arguments under circumstances that do not significantly prejudice them compared to the other party. The concept of equality of weapons is a crucial safeguard for the right to self-defence in criminal cases when the prosecution has the whole weight of the state behind it. This rule would be broken, for instance, if the accused was barred from an appeal hearing while the prosecutor was present or if the accused was refused access to material needed for the preparation of the defence or expert witnesses. It is important to underline the distinction between an accused person and a "civil" litigant. The former is more susceptible to abuse by the government apparatus, particularly if he is denied his freedom [7], [8].

## DISCUSSION

### Public hearing

A public hearing indicates that oral deliberations on the merits of the matter are open to the public, including the press, and are conducted in public. Courts are required to advise the public of the date, time, and location of oral hearings and to provide reasonable accommodations (within reason) for the presence of interested parties. With a few exceptions, judgements must be made public. Access to hearings by the general public may be limited under certain, outlined conditions. The restricted number of reasons on which the press and the public may be excluded from all or portions of proceedings are outlined in the ICCPR and the European Convention. Public morality, public order, minors, protection of the parties' private lives, and situations where publicity is determined to jeopardise the interests of justice are among them. The right to a public trial in criminal proceedings may only be postponed "insofar as necessary to protect the interests of justice," according to Article 8(5) of the American Convention.

Judges and jurors must avoid from making assumptions about any case in order to uphold the right to the presumption of innocent. It likewise holds true for all other public servants. This implies that public officials, in particular prosecutors and police, should refrain from declaring an accused person to be guilty or innocent before the conclusion of the trial Additionally, it indicates that authorities have a responsibility to stop the media or other strong social groups from deciding a case's conclusion based only on its merits. The rules of evidence and trial procedure must guarantee that the prosecution bears the burden of proof throughout a trial in line with the presumption of innocence.

Hearings must occur "within a reasonable time" according to both the European and American Conventions. When the ICCPR refers to prompt hearings, it also implicitly implies that justice must be served quickly and within a reasonable amount of time. According to the proverb, "Justice delayed is justice denied," a delay in justice often equates to no justice at all. It is particularly crucial for someone who has been accused of a crime to avoid hanging around in the dark for any longer than is absolutely necessary. No other aspect of human rights is the focus of European Court case law as often as "the reasonable time requirement." On a case-by-case basis, the European Court and the other significant supervisory institutions have determined what is an acceptable amount of time [9], [10].

Trials of up to ten years have been judged to be fair, whereas rials of less than a year have been ruled to be unreasonable. Nevertheless, the abundance of case law has produced a fantastic set of instruments to evaluate the effectiveness of courts and highlight the need of a sufficient administration of justice, including laws enabling such functioning.

The aforementioned has shown unequivocally that several significant regulations must be followed in order to have an effective system of due process. This compliance must be carried out consistently. Because of this uniformity, the language of the different standards has been thoroughly examined. Over the years, the different supervisory mechanisms have offered a sufficient interpretation of a number of terms, including what constitutes illegal behaviour, what constitutes a lawsuit, and what a court is. The importance of such an interpretation is shown by the example that follows. As was already established, those who are accused require, for reasonable reasons, greater protection than other parties involved in legal proceedings. However, adding non-criminal legal norms and processes, might lead a national legal system to weaken such protection. The government may then file a lawsuit for punitive damages rather than bringing charges against the defendant. Such a strategy has been remedied by supervisory mechanisms, which defined and gave the term "criminal charge" its own meaning.

Many instances involving the right to a fair trial have been handled by the international oversight bodies, including the European Court and the Human Rights Committee.The Human Rights Committee has ruled on more instances using Article 14 than any other ICCPR right at the UN treaty level. Levy v. Jamaica, Johnson (Errol) v. Jamaica, and Thomas (Damien) v. Jamaica are only a few examples of instances where people on death row have complained about the fairness of their trials. Additionally, General Comments 13 and 29 from the Human Rights Committee are quite significant in regard to the right to a fair trial. In General Comment 29, the Committee stated that, among other things, some aspects of the right to a fair trial that are considered fundamental principles, such as the presumption of innocence, should not be waived in urgent circumstances. The Committee also stated that "it is inherent in the protection of rights explicitly recognised as non-derogable" in the Convention, that they "must be secured by procedural guarantees, including often, judicial guarantees" As a result, procedural safeguards clauses "must never be subject to measures that would circumvent the protection of derogable rights.

The European Court has decided more cases on the right to a fair trial than any other right, similar to the Human Rights Committee. The most often item discussed before the European Court is item 6, which addresses the right to a fair trial. Examples of concepts developed through the European Court's case-law include access to justice (a civil claim must be able to be submitted to a judge, prohibition of denial of justice), fair hearing (equality of arms, right to be present at the trial), and the notion of "criminal." Furthermore, nearly 40% of the roughly 800 rulings the European Court publishes each year in recent years have included elements pertaining to a reasonable time. The African Commission has approved three resolutions on fair trials at the continental level. These resolutions go into further detail on Article 7(1) ACHPR and guarantee a number of new rights, as well as discuss the function of attorneys and judges in carrying out the Charter and enhancing the independence of the court. Additionally, the Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions and the Special Rapporteur on Prisons and Conditions of Detention has been appointed with mandates that address the right to a fair trial. The African Commission has mostly addressed the presumption of innocence and the fairness of the court in its statements.

The right to a fair trial has been the subject of a few discussions by the Inter-American Commission. However, it has made it plain when dealing with Article 8 ACHR that it is not concerned with whether a national court's judgement is accurate but rather whether it was reached in conformity with the fundamentals of due process of law. Access to a court in the context of amnesty or impunity legislation; the right to a hearing within a reasonable amount of time; and C) competent, independent, and impartial tribunals are the aspects of a fair trial

that the Commission has primarily addressed. The relevance of the constitutional idea of the separation of powers has been stressed by the Commission in its analysis of the definitions of "independent" and "impartial

**The Effectiveness ofthe Administration of Justice**

Despite what would seem to be an evident necessity for the successful administration of justice, many legal systems throughout the globe continue to struggle in this area. International supervisory institutions often receive complaints about the ineffective administration of justice. At least 100 human rights accords have been ratified on an international and regional level. Many of them are regarded to be a component of customary international law, and almost all nations are party to at least some of them. Human rights laws are broken, nevertheless, just as all other laws. An obvious sign that people and victims are increasingly able to file complaints against their governments for failing to uphold their international duties is the growing caseload before supervisory institutions.

The majority of international human rights accords specifically provide the right to an effective remedy in cases when one's rights are infringed. According to the international guarantee of redress, it is the responsibility of the violating state to provide the victim with an appropriate remedy first and foremost. International tribunals and oversight agencies serve a supporting role; they only get involved when the state is unable to provide the necessary remedy. However, these international organisations play a crucial role in preserving the reliability and consistency of the human rights system. Lack of an effective remedy may foster an atmosphere of impunity, especially when governments purposefully and persistently block remedies.

Everyone has the right to an adequate remedy by the appropriate national tribunals for actions infringing the basic rights guaranteed by the constitution or by law, according to Article 8 of the Universal Declaration. The ICCPR has several provisions that address the right to an effective remedy. The most comprehensive general provision in human rights legislation is found in article 2(3). Additionally, the ICCPR contains particular remedies, such as Article 6(4) on the ability to request a pardon, amnesty, or a commutation of the death penalty. The rights to habeas corpus and judicial review are defined in Articles 9(3) and (4), an anti-expulsion remedy is provided in Article 13, a fair trial is guaranteed in Article 14, and the right to a review of a conviction and punishment is defined in Article 14(5).Other UN Conventions, such as Articles 2, 2(c) and 3 CEDAW, Article 6 CERD, Article 2 and 3 ICESCR, Article 12 and 13 CAT, Articles 2(2), 3, 4, 19, 20, 32, 37(d) CRC, and Articles 18, 19, 22 and 23 CMW, all include both general and particular provisions on effective remedy.

There are several remedies provisions under the ACHPR. According to Article 7, everyone has the right to be heard. The right to "adequate compensation" in relation to "the spoliation of resources of a dispossessed people" is mentioned in Article 21. States parties are required by Article 26 to safeguard the independence of the judiciary and to permit the creation and development of suitable national institutions tasked with promoting and defending the rights and freedoms enshrined in the African Charter. Effective remedies are also provided under the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights. "If the Court finds that a human or peoples' right has been violated, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation," reads Article 27 of the Protocol. This clause is more comprehensive than all the present laws requiring victims of violations of human rights to have access to remedies. The right to an effective remedy is described in Article 13 of the ECHR, as is the right to

habeas corpus in Article 5(4) and the right to appeal in Article2 Protocol No. 7. The ACHR acknowledges Article 25's entitlement to judicial protection.

Other human rights agreements do not mandate that the remedy be "judicial," with the exception of Article 25 ACHR, which gives a right to appeal to "courts and tribunals." For instance, Article 2(3)(b) of the ICCPR accepts "judicial, administrative or legislative authorities" or "any other authority provided for by the legal system" of the state, giving each state a considerable margin of appreciation. The ECHR and ACHPR operate in a similar manner. Other non-treaty documents, such as the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which contains extensive protections for those who suffer monetary losses, physical harm, or mental harm (UNGA Resolution 40/34), as well as declarations, resolutions, and other texts, also address the right to an effective remedy. Victims have a right to compensation and should be made aware of this entitlement.

Remedial justice's primary goal is to make up for wrongs done to victims. In order to aid the victims and dissuade offenders from committing further wrongdoing, corrective justice often aims at restoration or recompense for loss. There are significant differences in how supervisory bodies award compensatory damages. The Human Rights Committee and other UN oversight organisations sometimes urge that nations provide compensation or other remedies, but they never mention the precise sums or other types of reparation that may be required. Regional human rights organisations, like the European and Inter-American Courts, have the authority to specify the kind of damages and remedies that the state must provide.

The Human Rights Committee of the United Nations has said on certain occasions that a state that has violated human rights must undertake to look into the circumstances, take necessary measures, and bring those held accountable for the crimes to justice. A key component of the Committee's approach to remedies is guarantees of non-repetition; typically, it urges nations to take action to prevent similar breaches from happening in the future. In addition, the Committee demanded that the applicants receive an effective remedy in a number of prisoner cases involving Jamaica and Trinidad and Tobago and suggested appropriate remedies, including: a) release; b) additional clemency measures; c) payment of compensation; d) improved conditions of confinement; e) release from prison; f) medical care; and g) commutation of the sentence (e.g., Thomas v. Jamaica, LaVenda v. Trinidad Furthermore, the Human Rights Committee notes in General Comment 29 that despite the fact that Article 4, paragraph 2's list of non-derogable provisions does not include the right to an effective remedy, "the State party shall comply with the fundamental obligation under article 2, paragraph 3, of the Covenant to provide a remedy that is effective" when a state of emergency is in effect.

The Court and the Inter-American Commission have both suggested solutions. In recent years, the Inter-American Commission has begun to negotiate amicable agreements incorporating extensive remedies and significant compensatory damages. The Commission has advocated court system reform, criminal investigation, prosecution, and punishment of offenders, adoption or amendment of laws, and assurances for the protection of witnesses in addition to or instead of monetary compensation. The Inter-American Court has used its remedy-related authority the most broadly of any supervisory body. It has granted monetary and non-monetary remedies, as well as pecuniary and non-pecuniary damages. Additionally, the Court has used creativity to manage every element of the awards, including creating trust funds and keeping cases open until the remedies awarded have been properly implemented.

The African Commission has offered specific advice on how to proceed in a number of situations, urging the release of those who were unfairly detained and calling for the repeal of legislation that was determined to be incompatible with the Charter. The Commission has not spoken about the extent of its corrective authority, but in a case involving Nigeria, it said it would monitor state compliance with its recommendations.

## CONCLUSION

In order to defend human dignity, advance freedom and equality, guarantee social justice and wellbeing, maintain the rule of law, and encourage international collaboration, substantive human rights are of utmost significance.

These rights act as the cornerstone of a fair and inclusive society in which everyone is treated with dignity and has their rights maintained. Substantive human rights enable people to live in accordance with their own choices and beliefs by ensuring basic freedoms and outlawing discrimination.

They also create systems of accountability and provide a legal framework for dealing with power abuses. Furthermore, realising one's fundamental human rights promotes social fairness, opportunity equality, and the general welfare of both people and communities. A world where everyone's rights are recognised, safeguarded, and upheld depends on their universal acceptance and fulfilment. As the foundation of a fair and compassionate society, it is essential for governments, organisations, and people to protect and advance substantive human rights.

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# CHAPTER 9

# A STUDY ON RIGHTS TO FREEDOM OF EXPRESSION AND RELIGION

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**ABSTRACT:**

In order to protect human dignity, advance freedom and equality, ensure social justice, and defend the rule of law, substantive human rights are essential. This essay emphasises the role of substantive human rights in building an inclusive and fair society. The study places a strong emphasis on important issues including defending human dignity, advancing freedom and liberty, preventing discrimination, promoting social justice and wellbeing, upholding the rule of law, and fostering international collaboration. A comprehensive spectrum of inalienable civil, political, economic, social, and cultural rights are included in substantive human rights. These rights provide a foundation for people to live in dignity, free from prejudice and mistreatment. They promote international harmony and cooperation and help build transparent, inclusive societies. The report emphasises the critical part that substantive human rights play in creating a society where each person's rights are recognised and upheld.

**KEYWORDS:**

Accountability, Dignity, Equality, Freedom, Human Rights, Non-Discrimination, Social Justice.

## INTRODUCTION

Without the freedom of speech, other rights are challenging to obtain and protect. The battle for free speech by European lawmakers in the 17th century is when the right to freedom of expression first emerged. Since that time, the globe has seen an ongoing fight for the right to free speech and the press, which often coexists with efforts to curtail the authority of governments. The right to free speech may be seen as a crucial component of an individual's defences against the state, just as the repression of that right is crucial to tyranny. As the basis for political and religious activity, freedom of expression is often practised with the rights to free speech and assembly.

State duties in connection to freedom of speech are unambiguous and immediate under current international accords. However, like with other types of liberty, unlimited freedom of speech may result in the violation of others' rights. Many constraints and restrictions have been placed on the right to free speech, often more severely than on other rights. The majority of restrictions in the past have dealt with the expression of ideas that are opposed to established institutions, ideologies, or religions. Additionally, under the sake of national security, governments often impose restrictions on free speech during times of conflict. The intricacy and significance of freedom of speech as a tenet of democracy have generated a wealth of case law before national courts and global oversight bodies [1], [2].

The right to freedom of speech is established under Article 19 of both the UDHR and the ICCPR. According to Article 19 of the UDHR, "everyone has the right to freedom of opinion and expression, including the freedom to hold opinions without interference and the freedom to seek, receive, and share information and ideas across frontiers through any media." Article

13 of the CRC and CMW defines freedom of speech. Additionally, the CRC mandates that states ensure that children who are able to develop their own opinions may do so freely and that such opinions will be taken into consideration in line with the child's age and maturity (Article 12). The regional conventions' Articles 10 ECHR, 13 ACHR, and 9 ACHPR all have clauses pertaining to the freedom of speech [3], [4].

The right to seek, receive, and transmit information and ideas of all types via any medium is a complicated one that is included in the freedom of speech and opinion. (See Article 19 ICCPR and Article 10 ECHR) The exercise of this right "carries with it special duties and responsibilities." As a result, in general, human rights legislation permits certain constraints or limitations on the right to free speech. These restrictions "shall only be such as are provided by law and are necessary: a) for respect of the rights or reputations of others; b) for protection of national security, of public order (order public), or of public health or morals," according to Article 19 of the ICCPR. These restrictions are supplemented by additional conventions, including those "for the moral protection of childhood and adolescence" (Article 13(4) ACHR), "for the restriction of any propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds, including those of race, colour, religion, language, or national origin," (Article 13(5) ACHR), and Additionally, Article 10 of the ECHR expressly grants the state extensive latitude in granting media licences.

The Inter-American Court addressed freedom of speech in its Advisory Opinion No. 5 on Membership in an Association Prescribed by Law for the Practise of Journalism, which is the Inter-American legal framework. In accordance with the African system, the African Commission issued the Declaration of Principles on Freedom of Expression in Africa in 2002. The document highlights the "fundamental significance of freedom of expression as an individual human right, as a pillar of democracy, and as a means of ensuring respect for all human rights and freedoms." The Declaration aims to protect that right and addresses issues such as restrictions on that freedom, states' obligations to support private broadcasting and diversity of information, freedom of information, the independence of broadcast and telecommunications regulatory bodies, defamation laws, criticisms of media content, and attacks on media professionals [5], [6].

The OSCE also discusses the right to free speech. Conditions for journalists and information transmission are among the criteria governing relations between participating governments set down in the Helsinki Final Act (1975). Both the Madrid protocol (1983) and the Vienna document (1989) have clauses that support media exchanges. State governments also agreed to support journalistic endeavours and uphold their copyrights. The Copenhagen Declaration of 1990 states in paragraph 9 that "[e]veryone has the right to freedom of expression, including the right to communication." This right includes the freedom to express one's beliefs freely, without hindrance from the government, and without respect to national boundaries. The OSCE Representative on Freedom of the Media post was created in December 1997 in order to guarantee a high degree of adherence to the norms and standards approved by the OSCE member nations. The Representative on Freedom of the Media's job is to keep an eye on important media developments in OSCE member states in order to provide early warnings about freedom of speech abuses. Additionally, he or she is required to support participating governments by arguing for and encouraging complete adherence to OSCE obligations and values surrounding freedom of speech and free media.

Both the CoE and the OSCE have recently released statements on the freedom of speech online. States commit to upholding the principles set forth in the CoE Declaration on

Freedom of Communication on the Internet from May 30, 2003, which establish, among other things, that internet content should not be subject to restrictions that go beyond those imposed on traditional media and that authorities should not restrict access to information and other forms of communication on the internet. Online censorship is expressed as alarming in the OSCE Recommendation on Freedom of the Media and the Internet.

The safety of professionals, especially journalists, whose bodily integrity is at risk when freedom of speech is not adequately safeguarded, has received special attention in a number of international fora. Civilian journalists operating in regions of armed conflict are given special security by the First Protocol (1977) to the 1949 Geneva Conventions military-employed war reporters are considered "soldiers".Some specialty UN organisations are dedicated to advancing freedom of speech. For instance, as part of its efforts, UNESCO has encouraged freedom of speech, press freedom, independence, and media plurality. In this context, UNESCO has passed a number of resolutions resolutions 'Promotion of independent and pluralist media' (1995) and 'Condemnation of violence against journalists' [7]–[9].

## DISCUSSION

Possible restrictions under numerous international norms indicated above impair the freedom of speech. Additionally, government initiatives that control the media, engage in propaganda, or impose other restrictions on the press, such as licencing requirements, economic measures, or information access restrictions, can distort freedom of expression and its generally recognised limitations. A significant corpus of case law has developed around the right to freedom of speech, progressively defining both the right itself and its restrictions. The right to freedom of speech has been the subject of several cases before the Human Rights Committee. For instance, it has determined that imprisoning a trade leader for endorsing a strike and denouncing a government threat to send in troops violated his right to freedom of expression, but convicting someone under a law that made debunking the Holocaust illegal served a legitimate purpose.

In another instance, the Committee rejected a complaint claiming a breach of a rule prohibiting the transmission of anti-Semitic sentiments through recorded telephone calls. (J.R.T. and the W.G. Party v. Canada) The complaint was determined to be inadmissible because hate speech was obviously incompatible with the rights guaranteed by the Covenant. The Committee has argued that commercial speech, such as outdoor advertising, is protected by the right to free speech, and that a journalist's right to information was violated when he was denied full access to parliamentary press facilities in his country for an undisclosed reason.put a legal obligation on the government to gather and share data (Guerra v. Italy). In a 2003 case (Krone Verlag GmbH & Co KG v. Austria (no. 3), the Court determined that Austrian courts had overstepped their bounds of appreciation by ordering a company to refrain from comparing its price to that of a competitor without also mentioning variations in their reporting styles.

For example, Bishop Gerardi v. Guatemala (Case 7778), one of the cases filed before the Inter-American Commission, dealt with violence against or murder of journalists as well as intimidation, threats, and harassment. The Interamerican Court addressed preventative censorship in a case where it was decided to prohibit the showing of a "blasphemous" movie. In this instance, the court ruled that although certain previous censorship is possible, prior censorship for blasphemy is not admissible under the umbrella of "moral protection of the young." Olmedo Bustos et al. v. Chile (the "Last Temptation of Christ Case"), the Court determined that there had been a breach of the right to freedom of speech. According to the Court's advisory opinion, obligatory participation in a professional organisation for the

practise of journalism cannot be justified since it denies non-licensed journalists their rights under the American Convention.

The African Commission on Human and Peoples' Rights has addressed the right to freedom of speech in a variety of contexts within the African system. It has discovered, among other things, the incarceration of union and opposition party members. The Commission has ruled that governmental retaliation intended to obstruct an organization's lawful efforts to inform and educate people about their rights is a blatant infringement of their right to freedom of speech. Finally, the Commission emphasised the intimate connection between the right to freedom of speech and the rights to association and assembly in a case involving the conviction and death of community organisation leaders after a march.International organisations and national governments have worked to advance additional criteria to safeguard certain aspects of the right because they see the significance of freedom of speech. A number of governments have passed laws to increase access to information, provide adequate access to the media, protect employees from retaliation for reporting the illegal activities of their employers, and protect personal information from being shared with anyone who is not expressly authorised to have it.

By, for example, employing subject-matter experts, international institutions have addressed the implementation and oversight of the right to freedom of speech. A Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression was appointed by the Human Rights Commission in 1993 (Resolution 1993/45 of the 5 March 1993). At its 58th session in 2002, the Commission on Human Rights (Resolution 2002/48) extended the authority. The reporter has touched on topics like how the right to freedom of opinion and expression helps promote and strengthen democratic systems and its advantages in other areas, like the effectiveness of education and information campaigns on HIV/AIDS prevention and has stated that "the exercise of the right to freedom of opinion and expression is a clear indicator of the level of protection and respect of all other human rights in a given society."

In 1997, the Office of the Special Rapporteur for Freedom of Expression was established by the Inter-American Commission on Human Rights. The Special Rapporteur's duties include raising public awareness of the value of upholding the right to freedom of expression, advising states on the adoption of progressive measures to strengthen the right, writing reports and conducting studies, and responding to complaints or other instances of the right being violated in OAS member states. The Inter-American Commission may be asked to propose preventative measures from the member states by the Special Rapporteur in order to safeguard the personal integrity of journalists and media reporters who are in danger or run the risk of suffering irreparable damage. Standards for the protection of journalists have been developed within the OSCE framework, and much effort has gone into fostering the sharing of knowledge and experience regarding the practical application of press freedom. In 1997, the OSCE created the post of Representative on Media Freedom. In order to offer early notice of breaches, the Representative's role is to monitor important media developments in OSCE member nations.

Additionally, the Representative supports and advocates for complete adherence to OSCE obligations and principles related to free speech and the media (see II.5). On December 18, 2003, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, and the UN Special Rapporteur on the Promotion and Protection of the Freedom of Opinion and Expression issued a joint statement denouncing ongoing attacks on journalists and the potential threat that media concentration poses to editorial independence. They acknowledged the interdependence between a free press and an

independent court as well as the possibility that editorial independence may be threatened by a concentration of power in the ownership of the media and communication channels. Additionally, they denounced criminal defamation as an unjustified limitation on the right to free speech.

**The right to freedom of conscience and religion**

Conscience and religious freedom protections are strongly linked to other substantive rights. For instance, the freedom of speech, assembly, and association are essential for maintaining religious convictions and engaging in religious practise. Thoughts and opinions are intangible if they haven't been stated, and a person only has value in their beliefs if they can articulate them. Private freedom of thought and religion is an unalienable right that cannot be constrained in any way. The right to freedom of thought, conscience, religion, belief, and opinion is closely related to the right to privacy because the guarantee of the value of freedom of thought and religion implies that one cannot be subjected to a treatment intended to change one's thinking process, be forced to express thoughts, to change opinions, or to divulge a religious conviction. The right to freedom of thought and religion safeguards against governmental indoctrination. No punishment may be imposed for having any opinion or for changing one's religion or philosophical beliefs.

The right to publicly express one's religious convictions via worship, observance, practise, or teaching is subject to restrictions, and it may be difficult to define what exactly constitutes a freedom. For example, is it ever acceptable to refuse to join the military or pay taxes out of religious conviction? Many states have constitutional traditions that contain safeguards for the freedom of thought, conscience, religion, and belief; measures are included in laws and regulations to prohibit and penalise interference with legally recognised expressions of religion or belief. The freedom of thought, conscience, religion, and belief are only partially enjoyed by millions of individuals, and there are many instances when the values of non-discrimination and tolerance are violated. The majority of human rights agreements do permit less restrictions on the right to practise one's religion than on rights like the right to peaceful assembly and the right to free speech.

The international oversight organisations have dealt with a number of messages involving infringements on the right to freedom of religion and thinking. The Human Rights Committee has addressed several individual communications relating to the freedom of religion and thinking. For instance, the Committee determined that preventing inmates from shaving their beards, attending religious services, and removing their prayer books violated this freedom. According to the Committee's statement in Boodoo v. Trinidad and Tobago, the freedom to manifest religion or belief in worship, observance, practise, and teaching encompasses a broad range of acts and the concept of worship extends to ritual and ceremonial acts giving expression to belief, as well as various practises integral to such acts." However, the Committee determined that it did not infringe a Sikh's right to exercise his religion freely by forcing him to wear a safety helmet while at work.

Conscientious objection to military service may be deduced from Article 18 ICCPR, contrary to current jurisprudence from the Committee. The Committee expresses concern about, among other things, "any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established or represent religious minorities that may be the target of hostility by a predominant religious community" in this general comment. The Committee asserts, among other things, that designated state religions may not be used as an excuse for violating a person's right to religious freedom and that Article 18(2)

prohibits coercion that might damage a person's ability to maintain their religion or belief, including threats of violence.

All governments must implement effective measures to prevent and end discrimination based on religion or belief, according to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Declaration is not a UNGA resolution, hence it has no mechanisms for monitoring or enforcing the rules and regulations it lays forth, but in 1986, the Human Rights Commission named a Special Rapporteur on Religious Intolerance with a mandate based on the Declaration. Among other things, the Special Rapporteur draughts reports, travels to other nations, receives letters, and advises governments.

Several matters involving the freedom of religion and thought have been brought before the oversight bodies within the regional systems. Many of the issues involving the right to freedom of conscience and religion that have been submitted to the European Court of Human Rights have to do with religious freedom in Greece. In Manoussakis v. Greece, the Supreme Court determined that governments may not impose excessively onerous regulations on how to run a house of worship. The values of Article 9 are the cornerstone of a democratic society, according to the Court, who stated this in the case of Kokkinakis v. Greece: "It is in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but is also a precious asset for atheists, agnostics, sceptics and the unconcerned."

The right of parents to make sure that their children get religious or moral education that is consistent with their own beliefs is another facet of religious freedom. In this case, the court ruled that the state is not permitted to pursue an educational objective that can be seen as disrespecting the parents' philosophical and religious beliefs. In addition to indoctrination, the Court has distinguished between "improper proselytising" and "bearing witness to Christianity," with the former potentially including violence or brainwashing (Kokkinakis v. Greece). Finally, it was claimed that the applicant's belief in and support for the idea of assisted suicide for herself may be applied to her belief in and support for pacifism under Article 8, which had previously covered ideas like those of veganism and pacifism. The Court rejected this because, according to the ICCPR, her claims did not involve any manifestation of a religion or belief through worship, instruction, practise, or observance (Pretty v. The Union Kingdom). The Court cited, among other cases, a ruling by the European Commission that not all actions motivated by religion or belief qualify as "religious practise" (Arrowsmith v. The United Kingdom). The Commission has decided on many instances involving Jehovah's witnesses and legal restrictions on the right to freedom of conscience and religion under the InterAmerican system. According to the Commission, it is against the law to prosecute adherents of that faith for refusing to take an oath of loyalty, acknowledge the state and its symbols, or enlist in the military

## CONCLUSION

In order to defend human dignity, advance freedom and equality, guarantee social justice and wellbeing, maintain the rule of law, and encourage international collaboration, substantive human rights are of utmost significance. These rights act as the cornerstone of a fair and inclusive society in which everyone is treated with dignity and has their rights maintained. Substantive human rights enable people to live in accordance with their own choices and beliefs by ensuring basic freedoms and outlawing discrimination. They also create systems of accountability and provide a legal framework for dealing with power abuses. Furthermore, realising one's fundamental human rights promotes social fairness, opportunity equality, and

the general welfare of both people and communities. A world where everyone's rights are recognised, safeguarded, and upheld depends on their universal acceptance and fulfilment. As the foundation of a fair and compassionate society, governments, organisations, and people need to protect and advance substantive human rights.

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# CHAPTER 10

# A BRIEF DISCUSSION ON RIGHTS TO INTEGRITY

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**ABSTRACT:**

A basic human right, the right to integrity includes the defence of one's physical and mental health as well as their autonomy and dignity. In order to promote and protect people's rights and well-being, this article gives a general overview of the rights to integrity. The examination examines important topics such the right to privacy, the right to be free from torture, and the right to be protected from cruel, inhuman, or degrading treatment. It looks at how crucial maintaining integrity is in a variety of settings, such as the criminal justice system, the healthcare industry, and online areas. The article also discusses the duties of governments and other players in upholding the integrity rights, as well as the need for strong legal systems and effective legal remedies.

**KEYWORDS:**

Autonomy, Dignity, Human Rights, Integrity, Personal Security, Privacy, Protection.

## INTRODUCTION

States must defend the right to life and uphold the ban on torture and cruel treatment if they value the integrity of the individual. The subject of both rights is covered in this section. Integrity rights are really important. This is evident from the facts that a) unlike some other rights, which contain clauses acknowledging the permissibility of restricting them on grounds like the need to maintain public order, it is never possible to justify restricting these rights, and b) these rights cannot be waived in the event of a public emergency. These two rights are regarded as jus cogens norms, or basic standards that apply to all nations and cannot be modified even by internal legislation or treaties.

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The enjoyment of all other rights and freedoms enshrined in international human rights agreements would be rendered meaningless without the right to life; there can be no rights if there is no life. For this reason, the right to life is regarded as a basic human right. The right to life is a fundamental right from which no derogation is allowed under the majority of human rights instruments, even in times of a public emergency endangering the life of the nation (see Article 4(2) ICCPR, Article 15(2) ECHR, and Article 27(2) ACHR). This is due to the fundamental importance of the right to life to the protection of human rights.

Regarding the right to life, there is a point that is often ignored that has to do with how the concept is understood. The Human Rights Committee released a statement stating that the

term "inherent right to life" under the ICCPR should not be interpreted in a restrictive manner and that the protection of the right to life entails both a positive obligation to protect the right to life as well as a negative obligation to not take someone's life, except in certain exceptional circumstances. Regarding positive duties, the Committee thought that states parties should do all within their power to lower infant mortality and raise life expectancy, notably via steps to end epidemics and hunger [3], [4].

Remedy for breaches is another crucial factor in relation to the right to life. The Human Rights Committee has argued that in terms of the right to life, solely disciplinary and administrative sanctions cannot be regarded as appropriate and effective remedies within the sense of Article 2(3) ICCPR. According to the Inter-American Court of Human Rights, "individuals lack true freedom if they cannot design their lives in accordance with their own goals and strive to realise their desires"; compensation aims to put the victim back in the position they held prior to the violation or to make sure they receive other redress that is appropriate to the wrong they experienced.

According to the Universal Declaration, "everyone has the right to life, liberty, and the security of person." The right to life is addressed separately from the rights to liberty and security in every human rights agreement. Several human rights documents, including Article 6 of the ICCPR, Article 6 of the CRC, Article 9 of the CMW, Article 2 of the ECHR, Article 4 of the ACHR, and Article 4 of the ACHPR, further enhance the right to life. The preservation of the right to life will be considered under the following headings: a) the freedom from state-authorized homicide; b) missing persons; c) the death penalty or capital punishment; and d) positive responsibilities resulting from the right to life. This section will also look at various interpretational issues relating to the right to life, such as the beginning and end of the protection of life. As a result, the unborn child/abortion and euthanasia/the right to die will be discussed.

No one may be 'arbitrarily' deprived of their life, according to the ICCPR. No deviation from Article 6 is permitted, even in cases of urgency, according to Article 4. The European Convention's Article 2 forbids the "intentional deprivation" of life, declares that everyone has a legal right to life, and places restrictions on the circumstances in which loss of life is permitted. According to Article 15 of the ECHR, this right cannot be waived during a war or emergency, with the exception of fatalities attributable to legal acts of war. According to Article 4(1) ACHR, everyone has the right to have their life respected. In accordance with Article 27, Article 4 is inapplicable during times of war, public danger, or other emergencies. The ACHPR's Article 4 declares that people are inviolable. Everyone has a right to respect for their life and the integrity of their person, and this right cannot be unilaterally taken away from them.

Extrajudicial executions, a fundamental violation of the right to life, need special attention. The term "extra-judicial, summary, and arbitrary executions" is used in the UN system to describe these "killings committed, condoned, or acquiesced by governments." These phrases did not initially completely overlap, but over time the lines separating the three aspects have became fuzzier. Even the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions, one of the most significant international documents in this field, falls short of defining these kinds of executions [5], [6].

Without a doubt, the nature of extrajudicial killings has evolved; these crimes are increasingly connected to armed conflict or civil war scenarios. A Special Rapporteur on Extra-legal, Summary, and Arbitrary Executions was appointed by the UN Commission on Human Rights in 1982. The Special Rapporteur primarily bases his work on information that

non-governmental organisations, governments, private citizens, and international bodies bring to his notice. Specific instances of purported extrajudicial, summary, or arbitrary killings, death threats, and/or general information regarding problems relating to the right to life are all included in the communications received by the Special Rapporteur. Before being sent to the relevant Government, the Special Rapporteur thoroughly reviews and analyses every material received. Examining specific situations and conducting on-site inspections are among the duties of the Special Rapporteur. Additionally, the Special Rapporteur often delivers "urgent messages" in situations involving impending executions.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions (1989) are two UN documents that should be mentioned in this context. These guidelines aid in assessing what constitutes an illegal deprivation of life even if they are not legally obligatory. International human rights law specifically prohibits racial murders among the different types of killings committed by state agents. According to Article 5 of the CERD, governments must take action to outlaw racial discrimination and to protect citizens from physical damage or violence "whether committed by public officials or by any other person, group, or institution." The Convention on the Suppression and Punishment of the Crime of Apartheid (Article II) defines "apartheid" as a "crime against humanity" and outlaws the murder of individuals who identify as a particular racial group. According to the Convention on the Prevention and Punishment of the Crime of Genocide, genocide is defined as a set of acts that are "committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such," including "killing members of the group [7], [8]

## DISCUSSION

### Disappearances

Human rights abuses have a long history of "disappearances." There are a variety of situations when disappearances are most likely to happen. Internal armed conflict, emergency declarations, and high degrees of militarization are the most obvious examples of these. Violence and confusion that follow disappearances often make it difficult to conduct an inquiry. The fact that many disappearances are carried out by non-governmental organisations might make things much more difficult. On the other side, official authorities (not always the central government) are often in charge of missing persons cases and extrajudicial killings. The absence of judicial independence, inefficient protection of the habeas corpus right, non-compliance with the quick and accessible registration of prisoners, and impunity for breaches are all aspects of the judiciary's inefficiency that aid criminals in their acts.

Finding a definition of disappearances that covers all the aspects of this crime has proven to be exceedingly challenging. 'Disappearances' involve violations of the right to liberty and security of person, frequently involve torture and other ill-treatment of the 'disappeared person' (including as a result of being 'disappeared' and isolated from one's family for a lengthy period of time), and frequently result in death. In fact, 'disappeared' people often don't show up again. (Article 3 of the Inter-American Convention on Forced Disappearance of Persons) It is regarded as a continuing crime when people are 'disappeared' and their fate and whereabouts are unclear. "Disappearances" have an overall negative influence on society by developing a culture of insecurity and anxiety. Last but not least, the effects of absence on family members may cause such agony as to qualify as torture or other forms of maltreatment.

The international community began taking action in the early 1990s to create new norms that would specifically prohibit the practise of disappearances and deal with both the victims and

the offenders. A Declaration on the Protection of All Persons from Enforced Disappearances was issued by the UN Commission on Human Rights in 1992. The Convention on the Forced Disappearance of Persons, which was approved at the Inter-American level in 1994, defined the concept of enforced disappearances that is used at the beginning of this section. "Enforced disappearance of persons" is defined in the Rome Statute of the International Criminal Court as "the arrest, detention or abduction of persons by, or with the consent, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

In its General Comment 6 on the right to life, the Human Rights Committee goes into more detail about the responsibility of states parties with respect to disappearances. To stop the disappearance of people, nations must implement definite and successful actions. They should set up efficient facilities and processes to fully look into incidents of missing and vanished people in situations when the right to life may have been violated. Although 'disappearances' may sometimes result in extrajudicial murders, this is not always the case. In some cases, people who have been 'disappeared' and were first believed to have been slain or formally proclaimed dead have subsequently come back to life. However, extrajudicial killings and disappearances have two things in common: the (virtual) eradication of political rivals, whether actual or imagined, and the avoidance of responsibility. The Working Group on Enforced and Involuntary Disappearances is a ch6666arter-based UN entity that focuses primarily on disappearances.

This Working Group's primary responsibility is to help the family members of missing people learn what happened to them and where they may be now. The Working Group receives and reviews reports of disappearances presented by the families of the missing or human rights groups working on their behalf for this reason. The Working Group sends specific instances to the relevant governments after evaluating whether such reports meet a number of6 requirements. It asks them to conduct investigations and report back to the Working Group on their findings. Regardless of whether the relevant government has approved any of the current legal instruments that allow for an individual complaints process, the Working Group handles the countless individual instances of human rights breaches on a wholly humanitarian basis [7], [8].

It basically serves as a conduit for contact between missing individuals' families and governments, and it has effectively established a conversation with the majority of governments with an interest in resolving disappearance cases. In order to avoid delays in its efforts to save lives, the Working Group has also established an urgent action procedure under which the Working Group's Chairman is authorised to take action on reported cases of disappearance that occur between the Group's sessions. This was done with the intention of preventing irreparable harm.

The issue of impunity has lately drawn considerable attention in the context of missing persons cases and extrajudicial killings, not just in Latin America but also in other areas. Impunity is a state in which those responsible for extrajudicial killings, disappearances, and other breaches of human rights go unpunished and unchecked. Systematic impunity is likely to contribute to the quasi-justification of the unlawful activities performed by state personnel by the authorities in light of "special circumstances." Since impunity is both one of the root causes of enforced disappearances and a significant barrier to the resolution of cases, several countries and the UN Human Rights Commission have often urged for actions to end it.

**Death penalty or capital punishment**

Since the end of the 19th century, there has been debate concerning the death sentence. The first nations to do so were Costa Rica (1877), Portugal (1867), and Venezuela (1863). The death sentence has not been used in any of the Council of Europe member states in recent years. Gradually, all of Europe's nations followed suit. There is no mention of the death penalty in the UDHR. Everyone has the right to life, liberty, and personal security, according to Article 3 of the UDHR. However, this clause cannot be read as outlawing the death sentence. The ICCPR clauses also fit this description. However, according to the ICCPR, only the most heinous offences are eligible for the death penalty, and neither pregnant women nor young criminals are eligible. The Second Optional Protocol to the ICCPR was approved by the UN General Assembly in 1989 with the goal of abolishing the death sentence. No one may be executed inside the borders of a state signatory to the Protocol, according to its rules. Additionally, parties commit to taking action to repeal the legal restrictions that permit the use of the death sentence. Except for the use of the death sentence during times of war, no reservations are permitted with regard to the Protocol.

The death penalty is also addressed in the ECHR. The Convention now includes a Sixth Protocol on the repeal of the death penalty. The death penalty must be abolished, as stated in Article 1 of the Protocol, although provisions are provided for the application of the death penalty as a punishment for certain actions during times of war or in the event of a danger of war. The death penalty has been abolished in all circumstances by Protocol No. 13, which the Council just accepted. This is the first international agreement that forbids the use of the death sentence under any circumstances. When it was made available for signing in May 2002, 36 nations did so; as of July 2004, 24 governments had ratified it. The Protocol's provisions are non-derogable, according to Article 15 of the ECHR, which means that no exceptions or reservations are allowed in the case of an emergency. Article 4(3) of the ACHR specifies that nations that have abolished the death penalty cannot reinstate it. In addition, the 1990-adopted Second Protocol to the ACHR prohibits the use of the death sentence. Article 27 of the ACHR forbids derogating from the right to life in times of emergency, just as the ECHR does.

There are no provisions pertaining to the death penalty in the ACHPR. The African Commission has passed a resolution titled "Urging States to Envisage a Moratorium on the Death Penalty" in which it "urges all state parties to the African Charter on Human and Peoples' Rights that still maintain the death penalty to fully comply with their obligations under the treaty and to ensure that persons accused of crimes for which the death penalty is a competent sentence are afforded all the guarantees in the African Charter." The African Commission urged nations that still use the death sentence to reserve it for the most severe offences and to think about eliminating it altogether in the same decision.A state may refuse to extradite someone who faces the death sentence in the state making the request, according to a number of extradition agreements (for example, see Article 11 of the European Convention on Extradition).

The Human Rights Committee now has the same opinion (see Judge v. Canada). Therefore, despite the fact that the death penalty's abolition is not explicitly required by general international law, as was said above, there is a tendency in that direction. The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) Aiming at the Abolition of the Death Penalty; Second Protocol to the American Convention on Human Rights Aiming at the Abolition of the Death Penalty; and Protocols No. 6 and 13 ECHR All contain the goal of abolition. This trend is also backed by a number of political resolutions that have pledged to gradually curtail the use of the death sentence (for example,

see UNGA Resolution 1997/12 from April 1997). It is also important to remember that the International Criminal Court (ICC), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Tribunal for the Former Yugoslavia (ICTY) all have laws that prohibit the use of the death sentence. Article 6(6) of the ICCPR, which states that nothing therein shall be claimed to delay or obstruct the abolition of capital punishment by any state party to the Covenant, further establishes the purpose of the international community to abolish the death penalty.According to the Human Rights Committee's interpretation of Article 6 (paragraphs 2 and 6) of the ICCPR, efforts taken to abolish the death sentence should be seen as advancements in the enjoyment of the right to life as defined by Article 40. However, there is disagreement about whether the death sentence and the right to life are compatible. For instance, the ICCPR keeps the death penalty only for the most egregious offences. A member of the Human Rights Committee made the following comment regarding this matter: "States parties are merely given the opportunity to be released from their obligations under Articles 2 and 6 of the ICCPR, namely to respect and ensure to all individuals within their territory and under their jurisdiction the inherent right to life without any distinction, and enables them to make a distinction with regard to persons having committed the most serious crimes."

One of the justifications offered by individuals opposed to the death sentence is that the possibility of killing an innocent person makes the practise unjustifiable. Evidence that several errors have been made in death sentences is used to support this claim. The arbitrariness and inequality of slavery is a further justification for its abolition. This line of argumentation contends that the death penalty picks an arbitrary group rather than the worst criminals, for example, depending on the calibre of the defence attorney. Furthermore, it is paradoxical that although death penalty seems to be legal according to international law (which forbids torture and other cruel, inhuman, or degrading treatment), corporal punishment is illegal. Given that the death penalty is not entirely outlawed by international law, it is crucial to guarantee that international norms and safeguards are followed in nations where the death penalty is legal. These norms and protections have been emphasised in a number of international treaties, as well as in remarks from the different human rights monitoring organisations and United Nations resolutions.

**Fair Trial Safeguards**

The human rights agreements also specify some procedural conditions that must be followed in situations involving the death sentence, in addition to substantive limitations on its application. These include, for instance, the global norms for a fair trial outlined in Article 14 of the ICCPR. Furthermore, the strictest requirements of due process must be observed in procedures that might result in the imposition of the death penalty. These include the independence, expertise, objectivity, and impartiality of judges and juries; the right to legal representation for all defendants facing the death penalty; and the need that defendants be treated as innocent unless proven guilty beyond a reasonable doubt. A breach of the right to life would result from failing to protect these standards in situations when the death penalty is applied. The many UN resolutions and recommendations made by treaty organisations make it abundantly evident that trials for crimes punishable by the death need stronger protection of due process than trials for crimes punishable by lesser penalties.

In addition, Article 6(4) of the ICCPR mandates that persons who have been given the death penalty have the right to request a pardon or commuting of their sentence. According to Article 4(6) of the American Convention on Human Rights, "capital punishment shall not be imposed while such a petition [amnesty, pardon, or commutation of death sentence] is pending decision by the competent authority." This provision is likewise set down in the

Geneva Conventions for protected civilians and prisoners of war (see Article 106 of the Third Geneva Convention and Article 73 of the Fourth Geneva Convention).

Other procedural requirements that states must adhere to include, among others, allowing sufficient time between sentencing and execution, informing those in charge of carrying out executions of the status of cases, prohibiting public executions, and treating death row inmates in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners to prevent aggravating their suffering.

## CONCLUSION

Upholding one's own autonomy, dignity, and right to bodily and mental well depends on one's ability to exercise their right to integrity. These rights include the right to privacy and security as well as defence against torture and other cruel, inhumane, or degrading treatment. In a variety of settings, including those involving healthcare, criminal justice, and digital places, it is crucial to respect and protect these rights. States have a duty to guarantee the defence of peoples' rights to integrity by putting in place efficient legal frameworks, guidelines, and remedies. As well as upholding moral norms and respecting people's rights, players in these sectors including healthcare providers, law enforcement organisations, and technological firms should. Promoting and upholding people's intrinsic rights to integrity helps to maintain their general well-being and sense of worth in society by encouraging others to cherish and uphold these rights.

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# CHAPTER 11

# POSITIVE OBLIGATIONS ARISING FROM THE RIGHT TO LIFE

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**ABSTRACT:**

Positive responsibilities are legal requirements placed on nations to take proactive steps to save and preserve human life. This essay gives a general overview of the duties arising from the right to life and its importance in safeguarding people's safety and well-being. The research looks at important issues such the need to avoid willful death, the obligation to look into violations and punish individuals accountable, and the obligation to put in place efficient emergency response and disaster management systems. The relationship between these commitments and the role played by governments in upholding them via law, regulations, and resource distribution are examined in the article.

**KEYWORDS:**

Accountability, Disaster Management, Human Rights, Investigation, Positive Obligations, Prevention.

## INTRODUCTION

States are required to protect the lives of persons under their authority by taking suitable measures in addition to abstaining from deliberate and illegal life deprivation. State compliance is necessary with a number of positive responsibilities that human rights oversight organisations have highlighted. The responsibility to investigate homicides and to punish criminals should be included among these positive tasks. By interpreting the right to life in conjunction with the general obligations to "guarantee" (Article 1(1) ACHR), "ensure" (Article 2(1) ICCPR), or "secure" (Article 1 ECHR), we find that states have a responsibility to set up efficient facilities and procedures to investigate killings and cases of missing or "disappeared" persons in situations that may involve a violation of the right to life. These obligationswhich the European Court frequently refers to as the "state's procedural obligations to protect the right to life" concern how the state must "proceed" after a deprivation of life occurs within its borders or after someone vanishes.

The Inter-American and European Courts have emphasised that even when there is no proof that state agents were involved in the killing or disappearance and even when the victim's family or others have not formally reported the killing to the authorities, the state is still required to conduct a "effective" investigation (see, for example, Velásquez Rodrguez v. Honduras and Yasa v. Turkey). When the missing individual was last kept in state custody, this responsibility was stricter. In such cases, the state is required to provide some sort of independent surveillance as well as to offer a credible explanation for the detainee's fate [1], [2].

The state would be violating the right to life if it did not launch a formal inquiry. However, it would also constitute a violation of the agreement if, after an inquiry, the supervisory organs determined that the investigation was "ineffective." The human rights monitoring bodies have cited a number of factors that can make an investigation "ineffective," such as the fact that it wasn't started right away after a person died, that it was brief and limited in scope, that it

contained oblique failures to take obvious actions, or that the investigating bodies lacked independence. States must defend the right to life by prosecuting those who commit senseless deaths. A state has a responsibility to punish offenders and bring those accountable to justice once an arbitrary death occurs inside its borders. The Human Rights Committee believes that some kind of criminal action is required. As Article states, the state may be required to use criminal procedures in the case of a breach of the right to life if disciplinary and administrative actions against the perpetrators are insufficient to entirely absolve the state of its international responsibilities.

**The Unborn Chil**

The issue of whether the unborn child is safeguarded when the right to life is upheld arises. For instance, Article 1 of the ICCPR states that "every human being" possesses the inherent right to life, but "everyone" and "every person" are used to refer to other rights. The issue of whether "every human being" has a wider connotation than "everyone" and may thus be taken to encompass the unborn child is raised by this use of distinct wording. The Human Rights Committee has not explicitly addressed this matter. However, it has discovered that, for instance, the criminalization of abortion might have effects on the right to life in both its caselaw and its concluding conclusions. In this case, the Committee believed that suicides by young women who are prevented from having an abortion because the procedure has been made illegal by the state may constitute a breach of their right to life [3], [4].

The Committee requested that the government adopt "all necessary legislative and other measures to assist women and particularly adolescent girls, faced with the problem of unintended pregnancies, to obtain access to adequate health and educational facilities." (1998) Concluding Observations on Ecuador. Such viewpoints have the implication that nations must carefully consider the effects of making abortions illegal. Anti-abortion legislation might result in needless deaths, which would raise questions about our responsibility to guarantee that everyone has the right to life. At the Inter-American level, the unborn child's situation is more transparent. The right to life must be safeguarded "in general, from the moment of conception," according to Article 4 of the American Convention. However, it seems that the Inter-American Commission questions whether the American Convention's Article 4 offers complete protection.

The right to life is protected, but it's unclear whether it also applies to the right to death. Euthanasia and assisted suicide are two closely linked topics. The act of euthanasia is when a third party purposefully causes someone's death for compassionate motives. An example would be administering a deadly injection at the patient's request to terminate his or her life. Contrarily, assisted suicide refers to a situation in which the individual doing the final act that results in death does so with the help of another person. An illustration of this would be someone taking a doctor-prescribed medication overdose. It is still unclear how euthanasia relates to the right to life since so few instances have been reported to international oversight authorities. For instance, it seems that Article 2 of the ECHR does not authorise euthanasia without restriction.

All regulatory agencies within the UN and the regional systems have addressed the right to life. The arbitrary deprivation of life is the topic that has seen the greatest development via case law. States are under a clear obligation not to murder individuals indiscriminately, according to the Human Rights Committee. It has been noted that this responsibility implies a positive duty for the state to look into all state murders and punish any unjustified deaths [5], [6]. For instance, the Committee determined in the case of Bautista de Arellana v. Colombia that "simply disciplinary and administrative remedies cannot be deemed to constitute

adequate and effective remedies within the meaning of Article 2(3) of the Covenant, in the event of particularly serious violations of human rights, in particular in the event of an alleged violation of the right to life." Therefore, the Committee concludes that only disciplinary and administrative remedies cannot be regarded as appropriate and effective remedies within the meaning of Article 2(3) ICCPR in the case of grave breaches of human rights, such as the right to life.

The Committee has also handled situations when the fatality could not be clearly linked to a police operation. In Dermit Barbato v. Uruguay, the Committee determined that a state would be in breach of the right to life if it failed to take reasonable precautions to safeguard the life of a person while they were in its care, either intentionally or unintentionally. In this instance, the state was tasked with prosecuting anybody found to be accountable for the death and providing the family with fair recompense. An intriguing aspect of this case is that the Committee decided it was unnecessary to conclude that the victim was murdered by state agents. Because the state did not take sufficient action to stop the victim's death while he was in their care, it was determined that Article 6(1) of the ICCPR (the right to life) had been violated.

As far as infringing the right to life is concerned, the Human Rights Committee has acknowledged the involvement of law enforcement officials, particularly in the area of arbitrary murders, which it emphasises is an issue of the highest importance. It has been advised that the law should rigorously regulate and restrict the instances in which such authorities may deprive a person of his life. The Human Rights Committee has addressed the question of disappearances in a number of instances. For instance, in Bautista de Arellana v. Colombia, the Committee determined that the state's failure to bring criminal charges against and punish someone who is known to be accountable for a person's disappearance and later death constitutes a violation of their right to life under Article 6 ICCPR. For simply imposing disciplinary measures on the military personnel responsible for the killing of political activist Nydia Erika Bautista de Arellana in this ICCPR.

Additionally, the Committee determined that there had been a violation of the right to an effective remedy because the compensation granted to Nydia's family by an administrative tribunal did not meet the criteria for an adequate and effective remedy under Article 2(3) of the ICCPR in the case of particularly severe human rights violations (see also Mojica v. Dominican Republic). The Committee determined that the mother of the victim in Quinteros v. Uruguay, which was taken to trial by the victim's mother, was also "a victim of the violations of the Covenant, in particular, of Article 7 suffered by her daughter." As a result, the mother's worry and agony over her daughter's absence and the ongoing uncertainty about her fate constituted a breach of Article 7 of the ICCPR. The "anguish and distress" endured by the family members of a "disappeared person" was also declared to be a breach of Article 3 (ill-treatment) by the European Court [7], [8].

## DISCUSSION

When examining the fairness of trials that end in a death sentence, the Human Rights Committee has mostly dealt with instances involving the death penalty. The Committee determined that any errors in the trial constituted a violation of both the requirements of the right to life and the right to a fair trial (see, for example, Johnson (Errol) v. Jamaica). The notion established by the ECHR in the Soering case has been broadly adopted by the Human Rights Committee. The Committee said that the death sentence "must be carried out in such a way as to cause the least possible physical and mental suffering" in its General Comment 20. In Ng v. Canada, the Committee determined that Canada had violated Article 7 (prohibiting

torture and ill-treatment) by extraditing Ng to California because "execution by gas asphyxiation may cause prolonged suffering and agony and does not result in death as swiftly as possible, as asphyxiation by cyanide gas may take over ten minutes." The Committee recently declared that nations that have abolished the death penalty are required to refrain from placing people in actual danger of it being used. In the case of Judge v. Canada, the Committee found that Canada had violated Article 6 of the Covenant by deporting the author to the United States, where he was facing the death penalty. Canada had thus created the essential link in the chain of events that would have allowed for the author's execution.

Abortion is consistent with Article 6 of the ICCPR, according to the Human Rights Committee, and anti-abortion legislation may violate a woman's right to life. In relatively few instances, the Committee has looked into the euthanasia debate. In this context, it is important to remember that the Human Rights Committee highlighted its reservations about the Dutch law governing review procedures for assisted suicide and euthanasia. In its remarks, the Committee said that it thought the ICCPR compelled the state to undertake the strictest scrutiny to ascertain if its commitments to protect the right to life as mandated by Articles 2 and 6 of the Covenant was being met. Euthanasia and assisted suicide appear to be prohibited under the ICCPR except in the most extreme cases, such as "voluntary and well-reasoned requests, unbearable circumstances, and where no other reasonable alternative is available" (ICCPR Concluding Observations on The Netherlands 2001).

The ECHR seems to need a similar strategy to the ICCPR at the European level. The European Court determined that the death of three terrorists suspected of taking part in a bombing operation constituted an unlawful taking of life because the authorities had not properly planned and controlled the use of force in McCann et al. v. The United Kingdom. In Kaya v. Turkey, the Court determined that there had been a breach of Article 2 ECHR, read in conjunction with Article 1 (responsibility to guarantee Convention rights), as a consequence of the lack of a thorough inquiry into a killing committed by armed personnel under dubious circumstances.

In a relatively small number of instances, the European Court has addressed the death sentence. The European Court determined that extraditing someone to a country where they face the death penalty does not, in and of itself, violate their right to life or their freedom from torture under the European Convention in Soering v. the United Kingdom, which involved the applicant's impending extradition from the United Kingdom to the United States where he feared receiving a death sentence and being subjected to the "death row" phenomenon. However, the Court determined that in this particular case, due to the applicant's personal circumstances, including his age and mental state at the time of the offence and the extremely long time he would spend on death row, his extradition to the United States would expose him to a real risk of treatment that would amount.

The old European Commission did not rule out the idea that, under certain conditions, the right to life may provide protection to the unborn child in a case involving abortion, but did not explain what those "conditions" were (see, for example, H v. Norway). However, as things stand, the justifications for abortion that have been upheld in specific instances seem to be fairly broad and are capable of addressing the majority of situations.

With relation to the right to life, the Inter-American Court of Human Rights has established a comparable pattern, including one of the most significant sets of case law on disappearances. Despite the fact that neither the American Declaration nor the American Convention expressly forbid this practise, the Court has determined in cases against Honduras that the state violated the right to life because it did not fulfil its positive duty to take preventive

action and displayed "lack" of respect for the right to life by engaging in or tolerating "arbitrary" life taking. In the historic Velásquez Rodriguez v. Honduras case, the Court determined, among other things, that Mr. Velásquez had vanished as a result of a systematic practise of disappearances that was "carried out or tolerated by Honduran officials" between 1981 and 1984. It was logical to assume that he had been murdered given the circumstances of his disappearance and the absence of information on his fate seven years after it happened. It must be assumed that his destiny was chosen by authorities that routinely killed captives without a trial and covered up their corpses to escape punishment, even if there was a little possibility of dispute in this regard.

This was a breach of Honduras' legal obligation under Article 4 of the American Convention to guarantee to every person subject to its jurisdiction the inviolability of the right to life and the right not to have one's life taken arbitrarily, together with the failure to conduct an investigation. In the case of Bámaca Velásquez v. Guatemala, the issue of disappearances was also crucially decided. In Villagrán Morales et al. v. Guatemala, the Inter-American Court expanded the positive responsibilities relating to the right to life to impose a responsibility on the state to help preserve human life. The Inter-American Commission has often discussed the issue of the death sentence and has taken an abolitionist stance in a number of instances. The Inter-American Commission determined that Peru had clearly violated its duties under the American Convention when it altered its constitution to include terrorism as a crime that would carry the death sentence. The implementation of the death sentence may be considered cruel, inhuman, or degrading treatment, according to the Commission's decision (see Report on the Situation of Human Rights in Peru.

A number of grave or widespread breaches of the right to life have been identified by the African Commission. Extrajudicial executions, denying medicine to a patient with a dangerous illness, arbitrary and harsh executions, and a number of arrests and detentions that were determined to breach Article 4 ACHPR even though no one was killed are a few examples of infractions. In a case against Chad involving disappearances, the African Commission determined that the state had broken Article 4 ACHPR because it had not made an effort to stop the disappearance or conduct an investigation later. Thus, it was determined that the state had violated Article 4 by failing to 'protect' those under its control (see Commission Nationale des Droits de l'Homme & des Libertés v. Chad, Communication 74/92). The African Commission has also discovered breaches of Article 4 in many incidents involving extrajudicial killings. For instance, the police shot and killed workers who were peacefully striking in three cases against Malawi (see Krishna Achuthan, Amnesty International on behalf of Orton and Vera Chirwa, and Amnesty International on behalf of Orton and Vera Chirwa v. Malawi, Communications 64/92, 68/92, and 78/92). The African Commission has also stressed in earlier instances involving Sudan that a state has a duty to protect everyone who resides within its borders, regardless of whether the killings were carried out by government troops.

**he right to freedom from torture or cruel, inhuman or degrading treatment or punishment**

Everyone agrees that torture is a violation of human rights and should not be condoned in any society. Freedom from torture is a right that is guaranteed by human rights law and humanitarian law in all conditions, including times of internal or international unrest, during a formal state of emergency, and during times of war. Although torture in all of its manifestations still happens often around the globe, it may be claimed that the ban on torture has become international customary law. Article 5 of the UDHR introduced the fundamental phrase, "torture or cruel, inhuman, or degrading treatment or punishment." Every human

rights treaty that has come after that has the same restriction. Although it was not the intention of the drafters of the Universal Declaration to discriminate between the many elements of this right, it has become essential due to the practises of several supervisory authorities, particularly the European Court. Prior to going into the key elements of this right, a few things need to be stressed. First off, the restriction is unambiguous and unaffected by any circumstance, even a state of emergency. Second, even if it can be shown that doing so is necessary to preserve law and order, using torture or other cruel, inhumane, or humiliating treatment or punishment is illegal (see, for example, Tyrer v. The United Kingdom). Last but not least, regardless of how well-founded the suspicion may be, the victim's behaviour is immaterial, and employing torture or other cruel, inhuman, or humiliating treatment or punishment is never justified.

Since it is exceedingly difficult to distinguish clearly between the many types of treatment or punishment, there is no definition of what constitutes cruel, inhumane, or humiliating treatment or punishment. These disparities, according to the Human Rights Committee, depend on the kind, intent, and intensity of the individual treatment. Furthermore, the European Court has noted that in order for mistreatment to be included in the ban, it must reach a minimum degree of severity. The evaluation of this minimum is relative since it is based on the specifics of the situation. The length of the therapy, its physical or mental side effects, the patient's age, sex, and overall health are all crucial considerations in this situation. It would seem that both an objective and a subjective criterion should be used to determine if torture or other cruel, inhuman, or degrading treatment or punishment has taken place. If a young, healthy adult is treated in a certain manner, the treatment may be considered demeaning; but, if that same treatment is meted out to a kid or an old person, it may be considered torture.

The CAT is now regarded as the most conclusive international legal principle on the issue of torture.The substantive articles, 1 through 16, deal with various types of cruel, inhumane, or humiliating treatment or punishment in addition to torture.The following rules are among the obligations placed on states by this convention: a) no statement obtained through torture may be used as evidence in any proceedings (Article 15); and b) every state party is required to bring legal action against anyone suspected of engaging in acts of torture, not just those who did so on its behalf. Section 7 The ICCPR offers defences against cruel, inhumane, or degrading treatment or punishment, including torture. The Human Rights Committee notes in its General Comment 20 that it is the responsibility of states parties to provide equal protection under the law and through other means against the acts forbade by Article 7, "whether committed by people acting in their official capacity, outside their official capacity, or in a private capacity." This ban includes extreme chastisement imposed as a deterrent against future crimes or as a disciplinary or educational measure. By means of extradition, deportation, or refoulement, States Parties should not subject any person to the risk of torture or other cruel, inhuman, or degrading treatment or punishment upon their return to another country.

The CRC offers protection in all crucial areas so that a kid might have a purposeful and honourable life. Article 37(a) protects against torture and other cruel, inhuman, or humiliating treatment or punishment and highlights that those under the age of 18 cannot be sentenced to death or life in prison without the prospect of release. Torture and other cruel, inhumane, or humiliating treatment or punishment are prohibited under Article 10 of the CMW. Although the phrasing is quite different, the regional versions of Article 3 ECHR and Article 5(2) ACHR both prohibit torture and other types of cruel treatment. Both conventions state that no one shall be subjected to torture or to inhuman or degrading treatment or punishment, which

is a general prohibition. However, the ACHR also states that "Everyone has the right to have his physical, mental, and moral integrity respected," emphasising that the state is also required to uphold the dignity of the individual. It is important to note that in 1985, a special agreement against torture was enacted at the Inter-American level. Article 5 of the American Convention on Human Rights (ACHR) forbids torture and other cruel, inhuman, or degrading treatment or punishment. The Inter-American Convention to Prevent and Punish Torture supplements this article and may be used before the Inter-American Court to interpret this section. It is important to note that the definition of torture in Article 2 of the Convention is wider than the term in Article 1 of the CAT and may possibly embrace additional acts of force.

The dignity is primarily protected under Article 5 ACHPR. There is a non-exhaustive list of actions that may result in the denial of dignity, and torture and cruel, inhuman, and humiliating treatment are specifically mentioned as instances. Since its founding in 1989, the European Committee for the Prevention of Torture (ECPT) has created a variety of criteria to safeguard prisoners against torture and other cruel, inhumane, or humiliating treatment or punishment. These include a variety of topics including isolation, rules, interaction with the outside world, and complaint and inspection processes.

## CONCLUSION

States are legally required to take proactive steps to safeguard and preserve human life as a result of positive responsibilities resulting from the right to life. These responsibilities include avoiding the willful taking of life, looking into infractions and holding offenders accountable, and setting up efficient emergency response and disaster management systems. States are essential in helping to satisfy these duties by putting in place the right laws, regulations, and policies and allocating the necessary funds. States contribute to the security and well-being of people by respecting these moral commitments, assuring the protection of people's right to life. States must prioritise carrying out these duties and put in place strong systems for preventing, looking into, and responding to infringement. A society that recognises and upholds the intrinsic dignity and sanctity of every human existence is only possible through the effective execution of the positive responsibilities resulting from the right to life.

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# CHAPTER 12

# A BRIEF DISCUSSION ON RIGHTS TO LIBERTY

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**ABSTRACT:**

Fundamental human rights that ensure each person's independence and autonomy are their right to liberty. In order to safeguard people's freedom and prevent them from being arbitrarily detained, this document gives an outline of the rights to liberty. The examination looks at important issues such the freedom from arbitrary or illegal detention, the right to a fair trial, and the freedom from torture and other cruel, inhuman, or degrading treatment or punishment. The significance of protecting these rights in diverse circumstances, such as criminal justice systems and immigration detention, is examined in the article. It emphasises how nations may protect these rights by establishing legal protections, due process guarantees, and practical remedies.

**KEYWORDS:**

Autonomy, Fair Trial, Freedom, Human Rights, Liberty, Personal Freedom, Protection.

## INTRODUCTION

The English Magna Charta (1215) and the American Declaration of the Rights of Man and Citizen (1789) are two documents that might be credited with establishing the right to liberty. Even while the Magna Charta primarily protected the rights of a small set of people feudal noblemen it still mandated that any arrest or confinement be legal and safeguarded the person from the abuses of his or her ruler. The Bill of Rights (1689) and Habeas Corpus Acts (1640, 1679) of the 17th century further defined the right to liberty of the person and protected against arbitrary arrest and imprisonment. In the French Declaration of Rights (1789), which granted the right to liberty to all citizens in the constitutions of national governments, the right was further refined and its range of applicability was expanded. The Mexican Revolution of 1915, which had "land and liberty" (Tierra y Libertad) as its rallying cry, was greatly influenced by the right to liberty.

At the international level, Article 9 of the Universal Declaration provided the first formal legal articulation of the right to liberty and security of the person. A variety of international human rights treaties at the international and regional level have subsequently expanded on the right to liberty and security, which is stated in this statement in a brief and ambiguous form. As the name implies, the right to liberty and security of the person includes two separate rights: the right to personal liberty and security. A brief explanation of each right is provided below in order to illustrate how these two rights are considered in accordance with human rights legislation. The right to liberty of the person, as stated in international human rights agreements, does not completely protect against being detained or arrested [1], [2].

Taking away someone's freedom is a legal way for the state to exert control over those under its authority. Instead, the right to liberty serves as a real assurance that any arrest or imprisonment will not be unjustified or arbitrary. Any loss of liberty is often only permitted if it follows a process set by domestic law and provided the following minimal protections are upheld: Every detained person has the right to file a habeas corpus petition before a court,

which must decide immediately whether the detention was legal and order the person's release. Additionally, every detained person has an enforceable right to compensation if the detention was illegal. Finally, persons held in custody must be brought promptly, that is, within a few days, before a judge who must either: They have the right to a speedy trial and release in return for a bond or other assurance that they will show up for court. In other words, depending on the intricacy of the case, pre-trial detention should not be used as a general rule and should be kept to a minimum [3], [4]. The definition of the right to personal security is not as clear as that of the right to liberty, and it varies throughout the many human rights agreements. The right to personal security is defined by the ICCPR, which offers it the widest definition, as the right to legal protection while exercising one's right to liberty. This demonstrates that circumstances other than the formal loss of liberty are included under the right to security. For instance, a state is obligated to take reasonable and acceptable steps to safeguard a person under its authority whose life is known to be in danger.

Most of the current international and regional human rights accords include the right to liberty and security, as stated in Article 9 of the UDHR. No one should be subjected to arbitrary arrest, imprisonment, or expulsion, according to Article 9 of the UDHR. The ICCPR elaborates on the fundamental ideas outlined in Article 9 of the Universal Declaration in Article 9 (right to liberty and security of the person) and Article 12(4) (prohibition of arbitrary exile). These rights are protected at the regional level by Articles 7 ACHR, 5 ECHR, and 6 ACHPR. Article 9 of the ICCPR, Article 7 of the ACHR, Article 5 of the ECHR, and Article 6 of the ACHPR all provide out basic procedural requirements and safeguards against arbitrary detention. In contrast to previous agreements, the European Convention's Article 5(1) explains in great detail the circumstances under which a person may be deprived of their liberty. The regulation of the reasons for detention is left to the purview of domestic law under the other human rights agreements. Detention for debt, which is expressly forbidden under Article 11 of the ICCPR, Article 7(7) of the American Convention, and Article 1 Protocol No. 4 of the European Convention, is a significant exception to this rule [5], [6].

All people deprived of their liberty are guaranteed a special right to humane treatment and to certain minimal conditions of pretrial detention and imprisonment, such as the separation of the accused from the convicted or the separation of juveniles from adults, under Article 10 ICCPR and Articles 5(3) to (6) ACHR. The right to liberty and personal security is guaranteed to migrant workers and their families under Article 16 of the CMW, which should also be mentioned. On the many and very complicated concerns pertaining to the right to personal liberty and security, the Human Rights Committee, the Inter-American Commission and Court, and the European Court of Human Rights have created reasonably thorough case law. Many phrases, like "arbitrarily," "promptly," "speedily," and "without delay," have ambiguous meanings that may only be determined case-by-case while taking into consideration all the facts. The growing corpus of case law is progressively helping to define the terms "liberty" and "security" more precisely.

The Human Rights Committee contains a wealth of case law pertaining to the right to the liberty and security of the person on a global scale. The majority of the provisions in Article 9 have been the subject of several judgements by the Human Rights Committee. Although other sorts of detention (such as detention of foreigners and detention for the purpose of forced mental treatment) have also been addressed (see, for example, Torres v. Finland and A. v. New Zealand), the bulk of cases have dealt with custody for criminal justice reasons. However, there are still some questions about how to interpret certain of Article 9's clauses, such as what exactly is meant by the term "promptness" and how long it is acceptable for a court to take to decide on a habeas corpus claim. With regard to the right to personal security,

the Committee has given this right the broadest scope possible because it has determined in a number of opinions that states are required to take reasonable and appropriate measures to protect citizens in the event of serious threats to their lives (see, for example, Delgado Paez v. Colombia, Bwalya v. Zaire, and Oló Bahamonde v. Equatorial Guinea). General Comment 8 elaborates on the definition of the right to liberty and helps explain some of the concepts included in Article 9 apart from personal choices. A non-derogable feature of Article 9 is the obligation for a judicial review to decide whether detention is legitimate, according to the Human Rights Committee's General Comment 29 [7]–[9]. The UN Working Group on Arbitrary Detention is another significant UN body that especially addresses arbitrary detention. The UN Commission on Human Rights has given the Working Group the following duties: a) to investigate cases of detention imposed arbitrarily or otherwise inconsistent with pertinent international standards outlined in international human rights instruments; b) to seek and receive information from governmental, intergovernmental, and non-governmental organisations, as well as receive information from the individuals concerned, their families, or their representatives. The only non-treaty-based procedure that specifically permits consideration of individual complaints is the Working Group on Arbitrary Detention.

Regarding the majority of the provisions of Article 7 ACHR, both the Inter-American Commission and the Inter-American Court have rendered a sizable number of rulings at the regional level. However, despite the fact that many of the rulings give novel perspectives, the Court and Commission's legal reasoning and analysis have not significantly clarified these laws. This may be due to the challenging conditions under which judgements involving this right must be made; nations are often unwilling to cooperate, and it may be difficult to gather evidence (particularly in disappearance instances). However, the Court and the Commission have both issued some very intriguing rulings pertaining to the right to personal liberty and security. For instance, the Court determined that the kidnapping of a person and the denial of access to judicial authorities so that the legality of the detention could be reviewed (habeas corpus) constituted a manifest violation of Article 7 in the Velásquez Rodriguez and Godinez Cruz v. Honduras cases. The Commission determined in Garcia v. Peru (Case 11.06) that threatening people with arbitrary and unfair arrest may breach their right to personal security and is consequently against Article 7. In a broader sense, the Commission has declared that every arrest must be performed by an agency that is duly authorised by the national constitution and in line with the protocols required by international law. In the absence of these circumstances, "arrests cease to be arrests per se and become kidnappings." The Inter-American Court cases of Bulacio v. Argentina and Gangarand v. Surinam on liberty and security are equally noteworthy.

## DISCUSSION

The European Court of Human Rights has heard more than 250 cases involving violations of Article 5 of the ECHR, and its substantial body of case law has helped to define complex concepts like "reasonable time," "promptly," and "judge or other officer." The lengthy number of reasons why governments may hold a person in custody is one of the issues the Court deals with. As previously stated, only the European Convention offers this list to the states, and both the states parties and the Court have concluded that it is difficult to include all acknowledged arrests in a single article. According to the European Court (see, e.g., McVeigh, O'Neill and Evans v. The United Kingdom), a brief detention for the purpose of conducting a street search is not a breach of Article 5(1). Another issue has been the difficulty in applying some sections of Article 5 consistently to the various civil and common law systems represented among the states parties. However, in general, the European Court has

offered the most thorough legal analysis of the right to liberty and security of the person, and its well-reasoned judgements have been of significant assistance to other international human rights oversight organisations. For instance, it has determined that the need that someone be brought before a court "promptly" indicates that this must be done within a period of precisely four days (see, for example, O'Hara v. The United Kingdom). A set of criteria have been devised for the idea of "reasonable time," which provide a helpful foundation for determining whether a period is appropriate. Some legislatures have enacted these restrictions to shorten the period before sentencing for example, to less than one and a half yearseven in the most complex situations.

The African Commission has endeavored to explain and elucidate the substance of Article 6 ACHPR on a number of occasions under the African system. Regarding the length of detention, the Commission has determined in a number of communications that, for instance, imprisonment for more than twelve years without a trial constitutes a violation of Article 6 and that even three months or three years of detention without a trial may be enough to do so (see, for example, Krishna Achuthan's (on behalf of Aleke Banda), Amnesty International's (on behalf of Orton and Vera Chirwa, and Amnesty International's ( In other situations, it was determined that the reason for and method of the detention violated Article 6. In Alhassan Abubakar v. Ghana, Communication 103/93, the Commission determined that the victim's incarceration without a trial violated Article 6 of the Constitution. In a case against Rwanda, the Commission determined that the government's arbitrary detention of thousands of people for no other reason than their ethnic origin violated Article 6 of the UN Convention against Torture.

**The right to freedom from slavery, servitude and forced or Compulsory Labour**

Slavery has existed forever; for example, slave-related laws were included in written Roman law. Slavery was a widespread practise that lasted for centuries. Slavery or practises that were similar to slavery that were part of colonialism had a terrible effect on communities all over the globe, especially in West- and East Africa, Latin America, and Asia. The first human right to get protection under international law was the freedom from slavery. The Slavery Convention, the first multinational instrument on human rights, was ratified in 1926. Its goal was to end all types of slavery and stop the slave trade. The prohibition of slavery is now regarded as a jus cogens norm and a customary international law rule. Additionally, the International Court of Justice recognised the prohibition of slavery as an erga omnes duty in one of its rulings (Barcelona Traction Case). Traditional slavery was controversially abolished in the 19th and first half of the 20th centuries, showing how difficult and contentious it may be to alter present behaviour in order to defend human rights.

Various human rights breaches are now referred to as slavery. In addition to traditional slavery and the slave trade, other forms of child exploitation include the sale of children, child prostitution, child pornography, the use of children as slaves, the mutilation of young girls, the use of young people as soldiers, debt bondage, the trafficking of people and the sale of human organs, the exploitation of prostitution, and some acts carried out under apartheid and colonial regimes. The reality of modern slavery is horrifying. It is believed that 27 million people still work as slaves or in conditions similar to slavery in the 21st century. About 20 million of them are forced into different types of bonded work. People are bought and sold all around the globe, held in private custody, mistreated, and abused for financial gain.

Slavery is described in Article 1(1) of the 1926 Slavery Convention as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are

exercised." It is essential to understand the 'enslaved person's' situation in order to define slavery. Informed consent and a clear understanding of the nature of the relationship between the parties are necessary (for an example, see the 1956 Supplementary Convention on the Abolition of Slavery). It also depends on the degree of control over the individual's possessions and the restriction of their inherent right to freedom of movement. However, in general, slavery happens when one person essentially "owns" another, allowing the former to abuse the latter without consequence.Slavery is a narrower idea than servitude. 'Servitude' alludes to various horrifying economic exploitation tactics used by one individual over another. In Van Droogenbroeck v. Belgium, the European Commission determined that the definition of "servitude" includes a "serf's" duty to reside on another person's land without being given the opportunity to do otherwise. However, the European Commission determined in the same instance that a circumstance may only be deemed "servitude" if it entailed "a particularly serious form of denial of freedom.

According to ILO Article 2 on Forced Labour, "all work or service, which is exacted from any person under the threat of any penalty and for which the said person has not offered himself voluntarily" is considered forced or compelled labour. Supervisory organisations, including the European Court, have interpreted freedom from compelled labour in their national treaties using the ILO 29 standard. Additionally, the European Court's jurisprudence has helped to advance our understanding of coerced and mandatory employment. In Van Der Mussele v. Belgium, the court determined that the word "forced" covers both physical and mental restraints and that forced employment includes both manual labour and professional labour. The word "compulsory," according to the Court's additional definition, refers to work that is "exercised under the threat of any penalty" and is done against the will of the subject. Therefore, "compulsory" work does not just relate to obligations or compulsions imposed by the law.

The Human Rights Committee, a UN treaty body, has just barely addressed Article 8 in its case law. Numerous special rapporteurs have been appointed throughout the years to undertake investigations on slavery, particularly in relation to the exploitation of minors, at the UN charter-based level. The role of the Special Rapporteur on the sale of minors, child prostitution, and child pornography was established by the UN Commission on Human Rights in 1990. The Rapporteur's job is to look into cases of child exploitation across the globe and report back to the General Assembly and UN Commission on Human Rights with suggestions for safeguarding the rights of the children involved. Governments, other UN agencies, and non-governmental groups are the main targets of these suggestions.

A Special Rapporteur on modern forms of slavery has also been appointed by the Sub-Commission on the Promotion and Protection of Human Rights. Since the words "slavery" and "servitude" were not deemed appropriate under the circumstances, the European Court has not recognised regional breaches of Article 4 of the European Convention. For instance, the European Commission and the Court have determined in a number of cases involving forced or compulsory labour that the imposition of obligations to provide services of a particular kind (free legal aid) or in a specific location against slavery, the article has mostly been used in relation to prisoner complaints against the need to undertake labour in jail, which is not seen as a breach by the European Court.

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A basic human right that has been recognised and supported by a number of human rights and humanitarian instruments is the right to freedom of movement. It had its first official legal sanction as early as the English Magna Charta (1215). The freedom of movement, which includes the ability to leave one's country, was a cause of intense disputes between Western and Eastern European nations during the Cold War. Since 1989, the circumstances that the right to freedom of movement covers have changed. The right to freedom of movement has become more crucial and contentious as a result of growing international mobility, tourism, and migration on the one hand and alarming xenophobic trends and restrictive attitudes of many states towards asylum seekers, migrant workers, and aliens on the other.

Commonly speaking, the right to freedom of movement refers to everyone who is legally residing in a certain territory's ability to travel freely, without restriction, and without specifically requesting permission from the authorities. Four distinct rights are included in the right to freedom of movement as stated in international human rights instruments: a) the freedom to move around a given territory; b) the freedom to select a residence within a territory; c) the freedom to leave any country, including one's own; and d) the freedom to enter one's own country.

Every person who is legitimately on a state's territory has the freedom to go about without restriction. Every time they are on state property, people of that state are doing so legally. However, a state may decide via legislation regarding immigrants whether people are allowed to travel about freely in line with the law. According to the Human Rights Committee's ruling on this issue, an immigrant whose status is regularised and who enters a country legally shall be regarded as being inside the country legally (General Comment 27). Once a person is legally within a country, any limitations on their freedom of movement and any treatment that differs from that of their countrymen must be justified on one or more of the reasons outlined in Article 12 of the ICCPR.

Permissible limitations on the right to free internal movement often have to do with measures used to preserve "public order," where imprisonment is appropriate, where traffic has to be controlled, or where specific measures (like blockades) are required to guarantee public safety. It is also acceptable to impose restrictions for "public health reasons," such as those that restrict freedom of movement for quarantine purposes to stop the spread of contagious illnesses. Another justification for restricting migration is to protect the environment. According to the Human Rights Committee, limiting the kind of people who are allowed to

reside on tribal reserves is permitted under Article 12 of the ICCPR in order to conserve the resources and maintain the tribe's identity order to uphold the right to freedom of movement, the state must make sure that it is shielded from both public and private interference. In the case of a woman, the duty to safeguard extends to the freedom of movement and the right to settle anywhere she pleases, free from restrictions imposed by custom or law or by anyone else, not even a close relative.

## CONCLUSION

It is essential to protect one's freedom and autonomy to have one's rights to liberty. These rights include the ability to avoid being arbitrarily or unlawfully detained or arrested, the right to a fair trial, and the freedom from torture and other torturous, inhumane, or humiliating treatment or punishment. Respecting these rights is crucial in a variety of settings, such as the criminal justice system and immigration detention, when people may be at danger of being arbitrarily or protractedly deprived of their freedom. To defend and maintain these rights, states have a duty to develop legal protections, due process guarantees, and efficient remedies. States support the preservation of individual freedom, dignity, and the rule of law through protecting the right to liberty. States must uphold and secure these rights, giving people the appropriate safeguards and legal protections to avoid arbitrary imprisonment and maintain their personal freedom.

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# CHAPTER 13

# A BRIEF EXPLANATION ON RIGHTS TO PRIVACY AND FAMILY LIFE

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**ABSTRACT:**

The essential human rights of privacy and family life protect people's relationships, dignity, and personal freedom. An overview of these rights and their importance in preserving privacy, intimacy, and the welfare of people and families is given in this essay. The examination looks at important topics including the right to privacy, which includes protection against unauthorised monitoring and interference, and the right to a family life, which includes the ability to create and preserve familial ties. The significance of protecting these rights is discussed throughout the article in relation to a number of circumstances, including technology and digital communication, reproductive rights, and migration. It emphasises how important it is for governments to preserve personal information and familial relationships via laws, regulations, and legal recourse.

**KEYWORDS:**

Autonomy, Dignity, Family Life, Human Rights, Reproductive Rights, Surveillance.

## INTRODUCTION

In the Universal Declaration, it is stated that "no one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence" and that "the family is the fundamental group unit of society entitled to protection by society and the state." This is the first formal declaration of the right to respect for privacy and family. Today, a broad variety of activities fall under the umbrella of the right to respect for private and family life. While significant concerns relating to the right to respect for family include the rights of parents to contact with their children, remarriage, and adoptions, privacy covers a broad range ranging from phone tapping to sexual orientation. The rights to respect for private and family life, as well as the right to be married and have a family [1], [2],

### The Right to Respect for Private and Family Life

The liberal idea of an individual's freedom as a self-governing creature, so long as his or her acts do not infringe on the rights and freedoms of others, is mirrored by the right to respect for privacy. When authorities intervene with, censure, or prohibit behaviour that fundamentally only affects the individual, such as failing to wear safety equipment at work or committing suicide, the right to privacy is infringed. States use the societal costs of the forbidden behaviours, such as the impact on the health care system, to justify such interferences. A person's intimacy, identity, name, gender, honour, dignity, looks, sentiments, and sexual orientation are all protected under the right to privacy. Under some circumstances, the right to privacy may be restricted to protect the interests of others, provided that the interference is not arbitrary or illegal.

People cannot be forced to alter their look or identity, for example, or be forbidden from changing their sex; nevertheless, they may be required to provide biological samples in order to establish paternity, if doing so serves the rights of others. The house, the family, and

communication are all protected under the right to privacy. Family may refer to things like biological relationships, financial links, marriage, and adoption. According to one interpretation, a person's right to respect for their home's privacy extends to their place of business. The covert monitoring and censoring of inmates' communication is a frequent infringement on their right to privacy in correspondence. Finally, as computer technology and automated data processing become more widespread, governments are required to maintain good data protection since public bodies and commercial organisations might use personal data for economic gain, endangering people's right to privacy [3], [4].According to Articles 12 of the UDHR and 17 of the ICCPR, "everyone has the right to protection of the law against such interference or attacks," and "no one shall be subject to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour and reputation." Both Article 16 of the CRC and Article 14 of the CMW, which protects migrant workers and their families from arbitrary interference with their family life and privacy, utilise language that is very similar.

The right to respect for one's home, correspondence, and private and family life is outlined in Article 8 of the ECHR, along with a variety of potential restrictions. Other than when "permitted by law and necessary in the interests of a democratic society, in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others," authorities are not allowed to interfere with this right. The right to privacy, honour, and dignity are outlined in Article 11 of the ACHR, which also forbids arbitrary interference with that right and declares that everyone has the right to legal protection against assaults or interferences with that right. Although the right to privacy isn't stated expressly in the ACHPR, Article 18 emphasises how important it is for the state to uphold family values.

Numerous complaints of infringement of the right to respect for private and family life have been handled by the Human Rights Committee. For instance, the Committee determined that the right to privacy was violated when people were denied the opportunity to change their names for religious reasons (Coeriel and Aurik v. The Netherlands), that a general ban on homosexuality violates the right to privacy (Toonen v. Australia), and that the state's eviction of members of an indigenous population from their ancestral burial territory was an arbitrary interference with their right to privacy and family life [5], [6].

Although the right to privacy may be curtailed, the Committee has also stated that measures of control or censorship of correspondence must be subject to adequate legal safeguards against arbitrary application and determined that excessive restriction or censorship of prisoners' correspondence constitutes a violation of that right (see, for example, Estrella v. Uruguay). General Comment 16 of the Committee's report also makes clear that governments must guarantee the proper protection of personal data and that the right to the respect of one's home applies to any commercial or business location.

The European Court has made it abundantly plain that a state has a responsibility to respect the privacy of its citizens, except in the very restricted situations prohibited by Article 8; specifically, only where required by law, in the public interest, and essential in a democratic society. The Court has declared that a person's right to privacy includes their moral and physical integrity, including their sexual life, and that in certain situations, the state has a responsibility to take action to protect that right. The Court has, among other things, found violations of the right to respect for private and family life when people were being secretly monitored by telephone tapping (Huvig v. France); when the government monitored prisoners' correspondence (Campbell and Fell v. The United Kingdom); when the prohibition

of homosexual acts of consenting adults was violated (Norris v. Ireland); and when children were being placed or kept in public care when their parents had not fully paid for their care (Norris v. Ireland). In addition, the Court has held that some professional or commercial activities or locations are also covered by the right to respect for privacy of the home (Niemitz v. Germany). The Court's ruling is now beginning to expand the transgender community's present restricted rights. The Supreme Court, for example, found in Goodwin (Christine) v. the United Kingdom that the state has violated the right to a private life by refusing to allow transsexuals to legally change their gender.

There haven't been many instances involving the right to privacy handled by the Inter-American system. The Commission determined that rape implies, among other things, a deliberate outrage to a person's dignity and becomes in this respect a question that is included in the concept of "private life" (Rivas Quintanilla v. El Salvador, Case 11.625). The Commission also determined that forcible recruitment of a soldier violated his right to dignity (Piché v. Guatemala, Case 10.975). The Commission has stated that any search must be supported by a "well-substantiated search warrant issued by a competent judicial authority, spelling out the reasons for the measure being adopted and specifying the place to be searched and the objects that will be seized" when it comes to interferences for investigative purposes [7], [8].

## DISCUSSION

### The right to marry and found a family

Marriage and the family are age-old customs that have long been acknowledged as the cornerstone of society. Family life and even the idea of "family" have undergone rapid change and evolution in recent years, similar to other facets of society. This has led to a variety of regulations that aim to, for example, guarantee equal rights for both spouses or partners in a relationship when it comes to children and regulate adoptions. The state has a duty to legalise marriage and the family while also respecting an individual's right to choose whether to be married and the equality of both partners. For instance, it is unlawful to outright prohibit marriage for inmates, and it is also unlawful to outright prohibit divorce based on religion.

According to a number of international rules, the family is entitled to particular protection. "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State," according to Article 16 of the UDHR. In accordance with Article 23 of the ICCPR, the family is protected, including the right of both men and women to start a family and the protection of children in the event of a divorce. The rights of the family are covered under Article 10 of the ICESCR, Article 17 of the ACHR, Article 15 of the Protocol of San Salvador, Article 12 of the ECHR, and Articles 16, 17 and 19 of the European Social Charter. The state has a responsibility to preserve the family since it is the "natural unit and basis of society a custodian of morals and traditional values," according to Article 18 of the ACHPR. According to international norms, the right to get married is also protected. In accordance with Article 16 of the UDHR, both men and women of legal marriageable age are entitled to unlimited marriage, equal rights in relation to marriage, and consensual unions. The right to marry is outlined in identical words under Articles 12 of the ECHR, Article 16 of the CEDAW, and Article 23 of the ICCPR. The right to marriage is also covered by certain international treaties, such as the Convention on the Nationality of Married Women (1957) and the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962).

Children's rights are obviously of the utmost importance in the framework of the family; the unique protection for children is outlined in Article 24 of the ICCPR, Article 19 of the ACHR, the European Social Charter, and the CRC. Other significant norms include, among others, the European Convention on the Adoption of Children (1967), the Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors (1984), and the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (1986).In this regard, a state's duties include registering newborns, guaranteeing that they have the right to a name and nationality, and ensuring that they are not the target of discrimination (for instance, those born outside of marriage). Children must be shielded from moral and physical harm, get social and family advantages, and receive specific protection for mothers and young children. Additionally, migrant workers' families should get extra protection [9], [10].

The right to family has been a topic of discussion for the Human Rights Committee on several occasions. In Hopu and Bessert v. France, the Committee said that the word "family" should be given a wide construction to include all people who constitute the family as recognised in the relevant community. The Committee holds the position that a couple's shared residency should be regarded as the norm for a family and that a person's exclusion from a nation where his or her immediate family members live may therefore constitute interference with family life. According to the Committee's findings legal protections or other measures a society can provide for the family may vary from country to country and depend on various social, economic, political, and cultural conditions and traditions. However, restrictions that are solely based on sex are not permitted.

According to the African Commission, the state's obligation to protect and support the family was violated by the forced expulsion of foreigners and political activists because it forcibly tore the family apart (Amnesty International v. Zambia and Angola, Communication 212/98). The right to the protection of the family is violated when parents and families of detainees are harassed, held captive, and tortured. According to the Comité Culturel pour la Democratie au Benin, "the family is central to African society and the rights of the family are a necessary corollary to the protection of the individual, being an integral part of this unit." The Commission also determined that it is unlawful to bar prisoners from contacting their family.

Except in the context of reparations, when it broadened the conventional definition of the family to encompass the extended family in accordance with the culture and customs of the community in issue, the Inter-American Court has scarcely ever addressed the right to family life. In addition, the Court has authorised temporary safeguards to shield migrant workers from being expulsed in breach of their right to family life and the specific protections afforded to children living in a family. Similar to this, the InterAmerican Commission has only addressed the right to respect for the family in a limited manner; for example, dealing with discriminatory practises regarding the role of each partner within marriage and gender discrimination violating the right to protection of the family. The Commission discovered discriminatory laws that, among other things, required women who wanted to pursue careers or hold jobs to do so only in circumstances that would not interfere with their responsibilities as wives and mothers.

The right to the protection of the family is best fostered within the European system. The right to privacy has been the subject of several cases before the European Court. In X. Y. Z. v. The United Kingdom, the court found, among other things, that the term "family" is not limited to those who are related by blood or marriage and can also refer to de facto relationships. The court establ6ished that certain criteria must be taken into consideration

when deciding whether a relationship between two people qualifies as a family, such as the length of the relationship, whether the couple cohabitates, and whether they have shown a commitment to one another in some way, but The right to marry does not automatically provide the right to divorce, but the court determined that a man's temporary ban on getting married again after three divorces constituted a breach of the right to marry.

**The Right to Property**

The right to property is one of the most complicated and divisive human rights. The right is debatable because some believe it to be fundamental to the idea of human rights, while others believe it to be a tool for abuse; a right that defends the "haves" against the "have-nots." It is complicated because no other human right is subject to as many restrictions and qualifiers, and as a consequence, no other right has given rise to more complicated case law from, say, the ECHR's supervisory authorities. It's complicated since it's seen as a civil right in general and even an integrity right by some. It also contains aspects of social rights, which have a big impact on how money and social benefits are distributed. Additionally, the right to property has significant ramifications for a number of crucial social and economic rights, including the right to work, the right to profit from scientific advancement, the right to education, and the right to appropriate housing.

Property issues were crucial in a number of revolutions, including the French, Russian, American, and South African ones. Furthermore, a number of the biggest breaches of human rights that occurred in the 20th century included property rights. During the Stalin period, the collectivization of agricultural land in the Ukraine caused a severe famine that cost 5 to 7 million lives in the years 1932–1933 alone. China's land was collectively owned during Chairman Mao's "Great Leap Forward," and iron kitchen utensils were collected for use by the whole population. This also resulted in famine, which is said to have caused 20 million people to perish from hunger between 1958 and 1962. The expulsion of almost 3 million people from their ancestral lands in South Africa during the Apartheid system was another of the biggest atrocities.

Therefore, it is not unexpected that this right was a topic of discussion relatively early in history. John Locke believed that the right to own property was a part of the so-called inherent rights that people could not be deprived of, like life and liberty. On the other hand, property was the same as robbery in the socialist Proudhon's eyes. The issue was equally important in Friedrich Engels' writings as well as the papal apostolic letter Rerum Novarum (1891). There are several advantages to land reform, incentives to provide people access to money, homes, and land. The distribution of wealth and the population's level of long-term security have been significantly impacted by the successful pension plans implemented in Europe between the 1960s and the 1980s.

Both the European and the Inter-American Courts of Human Rights have defined property in their case law. As a result, the notion of property has a distinct meaning that often deviates greatly from that of national law. Additionally, in some circumstances, benefits from public ties, such as public pension plans, may be included, as well as rights resulting from rental or lease arrangements. Property is regarded as one of the fundamental ideas of the legal system of today's contemporary governments, such as the member states of the EU. Property and contracts together serve as the foundation for exchange and commerce, which are the cornerstones of the market economy, making property essential to society. In addition, some limited legislation has been developed to counterbalance potential imbalances caused by the accumulation of property and to provide additional protection for those who depend on the property of others, while extensive case-law has been established to protect individuals

against abuse of property. Despite its complexity and contentious nature, property protection is seen in the developed world as a crucial component of the market economy and a need for personal security. Property and, more especially, land concerns, are significant causes of contention in the developing world. On the one hand, due to improper registration and a lack of legal remedy in cases of property rights violation, there is sometimes a lack of protection for the owner against abuse. Large-scale holdings may go hand in hand with strong property owners abusing their position of authority, on the other side.

There are few alternatives to land in many less developed nations, where the manufacturing and services sectors are undeveloped, to provide inhabitants the means for a respectable level of life and security. Given that more than two thirds of all wealth is often invested in land, it is not unexpected that land is one of the most challenging concerns in many developing nations. Additionally, since indigenous peoples' use patterns don't fit into the established property protection structures, they are more vulnerable to exploitation. Forcible eviction or relocation of urban squatters who have lived in a place for a long time are examples of property rights violations. Other examples include the denial of grazing or water rights that have been in existence for many generations but have never been formally registered, the eviction of forest dwellers for environmental reasons, and the relocation of villages for the construction of hydroelectric projects**.**

One of the most difficult and contentious human rights is the right to property. The right is controversial because some people think it is essential to the concept of human rights, while others think it may be abused and protects the "haves" against the "have-nots." It is difficult because no other human right is as vulnerable to limitations and qualifications. As a result, no other human right has resulted in more complex case law from, for example, the supervisory bodies of the ECHR. It's problematic since some people consider it to be an integrity right as well as a basic civic right. It also includes social rights elements, which have a significant influence on the distribution of resources and social benefits. A variety of fundamental social and economic rights, such as the right to work, the right to benefit financially from technological advances, the right to education, and the right to decent housing, are also significantly impacted by the right to property.

The French, Russian, American, and South African revolutions, among others, all centred on property problems. In addition, a few of the largest violations of property rights that took place in the 20th century. The collectivization of agricultural land in the Ukraine during the Stalin era led to a devastating famine that claimed 5–7 million lives in the years 1932–1933 alone. During Chairman Mao's "Great Leap Forward," all of China's land was jointly held, and every one of the people was given access to iron cooking utensils. This led to famine as well, which is estimated to have resulted in the deaths of 20 million people from starvation between 1958 and 1962. Another of the worst crimes committed during the Apartheid government in South Africa was the displacement of about 3 million people from their ancestral lands.

It follows that it is not surprising that this right was a subject of debate quite early in history. According to John Locke, the right to possess property is a component of the so-called inherent rights, which include freedom of speech and the pursuit of happiness. However, in the socialist Proudhon's perspective, owning property was equivalent to robbing someone. Both Friedrich Engels' works and the pope apostolic letter Rerum Novarum (1891) placed equal emphasis on the subject. Land reform, incentives to provide people access to money, housing, and land, has a number of benefits. The effective pension systems put in place in Europe between the 1960s and 1980s have had a considerable influence on the wealth distribution and degree of long-term security of the people. In its case law, the European and

Inter-American Courts of Human Rights have both defined properties. Because of this, the concept of property has a unique meaning that often differs significantly from that of national law.

In certain cases, rights stemming from renting or leasing agreements as well as advantages from public ties like public pension systems may also be included. One of the essential concepts of today's modern governments, including the member states of the EU, is viewed as being property. Contracts and property together provide the backbone of exchange and trade, the pillars of the market economy, making property fundamental to society. Additionally, a small amount of legislation has been created to correct any imbalances that may arise from the accumulation of property and to offer additional protection to those who rely on the property of others, while a large body of case law has been established to safeguard people from abuse of property.

Property protection is seen in the developed world as an essential element of the market economy and a need for personal security, despite its complexity and disputed nature. Property disputes and land issues in particular are major sources of conflict in the developing countries. On the one hand, there is sometimes a lack of protection for the owner against abuse because of defective registration and a lack of legal redress in situations of property rights infringement. On the other hand, powerful property owners abusing their position of power may go hand in hand with large holdings. In many less developed countries, where the industrial and services industries are underdeveloped, there are few alternatives to land that may provide citizens the means for an acceptable standard of living and security. It is not surprising that land is one of the most difficult issues in many developing countries given that more than two thirds of all wealth is often invested in property. Additionally, indigenous peoples are more susceptible to exploitation since their usage patterns don't conform to the existing mechanisms for property protection. Property rights abuses include the forcible eviction or relocation of urban squatters who have occupied a space for a long period. Other instances include denying grazing or water rights that have been in existence for many generations but have never been properly documented, displacing communities for the building of hydropower projects, and evicting forest residents for environmental grounds.

## CONCLUSION

The protection of a person's personal freedom, dignity, and connections depends on their ability to enjoy their family and private lives. The right to family life includes the ability to create and maintain familial ties, while the right to privacy protects people against unauthorised monitoring, intrusion, and interference in their private lives. Several situations, including technology and digital communication, reproductive rights, and migration, are significantly impacted by these rights. By passing pertinent laws, creating policies, and offering strong legal remedies, states play a critical role in safeguarding fundamental rights. States support the wellbeing and security of people and families by assuring the protection of privacy and family life. This helps to create a society that appreciates and respects people's right to private and close relationships. States must acknowledge and uphold these rights, fostering a climate in which people may freely enjoy their rights to privacy and a family life free from unjustified interference or prejudice.

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# CHAPTER 14

# A BRIEF DISCUSSION ON LABOUR RELATED RIGHTS

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**ABSTRACT:**

Labor-related rights are fundamental human rights that safeguard employees' welfare, dignity, and fair treatment at work. This essay gives a general review of labour rights and discusses how important they are for advancing fair labour conditions, social fairness, and sustainable economic growth. The examination examines important issues such the right to just compensation, the freedom of organisation and collective bargaining, the prohibition of child labour and forced labour, and the right to safe and healthy working conditions. The necessity of protecting these rights in both formal and informal work environments is examined in this essay. It emphasises the role played by governments, businesses, and labour unions in promoting and protecting workers' rights via laws, regulations, and social interaction.

**KEYWORDS:**

Child Labor, Collective Bargaining, Forced Labor, Human Rights, Labor Rights, Social Justice.

## INTRODUCTION

The extent to which many other rights, like the rights to education, health, and culture, are exercised is impacted by the right to labour. Its fulfilment is crucial for both the peaceful development of society and the individual's personal growth and dignity, in addition to the supply of revenue to the person. However, having the ability to work naturally makes an employee somewhat dependent on his employer. As a result, it could result in an unequal partnership. The right to strike, the right to associate, the right to organise, and the right to collectively bargain are all protected in order to safeguard employees and provide a fair playing field. The rights pertaining to social security are closely tied to those pertaining to employment. In a broad sense, the right to work includes the freedom to find employment as well as the freedom from wrongful termination. The first part of the equation includes the elements that affect one's ability to find employment, such as education, training for a trade, and unemployment rates. The later part addresses concerns relating to job security, such as protection against unfair termination [1], [2].

The ability to find work, the absence of forced labour, and job stability are the three primary components of the right to work. The right to make a livelihood through labour of one's own choosing, including the freedom to start one's own independent type of employment or company; the freedom to work; freedom regarding the choice of vocation and the site of performance; The responsibility of the state to make ongoing efforts to achieve full employment has been interpreted as the right to free employment services and the right to work. These initiatives include the creation and implementation of employment promotion policies, the promotion of technical and vocational education programmes intended to increase employment, as well as free access to information and assistance for job seekers; The right to safe and healthy working conditions, as well as rest, leisure, and reasonable working hours; The right to employment; the right not to be fired arbitrarily, and the right to protection against discrimination are other examples of these initiatives. The non-

discrimination concept, which applies to all socio-economic rights, is a crucial component of the right to labour. It calls for the elimination of prejudice in hiring, pay, possibilities for advancement, and how foreigners are treated [3], [4].

The right to work is covered by a number of international standards, and several agreements on worker rights have been written. Article 24 of the UDHR states that everyone has the right to leisure time, appropriate working hours, and periodic paid vacations. Article 23 of the UDHR outlines the right to work, the right to equal compensation for equal effort, and the right to equitable and advantageous payment. ICESCR Articles 6 and 7 expand on these rights in terms of the right to work and its crucial antecedent, equitable and benevolent working conditions. According to Article 11 of the CEDAW, states must take all necessary steps to end discrimination against women in the workplace, and Article 32 of the CRC lays out the conditions under which children may work in order to protect them from being exploited for economic gain and from jobs that would harm their education, health, or development. According to the American system, the right to work and the need that working conditions be reasonable, equal, and satisfying are spelt out in Articles 6 and 7 of the Protocol of San Salvador. Every person "shall have the right to work in just and satisfactory conditions and shall be paid equally for equal work," according to Article 15 of the ACHPR. The European Social Charter (ESC), Part I, also defends numerous facets of the right to employment.

The International Labour Organization's (ILO) activities must be emphasised while talking about labour rights. Labour shall not be considered a good or item of trade, as stated in the ILO Constitution. ILO 100 Concerning Equal Remuneration, ILO 122 Concerning Employment Policy, ILO 111 Concerning Discrimination, and ILO 142 Concerning Human Resources Development are only a few of the conventions the ILO has enacted in relation to the right to work. Trade union rights and the outlawing of forced labour are closely tied to the right to work. These rights are protected by a number of ILO conventions, including ILO 87 and ILO 98 regarding the freedom of association, ILO 29 and ILO 105 regarding the prohibition of forced work, ILO 138 regarding the minimum age, and ILO 182, which aims to end the worst types of child labour.

States are required by law to safeguard freedom from slavery and forced labour. While a state is not required to ensure that everyone has a job, it is required to take steps to gradually reach a high, steady rate of employment. The right to work may be violated by establishing a system of governance that outlines a high, ongoing unemployment rate. Although the state is not required to provide work, it must make sure that, for example, it does not discriminate in access to public jobs; distinctions based on gender, race, colour, nationality, or ethnicity may not be made. The right to work does not imply the right to be provided with employment. A right to hold a position in a public or private institution has not been established by an interpretation of Article 6 of the ICESCR or national or international case law. There is no recognised absolute right not to be fired, but a number of human rights laws provide protection against the arbitrary denial of one's right to employment.

The freedom to work and the principle of non-discrimination are examples of elements of the right to work that reflect strict and legally enforceable rights, whereas other elements of the right to work have historically been more difficult to enforce; they are essentially policy objectives that are framed in terms of legal obligations for states. For instance, the Committee on Economic, Social, and Cultural Rights has addressed the issue of discrimination in the workplace. The Committee has said that women may not be exposed to less favourable working circumstances than those experienced by males, nor may they be paid less for the same job, and it has deemed legislation requiring women to acquire their husbands' consent

before working to be unconstitutional [5], [6]. The European Committee of Independent Experts, which oversees the ESC, has declared, among other things, that the prohibition of discrimination on the right to work is unalienable and may call for special legislation, and that it may be essential to take further steps to assist underprivileged groups. It has been ruled that legislation mandating workers to do tasks they do not wish to undertake and requiring women to retire from public office when they get married are against the right to work.

There aren't many instances involving the right to work that the African Commission has dealt with. In cases involving slavery, the Commission has ruled that a political prisoner's right to work was violated when he was not reinstated in his prior government position after an amnesty. Only a relatively small portion of the rights related to labour have been addressed by the Inter-American system. For instance, 270 former state workers claimed they were wrongfully fired in the Baena Ricardo Case, which was taken before the Inter-American Court, for exercising their right to organisation and assembly in violation of the American Convention: The applicant's request was granted by the court. Although the Protocol of San Salvador was mentioned, Panama had not signed it, hence Panama could not be accused of infringing the rights outlined in the Protocol.

## DISCUSSION

The rules do not specify a specific structure, and social security may be offered on a variety of levels. According to the Committee on Economic, Social, and Cultural Rights, the word "social security" refers to all the risks associated with losing one's means of livelihood due to events beyond one's control. Social security is defined by the International Labour Organisation (ILO) 102 concerning Social Security (1952) as the protection society offers for its members through a variety of public measures against economic and social distress that would be caused by the cessation or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age, or death. The provision of medical care and subsidies for families with children are two examples of these actions. The right to social security exists on three different levels: the first, minimal approach, is social assistance given to the needy; the second is social insurance based on contributions, grounded in working relations specified in national law; and the third, the welfare state, combines the two, drawing resources from employee contributions and government funding, extending to everyone in a comprehensive manner [7], [8].

The 'rights-based approach' outlines five fundamental components of the right to social security: Comprehensiveness: It is important to offer coverage that is comprehensive against all events that might jeopardise a person's capacity to make a livelihood and, therefore, their ability to enjoy an appropriate level of life. Universality: requires that all people who need social security have access to it. Adequacy and appropriateness refer to the need that different social security programmes provide benefits that are sufficient to prevent beneficiaries from falling below the poverty line. Non-discrimination: Programmes shouldn't exclude anybody based on their colour, gender, sexual orientation, religion, political beliefs, or country of birth or social or ethnic background. The establishment of reasonable and fair procedures to determine eligibility for social security programmes as well as the provision of efficient legal remedies are requirements for respecting procedural rights.

The presence of a social security system is generally assumed by the rights pertaining to social security. A state may not cut social security spending because it has a duty to ensure benefits. The state is required under the right to social security to provide the bare necessities of life, such as shelter when a person's life is in risk due to homelessness. The state is

required to provide some insurance; for example, they must set up an old-age insurance system that is required by international law.

The San Salvador Protocol defines the right in Article 9 and lists the circumstances in which it is applicable, including old age, disability, and as it relates to those who are employed, social security shall cover medical care and allowance or retirement benefits in case of occupational accidents as well as paid maternity leave before and after birth. The American Convention does not specifically mention social security. "The aged and the disabled shall also have right to special measures of protection in keeping with their physical or moral needs," the African Charter states. Social security is not mentioned as a separate human right, although it is mentioned in other articles in regard to health, the right of the elderly and handicapped to particular protection, and the responsibility of the person to society of the European Social Charter, nations agree to "progressively" enhance social security levels above the ILO 102 minimum norm. Additionally, the ESC stipulates that everyone who works and their dependents has a right to social security and that everyone who lacks sufficient resources has a right to social and medical aid (Article 13), as well as a right to take use of social welfare programmes [9]–[11].

In a broad sense, the right to social security may be seen as a guarantee of the material requirements for a living level that is sufficient. People are safeguarded by social security from deplorable living circumstances, poverty, illness, and material instability. Thus, a right to social security may be derived from a number of civil and political rights, such as the ban on torture and other cruel treatment, the right to life, and the right to personal security. The right to social security has not yet been included in the interpretation of these rights; instead, the supervisory authorities have mostly dealt with issues involving discriminatory laws affecting those who get benefits from or make contributions to social security systems. Other problems include arbitrary benefit amount changes, excessive delays in payment, and slow response times from authorities to social security benefit complaints.

A number of instances involving discrimination in the distribution of social security payments have been resolved by the Human Rights Committee. Though a state is not compelled under the ICCPR to establish social security law, it has often ruled that if it does, then such legislation and its application may not be discriminatory. According to the Committee's ruling in the case of Swaan-de Vries v. the Netherlands, discriminatory legislation in the area of economic, social, and cultural rights is prohibited by Article 26 of the ICCPR. This law providing unemployment benefits to married men but not married women because they were not considered "breadwinners" was found to be discriminatory. It was determined that the denial of severance pay to a long-serving public worker who was fired by the government was discriminatory because the applicant did not get "equal protection of the law" (Orihuela v. Peru) "without any discrimination." On the other hand, under the Covenant, benefit differential based on marital status is not always considered discrimination. In light of the goals of the Act to help the jobless, the Committee has determined that the criterion of being unemployed at the time of application for unemployment benefits is reasonable and objective.

Regarding unemployment, the ICESCR Committee declared in its General Comment 6 that it is against constitutional social security provisions to restrict payments for persons who are temporarily unable to work in a manner that makes them equal to less than the period the person is unable to work. The "Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights" (1991) also offer a helpful tool for quantifying and defining the right to social security and for monitoring programme service delivery. The Committee determined which branches, including those listed below, are

covered by Article 9 of the Constitution, including health care, cash sickness benefits, maternity benefits, old-age benefits, invalidity benefits, survivors' benefits, employment injury benefits, unemployment benefits, and family benefits. A few instances involving pensions have been brought before the Inter-American organisations in respect to the right to social security. The court determined that the government had breached the right to property and the right to legal protection in cases where pensions for employees were lowered to a small fraction of what they had previously received.The European Court has ruled on various issues involving discrimination in the distribution of social security payments within the European system. The Court has determined that only very compelling reasons can justify sex-based discrimination in social security (see, for example, Schuler-Zgraggen v. Switzerland) and that discrimination against benefit recipients solely based on nationality is illegal under the ECHR (see, for example, Gaygusuz v. Austria).

Similar to the ICESCR Committee, the Committee of Independent Experts that oversees the European Social Charter has stated that states must establish or maintain a system of social security that is at least equivalent to that provided by ILO 102 and that they should work to gradually raise this level. The Committee has also stated that because the economy and social rights are closely related, pursuing economic objectives need not necessarily conflict with the need to increase the level of social security. One way to protect the social security system is to consolidate public finances in order to avoid deficits and debt interest, but the Committee reserves the right to determine whether the methods selected are appropriate. The European Court of Justice also ruled against the United Kingdom in a dispute involving discriminatory social benefit rules, concluding that it was unfair to award males winter fuel subsidies up to an older age than women.

**The Right toan Adequate Standard of Living**

Everyone must, at a minimum, have access to the rights essential for sustenance, including sufficient food and nutrition, clothes, shelter, and the conditions of care when necessary. The most important thing is that everyone should be able to fully participate in regular, daily contact with other people without feeling ashamed or facing excessive hurdles. People should thus be able to fulfil their fundamental requirements in circumstances that respect them. Nobody should be compelled to live in circumstances where the only option to meet their necessities is by denying themselves of their fundamental liberties, such as via beggaring, prostitution, or forced servitude.

According to the World Bank, an adequate standard of living entails spending more than the poverty threshold of the society in question on two things: "the expenditure necessary to buy a minimum standard of nutrition and other basic necessities" and "an additional amount that varies from country to country, reflecting the cost of participating in daily societal activities." Although the principles of progressive realisation are established by economic, social and cultural rights instruments, this concept does not exclude immediate duties (see textbox on 'progressive realisation'); measures towards this objective must be done immediately. Additionally, states parties to major human rights treaties have an immediate obligation to prohibit discrimination of any kind with regard to access to adequate food, clothing, and housing on the basis of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth, or other status, with the intention of nullifying or impairing the equal enjoyment or exercise of this right.

outlines some of the components of this right, including: a) dietary needs; b) clothes; c) housing; d) medical care; and e) essential social services.

Everyone has the right to "an adequate standard of living for himself and his family" under Article 11 of the ICESCR. The right to sufficient housing (General Comments 4 and 7), the right to food (General Comment 12), and the right to water (General Comment 15) are only a few of the parts of this right that have been explained by the Committee on Economic, Social, and Cultural Rights. The Committee provides the most thorough interpretation of the rights to housing, food, and water under international law through these General Comments (a more in-depth discussion of each of these rights is provided below). The Committee also elaborates on the requirements that must be met in order to satisfy these rights.

Several other human rights treaties also mention the right to an acceptable standard of life. The right of every child to a level of living appropriate for their physical, mental, spiritual, moral, and social development is recognised by States Parties under Article 27 of the CRC. In accordance with CEDAW's Article 14, "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas the righto enjoy adequate living conditions, in particular with respect to housing, sanitation, electricity and water supply, transport and communications. The CERD affirms that everyone has the right to enjoy, among other things, the right to housing, the right to social security, and the right to social services, without regard to race, colour, or national or ethnic origin. Additionally, several laws that are intended to protect individuals in certain situations also include clauses about having a decent quality of life.

According to Article 26, "states parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to gradually achieving, by legislation or other appropriate means, the full realisation" of these rights. The concept of progressive realisation is not exclusive to this Convention; it is also taken into consideration in other agreements, such as Article 1 of the San Salvador Protocol and Article 2(1) of the ICESCR. Although the availability of resources determines whether the concept of "progressive realisation" is followed, this clause also establishes certain behaviour that all states parties, regardless of their degree of development, must adhere to. In this context, Article 26 of the ACHR imposes the duty to continually improve circumstances and the prohibition of purposefully regressive actions. The recent jurisprudence of the Inter-American Commission on Human Rights, such as Miranda Cortez et al. v. El Salvador (Case 11.670), lends weight to this latter view. The Protocol of San Salvador also addresses the right to a living standard that is appropriate in Article 12(1).

Everyone has the right to appropriate nourishment, which ensures the possibility of achieving the greatest degree of physical, emotional, and intellectual growth, according to Article 12(1). The contracting parties agree to "recognise the right of workers to remuneration such as will give them and their families a decent standard of living" according to Article 4(1) of the European Social Charter. In addition, Article 31 of the European Social Charter (Revised) addresses the right to housing. Articles 16 and 19(4) of the European Social Charter as well as Article 4 of the Additional Protocol to the Charter additionally protect the right to housing.

The ACHPR does not explicitly protect the right to a decent quality of life, housing, or food in Africa. These rights, however, are fully covered by a combined interpretation of Articles 5 and 14–18 ACHPR and are not beyond the realm of interpretive choices accessible to the African supervisory bodies. The Social and Economic Rights Action Centre et al. v. Nigeria, Communication 155/96, where it established infringement of the rights to shelter and food, neither of which are specifically acknowledged by the Charter, provided recent confirmation from the African Commission. The right to housing or shelter is implicitly enshrined in the entirety of the right to enjoy the greatest quality of mental and physical health that is reasonably achievable, the right to property, and the right to the protection of the family, the

Commission found, according to an innovative interpretation. The rights to life, health, and to the advancement of economic, social, and cultural life also meant the right to food.

## CONCLUSION

Labor-related rights are essential for ensuring the welfare, dignity, and fair treatment of employees at work. Fair salaries, secure working conditions, freedom of organisation and collective bargaining, and the outlawing of forced labour and child labour are just a few of the many facets that make up these rights. In order to ensure decent work, social fairness, and equitable economic growth, upholding labour rights is crucial in both formal and informal employment sectors. States, companies, and trade unions all have important responsibilities to play in advancing and defending workers' rights via the creation of strong legal frameworks, practical guidelines, and social dialogue channels. Stakeholders may help create a just and inclusive workplace where employees are treated with dignity and have access to livable conditions and fair wages by recognising and upholding their legal rights. All parties must place a high priority on safeguarding workers' rights in order to promote a society that promotes social justice ideals and values the rights and worth of all employees.

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# CHAPTER 15

# A BRIEF DISCUSSION ON RIGHT TO HEALTH

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**ABSTRACT:**

A basic human right, the right to health includes the ability to enjoy the best possible level of both bodily and mental well-being. In order to promote health, access to healthcare, and equal health outcomes, this article offers an outline of the right to health. The report looks at important issues including the right to cleanliness, basic medications, and healthcare services. It explores the significance of tackling socioeconomic determinants of health and ensuring disadvantaged communities have equal access to healthcare. The essay emphasises the role played by governments in upholding their responsibilities to respect, safeguard, and realise the right to health via laws, regulations, and the distribution of resources.

**KEYWORDS:**

Healthcare, Equitable Health Outcomes, Human Rights, Health, Social Determinants.

## INTRODUCTION

Even if the groundwork for contemporary public health had been built in previous eras, it really took root in Europe during the Industrial Revolution of the 19th century. Public health initiatives were required as a result of the major health issues caused by industrialised society's harmful working and living environments. A Public Health Act was passed in England under pressure from a significant public health movement, which called for the establishment of a system with boards of health. At the United Nations Conference in 1945, the idea of defining health as a human right was first proposed. A special note that said that "Medicine is one of the pillars of peace" prompted the UN Charter's Article 55 to include a reference to health and the approval of a statement on the creation of an international agency for health. In 1946, the World Health Organisation (WHO) was founded. It was the first institution to explicitly state a "right to health" in its constitution's Preamble. The WHO language is crucial because it served as the model for the concept of the right to health in the different human rights treaty clauses covered below. Although it is difficult to define precisely what the right to health encompasses, academics, activists, and pertinent UN authorities have recognised some components that make up its essential substance. Regardless of the resources at their disposal, states must always provide these things [1], [2].

The WHO's Health for All and Primary Health Care initiatives, which state that "there is a health baseline below which no individuals in any country should find themselves," served as an inspiration for the right to health's fundamental principles. Therefore, regardless of their resources, nations should provide the following fundamental services: Access to maternal and child health care, including family planning, immunisation against the main infectious diseases, appropriate treatment for common illnesses and injuries, essential medications, adequate access to safe water and minimal sanitary conditions, and freedom from serious environmental health threats are just a few of the factors that must be taken into consideration. The framework of the right to health is made up of a number of principles in addition to the core content, including: a) the availability of health services; b) the financial,

geographic, and cultural accessibility of health services; c) the quality of health services; and d) equality in access to those services [3], [4].

It is helpful to highlight the responsibilities of governments with regard to the right to health in order to make clear what the normative substance of the right to health implies. According to the tripartite typology of duties, the right to health gives rise to the positive obligations of "protect" and "fulfil" as well as the negative responsibilities of "respect" and "responsibility" Both the need to respect equitable access to health care and the obligation to abstain from actions that are harmful to health, such as environmental pollution, are included in the requirement to respect the right to health. In order to ensure that everyone has equitable access to health services offered by third parties and to safeguard individuals from health-related violations by third parties, it is necessary to take legal and other action. Finally, there are two requirements that must be met: the state must establish a national health policy, and a substantial portion of the available money must be allocated to health.The primary oversight body for economic, social, and cultural rights at the international level, the Committee on Economic, Social, and Cultural Rights, is not legally permitted to take individual complaints; however, after reviewing the state reports, it makes recommendations to states parties referred to as "concluding observations" on how to implement the right to health. Moreover, the Committee has made significant contributions to our understanding of this right, most notably via General Comment 14 on the right to the greatest achievable level of health.

Complaints about alleged breaches of the right to health guaranteed by the CEDAW may be made by or on behalf of individuals or organisations via the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Too far, no complaints against this right have been made to the CEDAW Committee. While the ICCPR does not specifically include the right to health, the Human Rights Committee has addressed the issue in its case law under the integrated approach [5], [6]. Under various international protocols, certain efforts have been made to address health-related concerns. Environmental health-related problems have been raised in the framework of the UN Human Rights Commission's 1235 process, but no judgement has been issued. The WHO attempted to have the International Court of Justice (ICJ) rule on the right to health but was unsuccessful (see the ICJ Advisory Opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict (1996)). The World Bank has established a special panel where, among other things, health-related concerns may be discussed. This means that on a global scale, health concerns are receiving ever greater attention.

The American Declaration on the Rights and Duties of Man's right to health was the sole issue that the Inter-American Commission addressed at the regional level until recently. This is because Article 26 of the American Convention was reluctantly invoked by the Commission since it is a generic clause that refers to the "progressive nature" of these rights rather than listing specific economic, social, or cultural rights. The Commission, however, recently determined that the right to health is guaranteed by the Convention under Article 26 and that, as a result, the Commission is authorised to consider specific instances of infringement (see, for example, Miranda Cortez et al v. El Salvador (Case 12.249)). Although proving violations of Article 10 of the Protocol of San Salvador is outside the scope of the Commission's purview, it was stated that "the standards referring to the right to health will be considered in our analysis of the merits of the case, pursuant to Articles 26 and 29 of the Convention." The Commission is actively working to ensure the efficacy of economic, social, and cultural rights, which contributes to the relevance of this case of the right to health's direct enforcement. Therefore, the same standard might be used to evaluate additional social rights that are implied in Article 26 of the American Convention. Although Article 10 of the

Protocol of San Salvador explicitly states that everyone has a "right to health," the Protocol only allows for the submission of individual petitions to the InterAmerican system's governing bodies with regard to the rights to education and the right to organise and join unions.

Economic, social, and cultural rights complaints have often been included in messages sent to the Commission in Africa together with other complaints claiming infringement. The bulk of the Commission's conclusions in this area have come from its analysis of deportation and nationality-related issues. Examples include the Mauritania cases, which concern racial discrimination by the dominant Beydane population against the black Mauritanian community. The Commission concluded, among other things, that the malnutrition of black people The European Court has addressed the right to health in relation to political and civil rights, such as, for instance, the right to privacy or the right against discrimination, while operating under the auspices of the CoE. For instance, in the Guerra v. Italy case, this was done. The European Court determined that Italy's refusal to stop the release of poisonous fumes from a chemical facility constituted a breach of the right to privacy (Article 8 ECHR) of persons exposed to the vapours. The Commission on Human Rights designated a Special Rapporteur on Everyone's Right to the Enjoyment of the Highest Achievable Standard of Physical and Mental Health in 2002 [7], [8].

## DISCUSSION

### The Rights to Education and Culture

Human rights must be promoted at all costs, and education is both a fundamental human right in and of itself and a critical tool for achieving other rights. It is a requirement for the enjoyment of many economic, social, and cultural rights; for instance, the right to pursue higher education based on ability, the right to benefit from scientific advancement, and the right to choose one's occupation can only be meaningfully exercised after attaining a certain level of education. Similar to this, the freedom of information, the right to vote, and the right to equal access to public employment are all conditioned on having a certain degree of education, or reading. As a tool for empowerment, education may provide disadvantaged adults and children with the tools they need to break free from poverty and actively engage in their communities. In order to empower women, protect children from exploitation and dangerous employment, advance democracy and human rights, and preserve the environment, education is essential.

The social dimension and the freedom dimension might be seen as the two main facets of the right to education. States are required by the social dimension to gradually implement different types of free education while also making diverse kinds of education open and readily accessible to everyone. The freedom component pertains to the right to academic freedom and institutional autonomy, and it indicates that people or their parents or guardians have the personal freedom to choose educational institutions that adhere to their educational standards, as well as their religious or moral views. This freedom also means that people and organisations are free to start and run their own educational institutions.

Several international agreements include the right to education. "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms," the UDHR states. Detailed requirements involving education are included in Articles 13 and 14 of the ICESCR, Articles 28 and 29 of the CRC, Articles 10 and 14 of the CEDAW, Article 5 of the CERD, and Article 30 of the CMW. Additionally, Article 22 of the Convention Relating to the Status of Refugees guarantees the right to education. Additionally, the UNESCO Convention against Discrimination in

Education aims to promote individual equality of opportunity and treatment in education in addition to outlawing discrimination.

Regionally, the San Salvador Protocol's Articles 13 and 16 provide specific requirements on education. The normative substance of the right is outlined in Article 13 and includes tolerance, peacekeeping, plurality, respect for human rights and basic freedoms. Human dignity and the complete development of the human personality are the goals of education. No one should be denied the right to education, according to Article 2 First Protocol of the European Convention on Human Rights. This provision emphasises the freedom of parents to guarantee that their children get an education in line with their own religious and philosophical views. Education-related regulations are included in Article 17 of the ESC, whereas language-learning measures for migrant workers' children are found in Article 19. Article 17 of the ACHPR, which is administered by the African Union, merely mentions the need of the state to uphold "morals and traditional values recognised by the community.

In its General Comment13 on the application of the right to education, the Committee on Economic, Social, and Cultural Rights offered helpful recommendations. Examples of potential breaches of the right to education committed directly by states parties acts of commission or via their refusal to take the necessary actions to realise the right acts of omission have been provided, among other things. For instance, failure to implement mandatory, free primary education; failure to implement "deliberate, concrete, and targeted" measures to gradually realise secondary, higher, and fundamental education; the introduction or failure to repeal discriminatory legislation in the field of education; failure to maintain a transparent and effective system to monitor implementation of the right to education; There is a lot of case law on the individual right to education in respect to other rights, but there is little case law regarding the individual right to education alone.

In the African system, the Commission has addressed the exclusion of Jehovah's Witnesses from access to education, ruling that the closure of universities and secondary schools, the non-payment of teachers' salaries, preventing them from providing education and students from attending school, were violations of the right to education (Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah). 6A Special Rapporteur on the Right to Education was appointed by the UN Commission on Human Rights in 1998. Katarina Tomaaevski, the first rapporteur, outlined the requirements that the right to education placed on governments, including the need to guarantee that education is made available, accessible, acceptable, and flexible.

Achieving availability calls for both government development and funding of educational institutions as well as official approval of the formation of educational institutions by non-state entities. Governments have a responsibility to ensure that all children of compulsory school age have access to free education, but not to secondary or higher education, where some tuition or other fees may be charged. Acceptability indicates that governments must create and enforce standards on things like textbooks, health, safety, and the credentials of teachers in order to guarantee that education is of a specific calibre. The right of impaired children to an education serves as the finest example of flexibility. The idea that kids should adapt to schools has been replaced with the idea that kids should adapt to schools, and in cases when kids can't attend to school as when they have to work or are in jail education needs to be brought to them.

**The Right to Culture**

Before World War II, minorities sought protection against forced assimilation before the Permanent Court of International Justice, and minorities were a key concern of the League of

Nations, therefore cultural rights were already the topic of international litigation. Since then, the protection of cultural rights has remained a contentious issue, and it was unable to come to agreement on its inclusion in the Universal Declaration of Human Rights. The Universal Declaration of Human Rights only has a relatively limited description of cultural rights since it only covers the right to participate in cultural life and the protection of creative works in science, literature, and the arts Additionally, the East-West disputes and other changes, such as decolonization, made it difficult to preserve minorities and cultural rights.

Regarding cultural rights, there are various points of debate. One illustrates the assimilationist policies of numerous countries. The acknowledgement of cultural rights is often perceived as impeding assimilation and being secondary to national sovereignty and national identity. The communal character of cultural rights is yet another difficult feature. Should gender-based cultural practises be acknowledged such that collective cultural rights might take precedence over the rights of a single woman? Furthermore, it is thought that the idea of culture is ambiguous. Is the idea of culture to be applied anthropologically or should it be restricted to artistic expression.

Although the area of human rights supports a wide definition of culture and considers all cultural manifestations as components of cultural rights, there is still no agreement and the rights connected to culture are still as divisive today as they were in 1948. For instance, the ICESCR Committee undertook broad talks about Article 15, which deals with cultural rights, 10 years ago, but has yet to be able to craft a broad Comment on it. Numerous colloquia on cultural rights have been conducted by UNESCO, and an effort has even been made to draught a proclamation on the subject. The finest outcome to far, nevertheless, has been a 2001 proclamation on cultural diversity. The Council of Europe's Committee of Ministers first proposed in 1993 that a protocol on cultural rights be added to the European Convention at the regional level. But since there was no consensus on the topic, the procedure was put on hold in January 1996. Despite the fact that the substance of cultural rights is debatable, there has been a rise in attention to these rights over the last 20 years, particularly in relation to minorities, a topic that became explosive as a consequence of the changes that occurred in Central and Eastern Europe. Since cultural and minority rights are intertwined, both internationally and regionally, there are a number of norms in place. Additionally, oversight processes have generated a plethora of information that has steadily improved our knowledge of cultural rights. ethnic rights [9], [10].

**The Right to Participate in Society**

A person to participate in decisions that impact her/his interests. Everyone should be able to take part in society, protect their rights, and work to build a society that satisfies their needs and wants. The primary political manifestations of such involvement include the freedoms to participate in and run for office in elections, as well as the freedoms of association and assembly. These rights serve as the cornerstone for any representative, democratic process, a vibrant civil society, and the maintenance of the transparency of public affairs. Other rights, such as the right to education and the right to freedom of conscience and religion, are also closely related to the right to political participation.

The idea of participation goes beyond the ability to vote or associate freely. It includes the idea that all citizens ought to participate in decision-making processes that have an impact on them. Furthermore, a human rights-based strategy to development and poverty reduction, in which the poor must be taken into account as the main actors and strategic partners for development, is based on participation.Cases involving violations of the right to free elections have, for example, involved the dissolution of political parties, the termination of members of

opposition parties' parliamentary terms, and the subsequent incarceration of those individuals for alleged separatist activities. In Sadak et al. v. Turkey, the court declared that "the measure was incompatible with the very essence of the right to stand for election and to hold parliamentary office and that it had infringed the unrestricted discretion of the electorate which had elected the applicants."

The requirement that candidates for parliamentary elections have a sufficient command of the official language and the continued suspension of a suspected criminal's right to vote after his acquittal are two other instances where the Court has found a violation. States are allowed to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification, as the Court has granted states considerable latitude in cases involving the legality of legislation prohibiting those in public office from running for election. The Court determined that some limitations were reasonable and that legislation limiting the right "served a dual purpose that was essential for the proper functioning and upholding of democratic regimes, namely ensuring that candidates of different political persuasions enjoyed equal means of influence and protecting voters from pressure from holders of public office".

In the Inter-American system, the Inter-American Commission has ruled that denying an applicant the recovery of his nationality so that he could run for office resulted in a violation of his political rights rather than preventing a member of a former unconstitutional regime from running for office. According to the Commission's statement about election requirements in Bravo Mena v. Mexico (Case 10.596), "any mention of the right to vote and to be elected would be mere rhetoric if unaccompanied by a precisely prescribed set of characteristics that the elections are required to meet." In Constitutional Tribunal v. Peru, the Inter-American Court considered the American Convention's Article 23.

Communications concerning the right to political participation have been handled by the African Commission. The Commission determined that the right was violated by the annulment of the elections. "The right to vote for the representative of one's choice" was listed as one of the requirements for freely participating in governance. According to the Constitutional Rights Project (in reference to Zamani Lakwot and 6 Others v. Nigeria, Communication 87/93), "it is an inevitable corollary of this right that the results of the free expression of the will of the voters are respected; otherwise, the right to vote freely is meaningless." In another instance, the Commission determined that preventing former government officials from participating in politics following a military coup violated both their rights and the people's right to freely elect their government. The ability to vote is heavily reliant on governments upholding their positive duties. It is almost hard to guarantee fair elections without the necessary resources, expertise, and political will. In the last 10 years, improvements in norms and methods have improved elections' quality in addition to the financial backing of different governments. The International Institute for Democracy and Elections (IDEA), an international organisation founded in Stockholm that has made significant contributions to understanding the intricacies of elections, deserves particular note in this context.

The freedom of association, according to the Inter-American Court, is "the individual's right to join with others in a voluntary and lasting way for the common achievement of a legal goal." (Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practise of Journalism). The right to freedom of association enables people to band together to seek and advance shared interests in organisations like sports teams, political parties, NGOs, and businesses. The ability to organise and join groups freely is only one aspect of the freedom of association; in order for the right to be exercised, organisations

themselves must be free from undue government intrusion. Thus, the right encompasses elements of both an individual and a community right.

A person does not have the right to associate with others if they do not want to do so; the right to associate involves a mutual connection. The ability to refrain from associating is a drawback of the right to associate. Associations that are required for a democratic society to operate are excluded from the general prohibition of forcing people to join them. For instance, even if a society's actions conflict with that individual's beliefs, that person may not choose to be disassociated from it. In certain circumstances, a person may also be forced to join a professional organisation that was created to guarantee a particular quality of work, such as a medical organisation or a lawyer group. Laws requiring official recognition of groups or too onerous government registration procedures may not encroach on the right to associate. A specific facet of the right to freedom of association combined with the right to work is the right to create and join trade unions, as well as its opposite, the right not to form and join unions. For instance, this right gives union the freedom to set their own rules, join federations and other international bodies, and manage their own business.

It covers the freedom to choose not to join a union without fear of retaliation as well as the freedom to be elected to and participate in one without being intimidated. Armed services and law enforcement come under a separate category since their freedom of association rights might be restricted more severely than those of others, especially in relation to trade union activities.

The restrictions imposed on these groups' rights are only intended to restrict their options for associations; they are not intended to prevent them from enjoying their rights. The right to strike is closely tied to the freedom of association. One of the most crucial weapons trade unions have to defend their interests is the ability to strike, but this power must be used in accordance with any applicable national laws. A blanket ban on strikes for public workers may be seen as an undue limitation on the options available to trade unions to advance their objectives.

## CONCLUSION

A basic human right, the right to health guarantees that everyone has access to the best possible level of both physical and mental health. It includes socioeconomic determinants of health including access to critical medications, sanitation, and healthcare services. No of a person's socioeconomic situation or origin, attaining equitable health outcomes for all people depends on upholding their right to health. By passing the necessary laws, creating policies, and allocating funds to provide universal access to healthcare, states have a duty to respect, preserve, and fulfil the right to health. Prioritising the decrease of health inequalities and providing fair healthcare services is crucial, especially for disadvantaged groups. States help build a society that appreciates and promotes the health and well-being of all people by maintaining the right to health.

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# CHAPTER 16

# A BRIEF STUDY ON RIGHT TO EQUALITY AND NON-DISCRIMINATION

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**ABSTRACT:**

A basic human right that ensures equality of treatment and defence against unfair discrimination is the right to equality and non-discrimination. The right to equality and nondiscrimination is discussed in general terms in this essay, along with its importance in fostering an inclusive and fair society. The examination looks at important topics including equal legal protection, preventing discrimination based on things like colour, gender, religion, handicap, and sexual orientation, and fostering inclusion and diversity. It looks at how governments may combat prejudice by passing anti-discrimination legislation, putting anti-discrimination policies into practise, and ensuring that everyone receives the same chances and treatment.

**KEYWORDS:**

Diversity, Equal Treatment, Human Rights, Non-Discrimination, Protection, Right to Equality, Social Inclusion.

## INTRODUCTION

An essential component of international human rights legislation is the basic concept of equality and non-discrimination. Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation. As a result, everyone must be treated fairly and equally in front of the law in order to be guaranteed the right to equal treatment. The equality and nondiscrimination principles ensure that people in similar situations are treated fairly in both law and practise. It is crucial to emphasise that not all distinctions or variations in treatment constitute discrimination. In general international law, there is a violation of the principle of non-discrimination if: equal cases receive different treatment; a difference in treatment lacks an objective and justifiable justification; or there is an imbalance between the goal pursued and the means used [1], [2].

Some human rights laws, like CERD and CEDAW, are expressly designed to end discrimination based on certain criteria. In both situations, it is permissible to file a complaint on an individual basis if the rights guaranteed therein are violated. Such a process was created for CEDAW by the Optional Protocol, which was enacted in 1999. It is crucial to emphasise that these two documents specifically call on governments to take action to stop and oppose prejudice perpetrated by third parties. of the CERD, for instance, states that "Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, groups, or organisations." Additionally, Article 2(e) of CEDAW mandates that nations "take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise."

The general non-discrimination provision in Article 2 of the ICESCR/ICCPR forbids discrimination in the exercise of the rights guaranteed by both Covenants. Additionally, the equality of men and women is emphasised in Article 3 of each agreement. These clauses should be viewed as an essential component of all substantive clauses in the ICESCR/ICCPR. Even if a measure is in accordance with the substantive clauses on its own, when combined with Articles 2 and 3, it may still be a violation of those clauses.

Each Covenant has basic non-discrimination rules as well as ones that forbid discrimination based on particular grounds. For instance, the ICESCR's Article 7(a)(i) guarantees equal pay for equal work and equal working conditions for men and women; Article 7(c) ICESCR ensures equal opportunity for everyone to advance in their careers; Article 10(3) forbids any discrimination in the protection and assistance of all children and young people; and Article 13(2)(C) ensures equal accessibility in higher education. Furthermore, Article 24 of the ICCPR forbids discrimination against children based on race, colour, sex, language, religion, national or social origin, property, or place of birth. In a similar vein, Article 23(4) of the ICCPR mandates states to take adequate measures to ensure equality of rights and responsibilities of spouses with regard to marriage, during marriage, and at its dissolution [3], [4].

Human rights instruments sometimes contain anti-discrimination provisions that provide protection that is not only restricted to the rights stated in the documents. Article 3 of the ACHPR, Article 24 of the ACHR, and Protocol No. 12 of the ECHR, for instance, create free-standing rights to equality; their applicability is not limited to the rights outlined in the Conventions. Article 14 and Protocol No. 12 of the ECHR might be used as examples to show how important the difference is. Article 14 of the Convention offers limited protection for equality and non-discrimination since it forbids discrimination solely with relation to "enjoying the rights and freedoms" outlined in the Convention. Protocol No. 12 of the ECHR establishes a freestanding right to equality on a variety of grounds, including sex, ethnicity, colour, language, religion, national or social origin, and birth, in order to close this gap. By including a comprehensive non-discrimination language, Protocol No. 12 offers protection that goes beyond the ECHR's Article 14 clause that states that everyone has the right to "enjoy the rights and freedoms set forth in the Convention.

People are now protected against discrimination while exercising a range of economic, social, and cultural rights thanks to the implementation of Article 26. Among the many instances, the Committee's statement in Waldman v. Canada that "the Covenant does not oblige States Parties to fund schools which are established on a religious basis" should be mentioned. However, if a State party decides to support religious schools with public money, it must do so without prejudice. Although the right to social security is not specifically protected by the International Covenant on Civil and Political Rights, issues under the Covenant may still arise if the equality principle outlined in Articles 14 and 26 of the Covenant is violated, according to the ruling in Garcia Pons v. Spain [5], [6].

The European Court of Human Rights has consistently interpreted the term "discrimination" with respect to Article 14 of the Convention on a regional basis. The Court has specifically stated in its case-law that not every differentiation or differentiating of treatment constitutes discrimination.

A difference in treatment is discriminatory if it "has no objective and reasonable justification," that is, if it does not pursue a "legitimate aim," or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised," as the Court has stated, for instance, in the case of Abdulaziz, Cabales, and

Balkandali v. The United Kingdom (paragraph 72). The European Court has also determined that when national authorities are determining whether and to what extent variations in otherwise identical circumstances deserve a different treatment in law, a certain degree of appreciation is permitted.

## DISCUSSION

### The Human Rights Protection of Vulnerable Groups

Protection of persons at risk of having their basic human rights violated is the goal of human rights instruments. Certain groups need special protection in order to exercise their human rights equally and effectively because they are weak and vulnerable or have a history of being wronged for different reasons. The Committee on Economic, Social, and Cultural Rights has repeatedly emphasised that the ICESCR is a vehicle for the protection of vulnerable groups within society, requiring states to extend special protective measures to them and ensure some degree of priority consideration, even where in the face of severe resource constraints. Human rights instruments frequently set out additional guarantees for people belonging to these groups. This section focuses on groups who are particularly susceptible to violations of human rights, including those that face institutional discrimination, such as women, and those that find it difficult to defend themselves and hence need extra protection [7], [8].

### Women And Girls

A number of treaties for the protection of women were created after World War II, and both the UN Charter and the International Bill of Human Rights (see, for example, Article 3 ICESCR and Article 3 ICCPR) affirm equal rights for men and women and forbid sexism. A vast array of instruments have been created expressly for the protection of women, the eradication of discrimination against women, and the advancement of equal rights, in addition to instruments dealing to discrimination in general. These help to build a wide, international framework for present and future developments as well as common standards for national policies.

The CEDAW represents the extent of discrimination and limitations experienced by women based purely on their sex. It outlines equal rights for women in all spheres of life political, economic, social, cultural, and civil regardless of their marital status and demands for national legislation outlawing discrimination. It permits activities to change social and cultural norms that support discrimination as well as temporary special measures ('affirmative action') to hasten the attainment of equality in practise between men and women (Article 4). Other provisions include equal access to education and a choice of curriculum for all students (Article 10), the elimination of salary and employment discrimination and assurances of work stability in the case of marriage and childbirth. In Article 16 of the Convention, it is emphasised that men and women have equal obligations within the framework of the family. It also emphasises the need of social services, particularly childcare facilities, for balancing family duties with employment commitments and involvement in civic life

The Convention also calls for equal legal ability for men and women, as well as nondiscriminatory health care for women, including family planning services. States parties concur that any private agreements and other documents that limit women's legal competence "shall be deemed null and void" (Article 15). The issues facing rural women are given particular focus (Article 14). It should be highlighted that the various objections voiced by states parties greatly reduce the efficacy of the Convention in promoting the rights it provides. The majority of reservations seek to maintain religious and national institutions that are against the rights protected and several are plainly incompatible with the Convention's

goal and purpose. The General Assembly approved an optional protocol to the convention on October 6, 1999, and it became effective the next year. The Protocol creates a process through which individual women or groups of women may report alleged breaches of their rights guaranteed by the Convention to the CEDAW Committee. The Optional Protocol was approved by 60 governments in July 2004 (see II.1.C).The UN Convention on the Political Rights of Women (1952), the UN Convention on the Nationality of Married Women (1957), and the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) are additional universal instruments pertaining to the rights of women [9], [10].

The European Convention on Human Rights, the European Social Charter, and its corresponding protocols are the principal treaties of the Council of Europe in the area of women's rights. While the ECHR does not specifically address women's rights, it does prohibit any "distinction" based on, among other things, sex in respect to the rights guaranteed by the Convention under Article 14. In addition, Protocol No. 7 has amended the Convention to include the concept of equality between spouses with respect to their rights and obligations in marriage. A number of particular rights for women are outlined in the ESC, including equal pay, mother and child protection, protection of working women, and social and economic security for women. The Additional Protocol from 1988 covers the prohibition of sex-based discrimination in employment opportunities and treatment. The updated Charter also includes a provision that forbids discrimination on a number of reasons, including sex.

The Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) is noteworthy in the African context because it aims, among other things, to end harmful practises affecting women, such as genital mutilation (Article 5), the right to equality of men and women in marriage (Article 6), the right of women to choose whether to have children (Article 14), the right to peace (Article 10), and various economic and social rights. 6The Inter-American Convention on the Nationality of Women (1933), the Inter-American Convention on the Granting of Political Rights to Women (1948), and the Inter-American Convention on the Granting of Civil Rights to Women (1948) are just a few of the standards within the Inter-American system that are pertinent to women's human rights. In addition, the Inter-American Convention on the Prevention, Punishment, and Rehabilitation of Offenders was approved by the Organisation of American States.

For the purpose of monitoring the execution of the rights it upholds, the CEDAW creates the Committee on the Elimination of Discrimination Against Women (for a more thorough study of the Convention and Committee, see II.1.C). The Committee serves as a monitoring structure to keep an eye on how the Convention is being put into practise. This is mostly accomplished through reviewing the reports that the states parties provide, but in 1999, an optional protocol increased the Committee's authority by allowing it to also handle individual complaints. This process enables individuals and groups of persons who are purportedly the victims of infractions to lodge a complaint against protocol-signatory governments. As was previously discussed, the Optional Protocol also introduces a unique feature: an inquiry method that enables the Committee to open inquiries into alleged serious or repeated breaches of the rights enshrined in the Convention by a state party. The Committee may go to the concerned nation in this respect (see II.1.C).

Through its General Recommendations, which addressed a number of issues of utmost importance for women like violence against women (General Recommendation 12), equal pay for work of equal value (General Recommendation 13), female circumcision (General Recommendation 14), AIDS (General Recommendation 15), and violence against women (General Recommendation), the Committee has significantly contributed to the interpretation

of the obligations imposed by the Convention. Although the CEDAW Committee is qualified to hear individual complaints, no individual cases have been resolved to this point. However, individual complaints of sex discrimination have been submitted to the Human Rights Committee. In the Mauritian Women Case (Aumeeruddy Cziffra and 19 other Mauritian Women v. Mauritius), the Committee determined that an immigration law that granted certain status to wives but not husbands made an unfavourable distinction based on sex and was in violation of the ICCPR.

A legislation that prohibited married women from claiming ongoing unemployment benefits unless they could demonstrate that they were either "breadwinners" or that they were permanently separated from their spouses was the subject of another dispute filed before the Human Rights Committee. Married males were not subject to this requirement. In Broeks v. The Netherlands, the Committee determined that nondiscrimination based on sex violated Article 26 of the ICCPR. Article 26 is "free-standing," which means it may be used to challenge discriminatory legislation regardless of whether the relevant ICCPR provisions apply (for further analysis, see the right to equality and non-discrimination III.12).

The Convention on the Elimination of All Forms of Racial Discrimination (CERD) also lays out a communications procedure that has been used to challenge discrimination based on race and gender, for instance in the case of a foreign worker who was fired because she was pregnant. She sought redress in domestic courts, which upheld the employer's contention that foreign employees with children often take more sick leave than natives since they have a tendency to quit working after having children. In the case of Yilmaz-Dogan v. the Netherlands, the CERD Committee found that the state had not upheld the right to labour under the CERD. In its General Recommendation 25, the CERD Committee expressly addressed the problem of gender-related aspects of racial discrimination.

Two significant InterAmerican Commission rulings are worthy of notice within the system: Cases 12.051 Maria da Penha v. Brazil and 11.565 Ana, Beatriz, and Celia Gonzalez Perez v. Mexico. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belem do Para) was applied in the case against Brazil for the first time, and the Commission determined that a state was responsible for its negligence and lack of effectiveness in prosecuting and condemning the victim's aggressor (her ex-husband), as well as for failing to fulfil the state's responsibility to prevent harm. In the second instance, the Commission determined that Mexico was accountable for the unlawful arrest, rape, and torture of the Perez sisters as well as the subsequent failure to conduct an investigation and award damages. It's important to note that the Commission explicitly emphasises that rape may constitute torture and is a breach of women's privacy in this circumstance. The importance that being a victim of such a crime entails in the indigenous group of which the victims were members in this specific instance increased the gravity of the behaviour.

Also worth mentioning is the UN Commission on the Status of Women (see II.1.B), which has the authority to examine both private and open statements about the status of women. A Working Group of five members meets in private during each session to discuss communications addressed to the Commission and those pertaining to women received by the Office of the High Commissioner for Human Rights, as well as the replies of governments thereto, with the goal of bringing to the Commission's attention those communications which reveal a consistent pattern of reliably attested violations of women's rights. Regarding the complaints received, the Commission may advise ECOSOC; ECOSOC determines the next measures to be taken.

Every year, the UN Human Rights Commission addresses a number of agenda items that pertain to the protection of women, such as the trafficking in women and girls, the abolition of violence against women, and the inclusion of women's rights into the UN system. The Commission has also appointed a Special Rapporteur on Traditional Practises Affecting the Health of Women and the Girl Child as well as a Special Repporteur on Violence Against Women, Its Causes, and Consequences. Furthermore, it is obvious that complaints about violations of women's rights may be made to the ILO's general supervisory processes as well as the ECHR and ESC's systems.

The UN Decade for Women (1976–1985) had an effect on how the organisation developed its equal opportunity policy. A series of Forward-Looking Strategies were developed at the World Conference on Women in Nairobi in 1985. They may be thought of as a kind of international action agenda for improving the status of women until the year 2000 and providing directions for global long-term action. The challenges that women confront in attaining equality, development, and peace are reflected in the Forward-Looking Strategies. The plan is more of a broad guideline than a legal agreement. But considering the broad support it received, it now has a lot of moral weight.

During the Fourth World Conference on Women in Beijing in 1995, the Beijing Declaration and Platform for Action were both approved. This paper includes a variety of goals as well as suggested institutional and financial structures. The Platform for Action was assessed during a special session of the General Assembly in 2000, and the twenty-third special session of the General Assembly (Beijing +5), with the theme "Women 2000: gender equality, development, and peace for the twenty-first century," also assessed the progress made in its implementation. The Beijing Declaration and Platform for Action (the Outcome Document) and a Political Declaration were both approved by the assembly. The CSW's multi-year plan for the years 2002 to 2006 outlines its present and future activity, which is closely tied to both the Platform for Action and the Outcome Document.

The ILO aggressively combats gender discrimination. The firm strives to include gender issues into all of its policies and initiatives. The ILO's specific activities in relation to the Beijing Conference include promoting the more widespread adoption and ratification of international labour standards that are particularly pertinent to women. These activities include improving women's working conditions and social protection, enhancing organisations and institutions that represent and support women, and creating productive employment for women and eradicating poverty. The Bureau for Gender Equality and different research and seminars are among the ILO's activities. The International Programme on More and Better Jobs for Women was established with the ILO Governing Body's approval during its 265th session in 1996. Through job creation, training, entrepreneurial development, easier access to the labour market, and equal opportunity, this project supports the creation of additional jobs for women. Equal pay, occupational desegregation, health and safety, better working conditions for non-standard employment, social security, family-friendly workplaces, and protection for workers' rights are all promoted as ways to create better jobs.

## CONCLUSION

An essential component of human rights, the right to equality and nondiscrimination ensures that everyone is treated fairly and is protected against discrimination. This right includes nondiscrimination and equal protection under the law for all people, regardless of their race, gender, religion, sexual orientation, or other characteristics. Promoting a fair and inclusive society that celebrates variety and respects the inherent worth and dignity of every person

depends on upholding the rights to equality and non-discrimination. States have a duty to outlaw discrimination, pass anti-discrimination legislation, and put in place procedures and policies that guarantee equal opportunities and treatment. Challenges to cultural norms, preconceptions, and biases that support discrimination are essential in order to advance diversity, inclusion, and social cohesiveness. States promote a society where everyone may participate completely and equally, regardless of their origin or traits, through maintaining the right to equality and non-discrimination.

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# CHAPTER 17

# A BRIEF DISCUSSION ON RIGHT TO PARTICIPATE IN SOCIETY

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**ABSTRACT:**

A basic human right that enables people to actively participate in social, cultural, political, and economic activities is the right to participation in society. This essay gives a general review of the importance of the right to participate in society for the advancement of democracy, inclusion, and social cohesion. The examination examines important topics such the freedom of speech, association, peaceful assembly, and decision-making involvement. It looks at how governments may make sure that everyone has fair opportunity to participate, especially disadvantaged and vulnerable populations. The study emphasises the significance of developing an environment that supports active citizenship, encourages civic involvement, and safeguards people's participation rights.

**KEYWORDS:**

Civic Engagement, Democracy, Human Rights, Inclusivity, Participation.

## INTRODUCTION

A basic human right that guarantees people have the chance and freedom to actively participate in social, cultural, political, and economic arenas is the right to participate in society. This essay gives a general overview of the right to participate in society and discusses its importance for advancing inclusiveness, empowerment, and democratic government. The examination examines important topics such the freedom of speech, association, peaceful assembly, and decision-making involvement. It looks at how nations may foster an atmosphere that encourages meaningful and equitable engagement for all people, especially members of underrepresented and marginalised groups. The study highlights the significance of encouraging civic involvement, endorsing inclusive policies, and removing obstacles to participation. ‘The ability of every person to participate in decisions that impact her/his interests shapes the fundamentals of the right to participation [1], [2].

Everyone need to be able to take part in society, protect their interests, and assist in building a society that satisfies her/his interests and needs. The primary political manifestations of such involvement include the freedoms to participate in and run for office in elections, as well as the freedoms of association and assembly. These rights serve as the cornerstone for any representative, democratic process, a vibrant civil society, and the maintenance of the transparency of public affairs. Other rights, such as the right to education and the right to freedom of conscience and religion, are also closely related to the right to political participation.

The idea of participation goes beyond the ability to vote or associate freely. It includes the idea that all citizens ought to participate in decision-making processes that have an impact on them. Furthermore, a human rights-based strategy to development and poverty reduction, in which the poor must be taken into account as the main actors and strategic partners for development, is based on participation [3], [4].

**The right to vote and stand for elections**

The right to vote in elections and referendums must be created by legislation and may only be subject to justifiable limitations, such as establishing a minimum voting age. Restricting the right to vote based on a physical impairment or placing property, literacy, or educational criteria is unreasonable. Being a member of a party should not be a requirement for voting or a reason to be disqualified. The length of any voting right suspension, if it results from a conviction for a crime, must be appropriate given the crime and the punishment.

The ability to vote and run for office is protected by a number of laws. Both Article 21 of the UDHR and Article 25 of the ICCPR state that everyone has the right to equal access to public service in their country, as well as the right to vote and be elected "at periodic and genuine elections, which shall be by universal and equal suffrage" and held by secret ballot or by equivalent free voting procedures. Additionally, the Human Rights Committee stressed in General Comment 25 that it is the responsibility of the state to guarantee that those who are eligible to vote may really exercise their right. The states should take action to address particular issues limiting the full exercise of the right, such as language, illiteracy, or poverty, and interference with voting should be outlawed by criminal legislation. The right of women to vote and to take part in political and public life is outlined in Article 7 of CEDAW.

The requirements for the right to vote and be elected are the same under Article 3 of the First Protocol to the ECHR and Article 23 of the ACHR. As stated in Article 13 of the ACHPR, "Every citizen shall have the right to freely participate in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law," and as stated in Article 20 of the same document, "they shall freely determine their political status and shall pursuedevelopment in accordance with the policy they have freely chosen." The Inter-American Democratic Charter (2001), which outlines the possibility of electoral missions and states that essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, and the holding of periodic, free, and fair elections based on secret balloting and universal suffrage', are additional standards. The Charter is a politically charged document that embodies the countries of the Americas' pledge to work together to advance and preserve democracy in the area [5], [6].

Numerous restrictions may be placed on the right to vote, and the international standards permit a broad range of electoral systems. It is widely acknowledged that there is no one voting system that is equally suitable for all countries and peoples; rather, election systems are intricate and need for rigorous scrutiny to maintain freedom and justice.Cases involving violations of the right to free elections have, for example, involved the dissolution of political parties, the termination of members of opposition parties' parliamentary terms, and the subsequent incarceration of those individuals for alleged separatist activities. In Sadak et al. v. Turkey, the court declared that "the measure was incompatible with the very essence of the right to stand for election and to hold parliamentary office and that it had infringed the unrestricted discretion of the electorate which had elected the applicants."

The requirement that candidates for parliamentary elections have a sufficient command of the official language and the continued suspension of a suspected criminal's right to vote after his acquittal are two other instances where the Court has found a violation. States are allowed to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification, as the Court has granted states considerable latitude in cases involving the legality of legislation prohibiting those in public office from running for election. The Court determined that some limitations were reasonable and that legislation

limiting the right "served a dual purpose that was essential for the proper functioning and upholding of democratic regimes, namely ensuring that candidates of different political persuasions enjoyed equal means of influence and protecting voters from pressure from holders of public office" (see, for example, Gitonas et al. v. Greece, Ahmed et al. v. The United Kingdom).

In the Inter-American system, the Inter-American Commission has ruled that denying an applicant the recovery of his nationality so that he could run for office resulted in a violation of his political rights rather than preventing a member of a former unconstitutional regime from running for office (Whitbeck v. Guatemala, Case 10.804). According to the Commission's statement about election requirements in Bravo Mena v. Mexico (Case 10.596), "any mention of the right to vote and to be elected would be mere rhetoric if unaccompanied by a precisely prescribed set of characteristics that the elections are required to meet." In Constitutional Tribunal v. Peru, the Inter-American Court considered the American Convention's Article 23.

Communications concerning the right to political participation have been handled by the African Commission. The Commission determined that the right was violated by the annulment of the elections. "The right to vote for the representative of one's choice" was listed as one of the requirements for freely participating in governance. According to the Constitutional Rights Project (in reference to Zamani Lakwot and 6 Others v. Nigeria, Communication 87/93), "it is an inevitable corollary of this right that the results of the free expression of the will of the voters are respected; otherwise, the right to vote freely is meaningless." In another instance, the Commission determined that preventing former government officials from participating in politics following a military coup violated both their rights and the people's right to freely elect their government [7], [8].

## DISCUSSION

The ability to vote is heavily reliant on governments upholding their positive duties. It is almost hard to guarantee fair elections without the necessary resources, expertise, and political will. In the last 10 years, improvements in norms and methods have improved elections' quality in addition to the financial backing of different governments. The International Institute for Democracy and Elections (IDEA), an international organisation founded in Stockholm that has made significant contributions to understanding the intricacies of elections, deserves particular note in this context.

Having the right to free association requires that you have a connection with other people. not be granted the freedom to socialise with others who choose not to do so. The ability to refrain from associating is a drawback of the right to associate. Associations that are required for a democratic society to operate are excluded from the general prohibition of forcing people to join them. For instance, even if a society's actions conflict with that individual's beliefs, that person may not choose to be disassociated from it. In certain circumstances, a person may also be forced to join a professional organisation that was created to guarantee a particular quality of work, such as a medical organisation or a lawyer group. Laws requiring official recognition of groups or too onerous government registration procedures may not encroach on the right to associate.

A specific facet of the right to freedom of association combined with the right to work is the right to create and join trade unions, as well as its opposite, the right not to form and join unions. For instance, this right gives unions the freedom to set their own rules, join federations and other international bodies, and manage their own business. It covers the

freedom to choose not to join a union without fear of retaliation as well as the freedom to be elected to and participate in one without being intimidated.

Armed services and law enforcement come under a separate category since their freedom of association rights might be restricted more severely than those of others, especially in relation to trade union activities. The restrictions imposed on these groups' rights are only intended to restrict their options for associations; they are not intended to prevent them from enjoying their rights. The right to strike is closely tied to the freedom of association. One of the most crucial weapons trade unions have to defend their interests is the ability to strike, but this power must be used in accordance with any applicable national laws. A blanket ban on strikes for public workers can be seen as an undue limitation on the options available to trade unions to further their goals [9], [10].

According to Article 20 of the UDHR, "everyone has the right to freedom of peaceful assembly and association," "no one may be required to join an association," and "everyone has the right to organise and join trade unions." While drawing from the Universal Declaration, Article 22 of the ICCPR provides for potential right limits. In a democratic society, restrictions must be "prescribed by law, necessary in the interest of national security or public safety, public order, the protection of public health or morals, or the protection of others' rights and freedoms." The article also permits the imposition of legal limitations on how members of the police and the armed services may use their right to association. The right to organise a union, the right for that union to organise federations, the right for that union to operate freely within specific parameters, and the freedom to strike are all outlined in Article 8 of the ICESCR. Children's freedom of association is guaranteed under Article 15 of the CRC, subject to comparable restrictions. The right of migrant workers to join unions and request their support is acknowledged in Article 26 of the CMW.

Similar to this, Article 11 of the ECHR outlines the freedoms of assembly, association, and the creation and membership in unions. The right to organise is outlined in Article 5 of the ESC, but the right to refrain from joining is not included.The ECHR also grants states parties the right to impose limitations on foreigners' ability to engage in political activity. The freedom to create and join unions is outlined in Article 8 of the Protocol of San Salvador and Article 16 of the ACHR. No one may be forced to join an association, according to Article 10 of the ACHPR, which states simply that "every individual shall have the right to free association provided that he abides by the law." However, paragraph 2 of the Article outlining the right is special in that it subjects the right not to join to certain obligations of solidarity outlined in Article 29 of the Charter.Many ILO agreements, such as ILO 87 addressing the Freedom of Association and Protection of the Right to Organise (1948) and ILO 98 about the Application of the Principles of the Right to Organise and to Bargain Collectively (1999), deal with the right to association.

In the sake of public order, national security, and other people's rights and freedoms, states parties are given certain latitude with regard to the freedom of association. States wishing to rely on these grounds for exemption must construe them narrowly since they often result in case law before the different supervisory bodies. The Human Rights Committee has not seen many instances involving the right to organise an organisation. The Committee determined that the ICCPR was not violated when a fascist political party was outlawed, ostensibly for reasons of public order and national security. In Lopez Burgos v. Uruguay, the Committee found that the right to freedom of association was violated when trade union activists were harassed by the government as a result of their union-related activities. The Committee has also expressed concern about onerous registration requirements for NGOs and trade unions,

stating that these requirements may not be so onerous as to restrict the right to freedom of association. The right to strike is protected within the ICCPR's processes and mechanisms, subject to the limitations outlined in the Convention, but is not included by the scope of Article 22 according to the Committee's interpretation of the Convention (with significant disagreement.

In the interests of national security, public order, and the rights and freedoms of others, states parties are given a certain amount of latitude with regard to the freedom of association. These grounds for exemption, which have often resulted in case law before the different supervisory institutions, must be read carefully by states attempting to rely on them.There haven't been many instances involving freedom of association that the Human Rights Committee has handled. The Committee determined that a ban on a fascist political party was permissible under the ICCPR (M.A. v. Italy), presumably for reasons of public order and national security. The Committee has found violations of freedom when trade union activists have been harassed by authorities as a result of their trade union activities (Lopez Burgos v. Uruguay). Additionally, the Committee has expressed concern over onerous registration requirements for NGOs and trade unions, stating that such requirements may not be as onerous as to result in restrictions on the right to freedom of association. The Committee has read the Convention (against substantial opposition) such that the right to strike is protected by the ICCPR's processes and mechanisms but is not covered by the provisions of Article 22. However, it is subject to the particular limitations outlined in the Convention.

The European system has mostly dealt with disputes involving limitations on particular organisations or the unfavourable side of the freedom of association, the right not to join. In situations involving, for instance, a state's deregistration of a suspected subversive organisation and the dissolution of an opposition political party, it has discovered breaches. In a case called Sidiropoulos et al. v. Greece, the Court dealt with the negative side of freedom of association and determined that forcing someone to join a professional organisation against their conviction violates that person's right to freedom of association; however, in Rekvényi v. Hungary, the Court determined that prohibiting police from engaging in political activity did not violate the right.

The Inter-American Court has addressed this problem within the Inter-American framework in an advisory judgement on the mandatory membership of an organisation for the practise of journalism. It stated: "It would be against all reason to interpret the word freedom as a 'right' only and not as the 'inherent power that man has to work in one way or another, or not to work' according to his free will'" and that forbidding certain people from joining an association violated their right to freedom of expression by preventing them from using the media as a platform for expression and information dissemination. Additionally, the Court ruled in Baena Ricardo et al. (270 employees) v. Panama that almost 300 workers and union leaders who were sacked from state-owned firms due to their union activity had violated their human rights.

The African Commission has rendered decisions in situations where the freedom to association was relevant. The Commission, for instance, found that the state had violated the right to freedom of association when it unfairly tried and convicted members of a community organisation (International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nig.), or when prominent political figures were deported illegally (Amnesty International v. Zambia, Communication 212/98). Due to the close relationship between the right to freedom of association and labour rights, the ILO has established unique procedures to oversee associational freedom. In 1950, the ILO developed a unique mechanism after reaching an agreement with the ECOSOC. The process

is based on the filing of complaints that may be made by governments or by groups representing employers or employees.

Even governments that have not signed the ILO 87 and ILO 98 Conventions on Freedom of Association may be subject to its application. The apparatus consists of two bodies. One is the Committee on Freedom of Association, which hears complaints from governments, employers' groups, and workers' organisations. Under the so-called "direct contacts" approach, the Committee may even arrange in-person meetings. The ILO's Governing Body refers complaints of trade union rights violations to the Fact-Finding and Conciliation Commission on Freedom of Association, which investigates them. Both countries that have ratified the Freedom of Association Conventions and those that have not, though in the latter case, referral may not be made, are subject to the commission's findings (conclusions and recommendations). When the United Nations forwards concerns against ILO non-member nations and the nation agrees, the Commission may also look into claims of infringement of the right to freedom of association. Under this method, hardly many complaints have been guarantee that the final judgement is carried out, procedures are included in the ILO complaint processes. The decision's publishing is the most crucial of these clauses. Even if it doesn't seem to be particularly harsh legally and officially, it has proven to be a useful weapon.

A number of treaties for the protection of women were created after World War II, and both the UN Charter and the International Bill of Human Rights (see, for example, Article 3 ICESCR and Article 3 ICCPR) affirm equal rights for men and women and forbid sexism. A vast array of instruments has been created expressly for the protection of women, the eradication of discrimination against women, and the advancement of equal rights, in addition to instruments dealing to discrimination in general. These help to build a wide, international framework for present and future developments as well as common standards for national policies. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted by the UNGA on December 18, 1979, is one of the most significant pieces of legislation for the protection of women. It was developed over a five-year period through consultations by numerous working groups, the CSW, and the UNGA. It became operative in 1981. The 30-article Convention lays forth guidelines and steps to ensure that women worldwide have equal rights (see II.1.C). 177 nations were parties to CEDA as of July 2004.

The CEDAW represents the extent of discrimination and limitations experienced by women based purely on their sex. It outlines equal rights for women in all spheres of life political, economic, social, cultural, and civil regardless of their marital status and demands for national legislation outlawing discrimination. It permits activities to change social and cultural norms that support discrimination (Article 5) as well as temporary special measures ('affirmative action') to hasten the attainment of equality in practise between men and women (Article 4). Other provisions include equal access to education and a choice of curriculum for all students (Article 10), the elimination of salary and employment discrimination (Article 11), and assurances of work stability in the case of marriage and childbirth (Article 11). In Article 16 of the Convention, it is emphasised that men and women have equal obligations within the framework of the family. It also emphasises the need of social services, particularly childcare facilities, for balancing family duties with employment commitments and involvement in civic life (Article 11).

The Convention also calls for equal legal ability for men and women, as well as nondiscriminatory health care for women, including family planning services. States parties concur that any private agreements and other documents that limit women's legal competence

"shall be deemed null and void" (Article 15). The issues facing rural women are given particular focus (Article 14). It should be highlighted that the various objections voiced by states parties greatly reduce the efficacy of the Convention in promoting the rights it provides. The majority of reservations seek to maintain religious and national institutions that are against the rights protected and several are plainly incompatible with the Convention's goal and purpose.

The General Assembly approved an optional protocol to the convention on October 6, 1999, and it became effective the next year. The Protocol creates a process through which individual women or groups of women may report alleged breaches of their rights guaranteed by the Convention to the CEDAW Committee. The Optional Protocol was approved by 60 governments in July 2004 (see II.1.C). The UN Convention on the Political Rights of Women (1952), the UN Convention on the Nationality of Married Women (1957), and the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) are additional universal instruments pertaining to the rights of women. Additionally, Article 7 of the Rome Statute of the International Criminal Court (1998) declares that crimes against humanity include rape, forced prostitution, forced pregnancy, forced sterilisation, and other types of sexual assault.

## CONCLUSION

Democracy, inclusion, and social advancement all rest on the foundation of the freedom to participate in society. It covers the rights to free speech, association, peaceful assembly, and involvement in political processes. States are essential in establishing an atmosphere that encourages active citizenry and guarantees equitable and worthwhile participation possibilities.

States enable people to contribute to the social, cultural, political, and economic development of their communities through defending and promoting the right to participate. In order to create inclusive and cohesive societies, it is important for vulnerable and marginalised groups to actively participate. States must protect the right to participate, encourage civic engagement, encourage involvement from all groups, and provide procedures for inclusive decision-making. States may reinforce democratic principles, promote social harmony, and give people more control over how their societies develop by doing this.

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# CHAPTER 18

# A BRIEF DISCUSSION ON EFFECTS OF SUPERVISION IN HUMAN RIGHTS

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**ABSTRACT:**

In the context of human rights, supervision refers to the observation and control exercised by international organisations, national governments, and civil society groups to guarantee adherence to human rights duties and standards. This essay discusses how supervision affects human rights and how important it is for fostering responsibility, openness, and the defence of individual rights. The examination looks into important issues including the function of oversight institutions, such as treaty organisations and special rapporteurs, in determining whether a state is complying with the law, spotting infractions, and offering suggestions for change. It also looks at how monitoring affects strengthening marginalised groups, raising human rights knowledge, and encouraging communication between governments and civil society. The study emphasises the advantages of efficient monitoring, including preventing violations of human rights, promoting legislative changes, and bolstering human rights norms and standards.

**KEYWORDS:**

Accountability, Compliance, Human Rights, Monitoring, Oversight, Protection, Supervision, Transparency, Violations.

## INTRODUCTION

For the purpose of monitoring the execution of the rights it upholds, the CEDAW creates the Committee on the Elimination of Discrimination Against Women (for a more thorough study of the Convention and Committee, see II.1.C). The Committee moves. as a monitoring mechanism to keep an eye on the Convention's execution. This is mostly accomplished through reviewing the reports that the states parties provide, but in 1999, an optional protocol increased the Committee's authority by allowing it to also handle individual complaints. This process enables individuals and groups of persons who are purportedly the victims of infractions to lodge a complaint against protocol-signatory governments. As was previously discussed, the Optional Protocol also introduces a unique feature: an inquiry method that enables the Committee to open inquiries into alleged serious or repeated breaches of the rights enshrined in the Convention by a state party. The Committee may go to the concerned nation in this respect [1], [2].

Through its General Recommendations, which addressed a number of issues of utmost importance for women like violence against women (General Recommendation 12), equal pay for work of equal value (General Recommendation 13), female circumcision (General Recommendation 14), AIDS (General Recommendation 15), and violence against women (General Recommendation), the Committee has significantly contributed to the interpretation of the obligations imposed by the Convention. Although the CEDAW Committee is qualified to hear individual complaints, no individual cases have been resolved to this point. However, individual complaints of sex discrimination have been submitted to the Human Rights

Committee. In the Mauritian Women Case (Aumeeruddy Cziffra and 19 other Mauritian Women v. Mauritius), the Committee determined that an immigration law that granted certain status to wives but not husbands made an unfavourable distinction based on sex and was in violation of the ICCPR. A legislation that prohibited married women from claiming ongoing unemployment benefits unless they could demonstrate that they were either "breadwinners" or that they were permanently separated from their spouses was the subject of another dispute filed before the Human Rights Committee. Married males were not subject to this requirement. In Broeks v. The Netherlands, the Committee determined that nondiscrimination based on sex violated Article 26 of the ICCPR. Article 26 is "free-standing," which means it may be used to challenge discriminatory legislation regardless of whether the relevant ICCPR provisions apply (for further analysis, see the right to equality and non-discrimination III.12). The Convention on the Elimination of All Forms of Racial Discrimination (CERD) also lays out a communications procedure that has been used to challenge discrimination based on race and gender, for instance in the case of a foreign worker who was fired because she was pregnant [3], [4].

She sought redress in domestic courts, which upheld the employer's contention that foreign employees with children often take more sick leave than natives since they have a tendency to quit working after having children. In the case of Yilmaz-Dogan v. the Netherlands, the CERD Committee found that the state had not upheld the right to labour under the CERD. In its General Recommendation 25, the CERD Committee expressly addressed the problem of gender-related aspects of racial discrimination. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belem do Para) was applied in the case against Brazil for the first time, and the Commission determined that a state was responsible for its negligence and lack of effectiveness in prosecuting and condemning the victim's aggressor (her ex-husband), as well as for failing to fulfil the state's responsibility to prevent harm. In the second instance, the Commission determined that Mexico was accountable for the unlawful arrest, rape, and torture of the Perez sisters as well as the subsequent failure to conduct an investigation and award damages. It's important to note that the Commission explicitly emphasises that rape may constitute torture and is a breach of women's privacy in this circumstance. The importance that being a victim of such a crime entails in the indigenous group of which the victims were members in this specific instance increased the gravity of the behaviour.

Also worth mentioning is the UN Commission on the Status of Women (see II.1.B), which has the authority to examine both private and open statements about the status of women. A Working Group of five members meets in private during each session to discuss communications addressed to the Commission and those pertaining to women received by the Office of the High Commissioner for Human Rights, as well as the replies of governments thereto, with the goal of bringing to the Commission's attention those communications which reveal a consistent pattern of reliably attested violations of women's rights. Regarding the complaints received, the Commission may advise ECOSOC; ECOSOC determines the next measures to be taken [5], [6].Furthermore, it is obvious that complaints about violations of women's rights may be made to the ILO's general supervisory processes as well as the ECHR and ESC's systems.

The UN Decade for Women (1976–1985) had an effect on how the organisation developed its equal opportunity policy. A series of Forward-Looking Strategies were developed at the World Conference on Women in Nairobi in 1985. They may be thought of as a kind of international action agenda for improving the status of women until the year 2000 and providing directions for global long-term action. The challenges that women confront in

attaining equality, development, and peace are reflected in the Forward-Looking Strategies. The plan is more of a broad guideline than a legal agreement. But considering the broad support it received, it now has a lot of moral weight.

During the Fourth World Conference on Women in Beijing in 1995, the Beijing Declaration and Platform for Action were both approved. This paper includes a variety of goals as well as suggested institutional and financial structures. The Platform for Action was assessed during a special session of the General Assembly in 2000, and the twenty-third special session of the General Assembly (Beijing +5), with the theme "Women 2000: gender equality, development, and peace for the twenty-first century," also assessed the progress made in its implementation.

The Beijing Declaration and Platform for Action (the Outcome Document) and a Political Declaration were both approved by the assembly. The CSW's multi-year plan for the years 2002 to 2006 outlines its present and future activity, which is closely tied to both the Platform for Action and the Outcome Document.

The ILO aggressively combats gender discrimination. The firm strives to include gender issues into all of its policies and initiatives. The ILO's specific activities in relation to the Beijing Conference include promoting the more widespread adoption and ratification of international labour standards that are particularly pertinent to women. These activities include improving women's working conditions and social protection, enhancing organisations and institutions that represent and support women, and creating productive employment for women and eradicating poverty. The Bureau for Gender Equality and different research and seminars are among the ILO's activities. The International Programme on More and Better Jobs for Women was established with the ILO Governing Body's approval during its 265th session in 1996. Through job creation, training, entrepreneurial development, easier access to the labour market, and equal opportunity, this project supports the creation of additional jobs for women. Equal pay, occupational desegregation, health and safety, better working conditions for non-standard employment, social security, family-friendly workplaces, and protection for vulnerable employees are all promoted as ways to create better jobs.

The ILO also created the Capacity-building Programme on Gender, Poverty, and Employment, which focuses on improving women's access to quality employment, enhancing their bargaining and negotiating power, and offering creative ways to increase social protection, particularly in the informal sector [7]–[9].

The International Labour Organisation (ILO) published a study on Women and Men in the Informal Economy in honour of the 90th session of the International Labour Conference, which took place in Geneva in June 2002. The study provides studies of the conditions and characteristics of employment of women and men in the informal sector in a few chosen nations, as well as an up-to-date data summary. Finally, it should be mentioned that NGOs play a critical role in promoting women's rights, conducting research, and documenting abuses both inside the UN system and in regional organisations. The International Women's Rights ActionWatch (IWRAW-Asia Pacific), an NGO that should be specifically mentioned in relation to the CEDAW Committee, was founded in 1986 as a watchdog to assist the work of the CEDAW. Along with doing national analyses, the IWRAW-Asia Pacific is involved in raising awareness and educating the public. The Women's Environment and Development Organisation (WEDO) report, which discusses the national implementation of the Beijing Platform, and the Coalition against Trafficking in Women (CTW) are two further instances of NGO efforts.

**Trafficking in Women and Girls**

Thousands of girls and women from developing nations are enticed, kidnapped, or sold into forced prostitution and other types of slavery every year, usually in the West. Trafficking is a complicated, global problem that requires many solutions. Its causes may be traced back to socioeconomic reasons such as migration, crime, and law enforcement as well as gender inequality.

2003 saw the implementation of the UNGA Resolution 55/25"Protocol to Prevent, Suppress and Punish Trafficking in Persons, Particularly Women and Children, Supplementing the Convention against Transnational Organised Crime(2000)." States that ratify the Protocol agree to make human trafficking illegal, to aid and protect victims, and to compensate them. Additionally, Article 9 outlines steps to stop trafficking. The Council of Europe is concerned about female trafficking. In order to develop a European Convention on action against human trafficking, it formed the Ad-hoc Committee on Action against Trafficking in Human Beings (CAHTEH) in 2003. This instrument is anticipated to be a useful tool for international cooperation that will be focused on defending the rights of victims and upholding human rights. It will strive to strike the optimal balance between issues involving human rights and prosecution. The Declaration of the Committee of Ministers from November 16, 1988, which stated that the principle of gender equality is an essential component of human rights and that sex-based discrimination restricts the exercise of fundamental freedoms, should also be mentioned within the context of Europe. Its elimination is necessary for social fairness and is a precondition of democracy. Even while several nations have condemned human trafficking as a horrifying form of abuse, more decisive action must be made to put a stop to the practise, safeguard women and children, convict traffickers, and give victims with adequate compensation.

Millions of women experience abuse every day, which violates their rights to life, safety, dignity, and physical and mental welfare. In the family, outside, and even by the government or coercive institutions, physical and emotional abuse is suffered. Domestic violence, the least obvious kind of abuse, continues to be the most common and kills hundreds of women year. Women who are members of minority groups, refugees, migrants, indigenous women, depressed women, women in institutions or in detention, young girls, women with disabilities, elderly women, and women caught up in armed conflict are among the most vulnerable. Recommending actions at the national, regional, and international levels to eradicate violence against women and its causes, as well as to remedy its effects, in order to effectively respond to information on violence against women, its causes, and its consequences from relevant actors, such as international organisations, states, and women's organisations (E/CN.4/RES/ 1994/45).

Yakin Ertürk, the current rapporteur, calls attention to the "universality of violence against women, the multiplicity of its forms, the intersectionality of diverse kinds of discrimination against women, and its linkage to a system of domination that is based on subordination and inequality" in her 2004 report. The Rapporteur also talks about the issues with human rights related to HIV/AIDS and how they relate to violence against women (ECN.4/2004/66). The concerns of female genital mutilation and trafficking of women and girls have also been of concern to the rapporteur. At the global level, violence against women is a universal issue that all treaty organisations have addressed from various angles. It is important to remember CEDAW General Recommendation 19 on violence against women in this respect, which says unequivocally that "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on the basis of equality with men.

**CEDAW Committee**

adopted the InterAmerican Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para), a specialised treaty addressing violence against women. The Convention lays forth a range of duties for governments, ranging from negative measures like the prohibition of violence to positive ones like the commitment to change social and cultural norms of behaviour for men and women = According to Africa's Optional Protocol on the Rights of Women in Africa, Article 3(4), "States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence," Article 4 of the Protocol further outlines the right to life and Article 15 calls for the abolition of harmful practises.

The idea that a woman has the freedom to choose whether and when she wants to have children is at the heart of reproductive rights. The freedom to choose is still absent or under danger in many areas of the globe, notwithstanding recent advancements towards wider legalisation of abortion. A well-known NGO, the Centre for Reproductive Rights, estimates that 38% of people on the planet today live in nations where abortion is either illegal or only authorised when the woman's life is in risk due to the pregnancy. The right to life of the foetus is emphasised by several nations; in this regard, Article 4 of the American Convention on Human Rights is noteworthy since it safeguards the right to life "in general, from the moment of conception." States have a responsibility to provide access to contraception and reproductive health services to avoid unwanted or untimely births in order to respect women's freedom to decide whether to have children. Governments must make sure that women are informed and express their agreement before contraceptive methods are used, according to this right. Governments also have a responsibility to eliminate obstacles to safe abortion and prioritise women's reproductive autonomy, health, and right to equality when designing reproductive rights-related legislation.

**Traditional Practices**

Many nations continue to uphold long-standing cultural norms that violate women's rights and maintain gender inequality and women's subordination. FGM, early marriage, various taboos or customs that prevent women from managing their own fertility, forced feeding of women, customs surrounding childbirth, the preference for sons and female infanticide, early pregnancy, paying dowry, and honour killings are some of these practises. According to OHCHR's Fact Sheet No. 23, Harmful Traditional Practises Affecting the Health of Women and Children, these practises continue "because they are not questioned and take on an aura of morality in the eyes of those practising them." Female genital mutilation (FGM) is a particularly heinous traditional practise that will be covered in this article. The female genitalia are cut off or otherwise harmed in FGM, a hazardous traditional practise. It could include sewing or narrowing the vaginal entrance, removal of the prepuce, clitoris, and/or labia minora, and/or further surgeries. FGM is a practise that has its origins in Middle Eastern and African customs, as well as in numerous diasporas from these areas.

It is estimated that 130 million women and girls have undergone some sort of mutilation, and an additional 2 million are at danger of doing so. The risks of FGM to one's health have been extensively documented, and they include things like excruciating pain, anaemia, shock, haemorrhage, infections, urine retention, stones in the bladder or urethra, scarring, cysts, the formation of fistulae or holes between the vagina and the bladder, urinary incontinence, infertility, difficult labour, and even death. There are also often reported psychological and sexual side effects from the surgery. FMG is deeply ingrained in tradition in many

communities, and attempts to stop it have had little success despite the fact that numerous women and girls have been injured or even killed as a consequence of the practise and some nations in Africa and the West have made it illegal.

The causes of FGM's continued use are many. It is regarded as a means of reducing female sexual desire and increasing male sexual pleasure, is intended to preserve a woman's virginity until marriage and maintain her faithfulness throughout her marriage, and in some communities, women who have not undergone the procedure are not eligible for marriage. Although Jews, Christians, and other religious groups also perform FMG, in certain areas it is connected with Islam.

Although numerous conventional defences have been advanced, the foundations of FMG seem to be women's long-standing subjugation and the taboo surrounding their sexuality.A number of international agencies have recently taken up the subject of FGM as a violation of women's right to bodily integrity as a result of growing public awareness of the problem. The position of Special Rapporteur on Traditional Practises Affecting the Health of Women and the Girl Child was created by the UN Commission on Human Rights in 1998. FGM has also been covered in reports to the Commission by the Special Rapporteur on Violence Against Women, its Causes, and Consequences. Three UN organizations the World Health Organisation (WHO), United Nations Children's Fund (UNICEF), and United Nations Population Fund (UNICEF) presented a Joint Plan in 1997 with the goal of eradicating FGM within three generations and bringing about a drop in the practise within 10 years. The strategy calls for "de-medicalizing" FGM, educating the public and policymakers on the need to end the practise, and enlisting the aid of African nations to create their own, culturally-specific national FGM eradication plans.

In 2003, more than 100 experts from 28 African and Arab governments, national NGOs, and international organisations gathered in Cairo for the Expert Consultation on Legal Tools to Prevent Female Genital Mutilation, which was part of a special international initiative to eradicate FGM. The Cairo Declaration for the Elimination of FGM, which was adopted at the end of the conference, made many affirmations, including the fact that "the prevention and the abandonment of FGM can be achieved only through a comprehensive approach promoting behaviour change, with legislative measures as a pivotal tool." Numerous governmental investigations have explored the subject of FGM, and the Committee on the Elimination of Discrimination Against Women notably addressed it in its General Recommendations 19 on violence against women and 24 on women and health. Similarly, while reviewing state reports, the Committee on Economic, Social, and Cultural Rights often considers harmful traditional practises. In General Comment 14, the Committee addressed the problem of FGM and said that it is a breach of the right to health.

## CONCLUSION

The promotion of responsibility, openness, and the defence of individual rights depend heavily on supervision in the field of human rights. Supervision assists in determining if a state is complying with human rights norms, identifying infractions, and making suggestions for change via monitoring and oversight carried out by international organisations, national institutions, and civil society organisations. The benefits of monitoring are substantial since they promote respect for human rights, give marginalised people more influence, and encourage communication between governments and civil society. Effective oversight discourages violations of human rights, promotes legislative changes, and reinforces human rights norms and standards. It encourages openness in government, makes governments responsible for their deeds, and offers channels for restitution and justice. A greater execution

of suggestions is required, and safeguarding the impartiality and efficiency of supervisory procedures are two problems. States must work together with oversight organisations, civil society groups, and national institutions to increase the effectiveness of oversight and guarantee the preservation and advancement of human rights for everyone.

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# CHAPTER 19

# A STUDY ON CHILDREN WELFARE IN HUMAN RIGHTS

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**ABSTRACT:**

The safety, well-being, and development of children are all essential components of human rights. In order to provide a secure, caring, and inclusive environment for kids, this article underlines the importance of children's welfare within the framework of human rights. The study examines important factors such abuse prevention, accessibility to healthcare and education, involvement, and the child's best interests. It looks at how nations, global organisations like the UNCRC, and pertinent parties may support and advance the wellbeing of children. The essay stresses the significance of dealing with problems like child abuse and exploitation as well as guaranteeing equal opportunity for all kids, regardless of their circumstances.

**KEYWORDS:**

Child Abuse, Children's Rights, Development, Education, Human Rights, Participation, Protection, Welfare.

## INTRODUCTION

Every kid has the right to develop into an adult in good health, in peace, and with respect. Infants and young children are helpless and reliant on others to meet their fundamental requirements, including obtaining food, medical care, and an education. Many times, at the expense of their whole growth and education, kids are left to fend for themselves in many societies. Twelve million children under the age of five are thought to die every year, mostly from preventable causes, according to the United Nations Children's Fund (UNICEF). Additionally, 130 million children in developing nations, mostly girls, are not enrolled in primary school, 160 million children are underweight, 1.4 billion children do not have access to safe water, and 2.7 billion children do not have access to adequate sanitation. In addition, according to Human Rights Watch, 250 million children between the ages of five and fourteen work in some capacity every year, typically in connection with forced labour, child prostitution, pornography, or drug trafficking. According to UNICEF, there are presently 300,000 kids fighting in violent conflicts in more than 30 nations [1], [2].

Every nation has a responsibility to guarantee children's rights to health, nutrition, education, and the social, emotional, and cognitive development of children. In addition to promoting a more egalitarian society, ensuring that children have access to basic rights and freedoms promotes a population that is healthier, more literate, and eventually more productive. Children's rights and women's rights are inextricably linked since, even before birth, a child's life and growth rely on the mother's health and opportunities. Considering that women still provide the majority of child care, protecting women's rights is crucial for ensuring that children have access to their human rights.

A Declaration on the Rights of the Child (Declaration of Geneva) was approved by the League of Nations in 1924. It included five fundamental principles that reflected the widespread agreement that children need extra protection. With the preamble noting that "the

child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth," the UNGA unanimously approved a second, more comprehensive Declaration on the Rights of the Child in 1959.

The Convention on the Rights of the Child (CRC), which was adopted by the UNGA on November 20, 1989, was the product of serious effort on writing the CRC that started in the latter years of the 1970s. On September 2, 1990, the Convention came into effect, and a few years later, most nations had ratified it. The CRC is the most broadly approved human rights pact ever created, with 192 governments having ratified it as of July 2004. The only UN members that have not ratified the Convention are the United States and Somalia. The Convention, which is supposed to be comprehensive, outlines civil, political, social, economic, and cultural rights for "every human being below the age of eighteen years, except where the age of majority is earlier under the law applicable to the child [3], [4].

The architects of the Convention were driven by four overarching principles: the concept of non-discriminationthe child's best interests the right to life, survival, and growth and respect for the child's opinions Three fundamental ideas protection, supply, and participation form the basis of the CRC. Protection from, among other things, violence, abuse, neglect, maltreatment, or exploitation (Article 19); provision of, among other things, name and nationality (Article 7); social security; a minimum standard of living; and education (Articles 26 to 28); and participation through a child's right to freedom of expression, thought, and association.

The CRC contains a number of rights that are also included in other international instruments, but Article 41 provides an explicit "most favourable conditions clause" that states that nothing in the CRC shall affect any provisions that are more conducive to the realisation of a child's rights and may be found in a state party's law or international law in force in that state (Article 41). It is the first instrument to clearly provide children rights and protection as autonomous human beings, even if the Convention lays out numerous rights that have previously been declared in other documents, such as the ICCPR (Articles 23(4) and 24) and ICESCR (Article 10(3)). The broad rights outlined in previous agreements and the UDHR have been reconstructed with a specific emphasis on the rights and needs of children. This is where the CRC adds the most value.The rights to adoption, education, and parent-child contact are among the other rights that are specifically relevant to children [5], [6].

Compared to the CRC, certain international treaties provide stronger safeguards. For instance, the minimum age for work is not specified under Article 32 of the CRC, which deals with child labour. ILO 138 states that developing countries may first define a minimum age of 14 years and that the minimum age for entrance to employment or labour should not be less than 15 years. The aforementioned ILO Convention specifies that 18 years of age is the minimum requirement for work under certain conditions (such as when there are health risks). The ILO 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), which classifies individuals less than 18 as children (Article 2), as well as the CRC typically specify the minimum age of 18 years (Article 1).

Similarly, whereas Article 77 of Protocol I to the 1949 Geneva Conventions provides enhanced protection with respect to the recruitment of minors between the ages of 15 and 17, the CRC prohibits the recruitment of children younger than 15 for the armed services. For those governments that have accepted more benevolent international agreements, Article 41 (the "most favourable treatment") is applicable here. Additionally, while ratifying the CRC, nations may declare their intention to implement extra protective rules, such as refraining from enlisting minors in the military. The UNGA approved two supplemental protocols to the

CRC in 2000. The first optional protocol on children in armed conflict seeks, among other things, to raise the age at which people may engage in armed conflict from 16 to 18. It also has a special rule governing the actions of non-state actors, which states that non-state forces may not enlist anybody under the age of 18. In accordance with the CRC's second protocol on the sale of children, child prostitution, and child pornography, governments are required to make specific crimes against children against the law and to prosecute or extradite criminals who fall within their purview.

The African Charter on the Rights and Welfare of the Child (1990), which states in Article 18(3) that "the State shall ensure protection of the rights of the woman and the child as stipulated in international declarations and conventions," is one of the relevant standards in the regional systems for the protection of children's rights. According to Article 17(5) of the American Convention on Human Rights, children born into and out of wedlock have the same rights, while Article 19 states that "every minor child has the right to measures of protection on the part of his family, society, and the state." For example, the Inter-American Convention on the International Return of Children (1989), the Inter-American Convention on Conflict of Laws Regarding the Adoption of Minors (1984), and the Inter-American Convention on International Traffic in Minors (1994) are additional pertinent documents in the American context. The European Social Charter (Article 7) and Article 17 of the European Union's legislative framework, respectively, provide children and young people with additional protections with regard to employment and social, legal, and economic protection. The European Convention on the Exercise of Children's Rights (1989), the European Convention on the Legal Status of Children Born Out of Wedlock (1975), and the European Convention on the Adoption of Children (1967) are further significant European agreements [7]–[9].

## DISCUSSION

The CRC creates the Committee on the Rights of the Child to monitor the states parties' progress towards fulfilling the responsibilities outlined in the Convention. The Committee is made up of 18 multidisciplinary experts from fields like international law, medicine, education, and sociology. As it lacks the authority to hear individual complaints, its primary duty is to review reports submitted by states on the steps they have taken to implement the Convention. The Committee may organise unofficial regional gatherings with UNICEF's assistance to familiarise itself with the many problems affecting children in various areas and to start conversations with NGOs and governments. The Committee adopts General Comments for the interpretation of the rights set out in the CRC, similar to other oversight bodies. General Comment 5 on general CRC implementation measures, which outlines nations' duties with respect to the Convention, was recently accepted by the Committee (2003).

The Human Rights Committee, the ICCPR's oversight body, has been actively involved in the defence of children. It has made decisions about certain child-related matters. In Laureano v. Peru, the Committee, for example, determined that the state had not provided the extraordinary measures of protection required by the ICCPR by failing to look into a minor's disappearance. In Monaco de Gallicchio and Vicario v. Argentina, the court found that the Covenant's special measures of protection were violated by failing to recognise a grandmother's legal standing in guardianship and visitation cases, as well as by taking too long to establish a child's legal name and issue identity documents. The Committee has stated that unilateral objection by one parent is not one of the exceptional circumstances that restricts a child's right to frequent contact with both of their parents after a divorce (Hendriks v. The Netherlands). The Committee determined that the state's inability to guarantee a

divorced parent's right to ongoing communication with her children constituted an infringement on her right to privacy. In Winata and Li v. Australia, the Committee determined that the deportation of parents from a nation where a child was born and raised constituted an arbitrary interference with the right to family and a breach of the child's entitlement to particular protection. In the case of Thomas (Damien) v. Jamaica, the Committee determined that failing to separate adolescents from adults in jail violated their right to particular protection under Article 24.

The Commission and the Court have dealt with a number of instances involving minors within the Inter-American system. The cases of Villagrán Morales et al. v. Guatemala see Street Children case below, Bulacio v. Argentina which concerns a 17-year-old who was arbitrarily detained and severely beaten before passing away as a result of the blows), and Centro de Reeducacion del Menor which concerns the situation of extreme physical and psychological violence endured by children and adolescents imprisoned in Paraguay are all deserving of mention in this At the time of writing (July 2004), the Court was still reviewing the latter case. It is also important to note that the Inter-American Court has adopted an advisory opinion specifically addressing the protection of children in which it is established that the American Convention, which only makes general references to children's rights, forms an organic whole corpus jure with the UN Convention on the Rights of the Child (see Juridical Status and Human Rights of the Child, Advisory Opinion OC-17/02, 28 August 2002).

The United Nations Children's Fund (UNICEF), one of the foremost institutions dedicated to protecting children's rights, should also be mentioned. After the Second World War, UNICEF was established in 1946 to give food, clothes, and medical treatment to European children who were suffering from starvation and illness.The current mission of UNICEF is to remove the barriers that poverty, violence, illness, and prejudice throw in the way of children. Article 45 of the CRC expressly mentions UNICEF's function. The group is committed to enhancing the environment for children as well as basic healthcare, food and water security, community development, and education. It has made significant investments in schemes for, among other things, water delivery systems, literacy, and vaccines in recent years. 40% of children worldwide have access to vaccines thanks to UNICEF, which is also crucial to achieving the Millennium Development Goals and the objectives established at the 1990 World Summit for Children. A very helpful "Implementation Handbook for the Convention on the Rights of the Child" has also been released by UNICEF. Through initiatives like taking part in the worldwide Movement for Children and the UNGA Special Session on Children, UNICEF emphasises the importance of a worldwide commitment to children's rights and promotes youth engagement in choices that have an impact on their lives. To better the lives of children throughout the globe, UNICEF employs more than 7,000 individuals in 158 nations. As a Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography by the UN Human Rights Commission.

The Rapporteur raised worry in a report from 2003 on how many kids who are sold, trafficked, or exploited for prostitution or pornography are criminalised but yet not recognised as victims. In addition, the Stockholm World Congress against Commercial Sexual Exploitation of Children was convened in 1996 to oppose child sexual exploitation. A second Congress was held in Yokohama in 2001 with the goals of highlighting the condition of children in the international sex trade, reviewing achievements, and developing new strategies to protect children from sexual exploitation. The Yokohama Global Commitment was adopted by the Congress, in which parties agreed to, among other things, increase efforts to stop commercial sexual exploitation of children by addressing the root causes of child

exploitation, such as poverty, inequality, discrimination, persecution, violence, armed conflicts, HIV/AIDS, dysfunctional families, the demand factor, criminality, and violations of children's rights. The Congress also outlined steps to make child sexual exploitation a crime.

On January 18, 2002, the Sale of Children, Child Prostitution, and Child Pornography Optional Protocol to the Convention on the Rights of the Child came into effect. This Protocol adds specific guidelines for criminalising breaches of children's rights related to the sale of minors, child prostitution, and child pornography to the Convention on the Rights of the Child.The young soldiers are especially susceptible once the hostilities are over because of the mental and physical toll they take. Many end up physically crippled and have post-traumatic stress disorder, which may manifest itself in a variety of ways, including anxiety, bedwetting, nightmares, hyperactivity, and violent conduct, to mention a few.

Some civilizations pay little attention to the dehumanising realities of child soldiers because it is a taboo issue. This makes it impossible for the victims to ask for assistance, integrate back into society, and reconnect with their family. More broadly, however, a lack of knowledge about the risks that child soldiers face, such as sexual exploitation, creates issues with the effective demobilisation, reintegration, and disarming of child soldiers. Three further documents pertaining to child soldiers have been accepted and put into effect in addition to the Optional Protocol to the CRC on the participation of minors in armed conflict. The standards established by the Optional Protocol are supported by all three and strengthened in one instance. The first regional pact to designate 18 as the minimum age for all recruitment and hostilities involvement was the African Charter on the Rights and Welfare of the Child (1990). According to ILO 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), "forced or compulsory recruitment of children for use in armed conflict" constitutes one of "the worst forms of child labour" prohibited by the Convention. It also calls for programmes of action to end child soldiering with "all necessary measures to ensure the effective implementation and enforcement including the provision and applicat

Last but not least, a significant advancement in the movement to end the use of children in armed conflict is the Rome Statute of the International Criminal Court. Conscripting or enlisting children under the age of fifteen into the national armed forces or using them to actively participate in hostilities in an international armed conflict are both considered war crimes, as is conscripting or enlisting children under the age of fifteen into armed forces or groups or using them to actively participate in hostilities in a non-international armed conflict. It is important to note that the recruitment or use of child labour is another issue of concern, according to the Special Court for Sierra Leone, which was established in January 2002 by the Government of Sierra Leone and the United Nations with the goal of trying those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the nation since 30 November 1996.

According to the International Labour Organisation (ILO), 250 million children between the ages of five and fourteen labour in developing nations, often providing a necessary source of cash for the family's survival. The CRC tackles issues like child work that harms a child's development, among other things. Organisations like the ILO and other international NGOs have started campaigns to end child labour while also improving the lives of the children who are compelled to work because they are aware that it is a long-term, structural problem. ILO 182, which prohibits the worst kinds of child labour and calls for rapid action to end it, should also be included. In the five years after the Convention's adoption in June 1999, 149 countries have ratified it.States and the international community are mostly responsible for ensuring that children's rights are upheld. The World Declaration on the Survival, Protection,

and Development of Children and the Plan of Action were approved during the 1990 World Summit for Children as specific objectives for implementing children's rights.

In its Vienna Declaration and Programme of Action from the 1993 Vienna World Conference on Human Rights, particular emphasis was put on the rights of children. The Conference demanded that the CRC be ratified by everyone. It recognised that children's rights should come first in all efforts by the UN system to safeguard and advance human rights and acknowledged the need to develop measures for child protection. There has been a significant complaint lodged against Portugal about child labour under the European Social Charter's (ESC) System of Collective Complaints. The lawsuit (International Commission of Jurists v. Portugal, lawsuit No. 1/1998) was filed on October 12, 1998, and it pertains to Section 7(1) of the European Social Charter, which forbids hiring anybody under the age of 15. The Committee of Ministers issued Resolution CHS after receiving a ruling on the grounds of the complaint from the European Committee of Social Rights, which found that Article 7(1) had been violated.

**Refugees**

One of the most complicated problems the global community is now dealing with is the issue of refugees and internally displaced people across the globe. At the UN and other fora, there is a lot of debate about how to better safeguard these especially vulnerable communities. People have left their homes throughout history to avoid persecution. Following the Second World War, the international community included the right to seek and receive refuge (Article 14) into the 1948 Universal Declaration of Human Rights. In order to protect and aid refugees, the United Nations established the Office of the High Commissioner for Refugees (UNHCR) in 1950. The 1951 Convention, which is the cornerstone of refugee protection, was also accepted by the UN in 1951. Additionally, the 1951 Convention's temporal and geographic restrictions were removed by the Protocol relating to the Status of Refugees (the 1967 Protocol), which broadened the definition of a refugee.

In the last 50 years, the international community has reacted to refugee crises rapidly and generously, but certain unsettling tendencies are starting to emerge. Countries that formerly welcomed refugees with open arms have mostly retreated in their dedication to protecting refugees by implementing antagonistic and restrictive policies. Refugees have been denied entrance and expulsed from asylum nations due to real and alleged misuse of the asylum procedures as well as irregular movements. Those who arrive in a possible asylum nation are often turned away or sent back without having the opportunity to seek for asylum. The bulk of refugees in the world today come from Asia and Africa. Instead of individual flights, current refugee flows typically take the shape of mass exoduses. Women and children make up 80% of the world's refugees today, and severe poverty and natural or ecological catastrophes are the main drivers of migration. Because of this, many modern refugees do not meet the criteria outlined in the 1951 Convention. In 2001, there were at least 22 million individuals internally displaced (IDPs), who had been uprooted inside their own nations, and an estimated 14.9 million refugees, who had fled their homes and travelled across international borders in search of protection.

## CONCLUSION

A crucial aspect of human rights is the welfare of children, which ensures their protection, wellbeing, and development. The promotion of a secure, caring, and inclusive environment that enables kids to develop and realise their full potential involves upholding children's rights. Along with access to high-quality healthcare, education, and developmental opportunities, protecting children from abuse, exploitation, and violence is essential.

Fundamental principles include encouraging children to participate in choices that will impact them and always keeping them in mind. States have a crucial role in defending children's rights and promoting their welfare via law, regulations, and the provision of critical services, together with international instruments and relevant partners. It is crucial to make an effort to solve problems like child abuse, exploitation, and providing equitable opportunity for all children. Societies may provide a compassionate and supportive atmosphere that fosters children's well-being and enables them to grow up to be active, healthy, and empowered people by giving children's welfare a high priority when it comes to human rights.

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# CHAPTER 20

# ANALYSIS OF NATIONAL MINORITIES

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**ABSTRACT:**

Understanding the complexity of cultural diversity and the effects of prejudice on these groups is necessary for analysing national minorities. National minorities' ethnic groups each have unique identities based on their cultural practises, rituals, and traditions. Since language limitations sometimes make it difficult for linguistic minorities to obtain public services like education and work, language is vital in determining their identity. Different manifestations of discrimination against national minorities include unfair treatment, prejudice, and less opportunity. The study of national minorities sheds light on the difficulties these communities experience and the need of inclusive policy. It emphasises how crucial it is to advance equality, fight prejudice, and defend the rights of national minorities. Governments and politicians should seek to build a more accepting society where members of national minorities may prosper and enrich the fabric of the country.

**KEYWORDS:**

Cultural Diversity, Discrimination, Ethnic Groups, Identity, Language, National Minorities.

## INTRODUCTION

In order to safeguard an individual's rights in relation to the state, human rights were formed. The most vulnerable people that require protection often come from groups or minority that in some way set themselves apart from the majority of the population, such as by language, religion, ethnicity, or culture. Throughout history, tyrannical majorities have abused minorities, subjecting them to discrimination, land seizures, expulsions, forced assimilation, and even genocide. Active repression by governments seeking to promote cultural unification has often led to the loss of identity and culture. Striking a balance between the genuine concerns of oppressed minority and those of the governing majority is one of the toughest difficulties governments confront in an increasingly homogenised environment. Prior to the 19th century, religious minorities were the focus of protective measures for minorities. For example, the Balkan states joining the Concert of Europe were required by the Treaty of Berlin of 1878 to respect religious freedom within their borders. These states would only be recognised under international law if religious freedom was respected for the Jews in Romania and Serbia and Muslims in Bulgaria and Montenegro [1], [2].

Following the First World War, it was evident that the protections in place for national minorities were inadequate, but the Covenant creating the League of Nations (1919) was devoid of any overarching clause guaranteeing minorities' rights. Protection was to be obtained by the ratification of treaties covering certain circumstances by the great nations, but attempts in this direction were unsuccessful for a number of reasons. Increased emphasis on democracy and human rights has led to greater attention to the protection of minorities' rights. After the Second World War, a different perspective took hold and the protection of individual rights and the elimination of discrimination were seen as effective methods of protection. Rights of national minorities are also no longer as taboo. Prior to the conclusion

of the Cold War, countries were concerned that extending rights to minorities might compromise their territorial integrity; however, since then, several international fora, most notably the UN

Democracy, inclusion, and social advancement all rest on the foundation of the freedom to participate in society. It covers the rights to free speech, association, peaceful assembly, and involvement in political processes. States are essential in establishing an atmosphere that encourages active citizenry and guarantees equitable and worthwhile participation possibilities. States enable people to contribute to the social, cultural, political, and economic development of their communities through defending and promoting the right to participate. In order to create inclusive and cohesive societies, it is important for vulnerable and marginalised groups to actively participate. States must protect the right to participate, encourage civic engagement, encourage involvement from all groups, and provide procedures for inclusive decision-making. States may reinforce democratic principles, promote social harmony, and give people more control over how their societies develop by doing this [3], [4].

The UN Sub-Commission debated whether its work should be based on a precise definition of the term "national minority," but it now appears to take the pragmatic stance of Mr. Max van der Stoel, a former OSCE High Commissioner on National Minorities who said he can "recognise a minority when he sees one." He defined a minority as a group that differs from the majority in terms of its linguistic, ethnic, or cultural characteristics. Additionally, it is a group that wants to maintain its own identity. It should be noted that the term's lack of definition is still up for discussion. For example, several states have made declarations outlining their own definitions of national minorities while ratifying the CoE Framework Convention for the Protection of National Minorities; other states have condemned such declarations. It is obvious that there are numerous situations in which it is impossible to draw a clear difference between national and other minorities. Themodern minorities', such as migrants, and foreigners who reside in a nation of which they are not citizens are examples of these other minorities.

In its General Comment 23 on the rights of minorities, the Human Rights Committee explains the extent of Article 27. under addition to the broad safeguards that are applicable to all people, such Articles 12 and 26, there are a number of additional rights under the ICCPR that may be especially pertinent to minorities. Although the ICESCR does not have a single article particularly addressing national minorities, there are numerous provisions that are of significant concern to minorities, including provisions 6 and 7, 12, 13, 14, and 15. The provision of Article 27 ICCPR addressing the right to practise one's religion, practise one's culture, and use one's own language is also extended to children under the terms of Article 30 of the Convention on the Rights of the Child (CRC) [5], [6]. The significance of CERD among the human rights treaties of the UN should be emphasised. The scope of CERD's applicability is significantly larger than just what is often understood as "racial discrimination." According to the definition of "racial discrimination" (emphasis added), it is "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." When reviewing the periodic reports, the CERD Committee has always taken discrimination against minorities into account.

All peoples "enjoy the right to self-determination," according to the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples issued by the UNGA. The word

"peoples," however, has never been defined by the UN. A response to the fundamental issue of whether a minority should be referred to as a "people" would suggest that minorities are entitled to the rights of peoples, notably the right to self-determination. The UN Charter's goals and tenets are incompatible with the disruption of a nation's territorial integrity, according to the Declaration. The applicable clause is found in Article 2(4) of the Charter.

Regarding a particular, all-encompassing instrument for the protection of minorities, little progress has hitherto been achieved in international fora. In the framework of the UN, a proposal to draught a statement on the protection of minorities was first envisioned in 1978. Under the auspices of the UN Commission on Human Rights, a permanent working group was established that year, but it wasn't until 1992 that the group produced the draught Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities that was approved by the UNGA in December 1992 (Resolution 47/135). The Declaration seems to provide a lower threshold of protection than certain other agreements addressing national minorities, such as CSCE treaties [7], [8].

A list of rights for people who identify as national minorities can be found in the Copenhagen Document of the Conference on the Human Dimension (1990), which also states that "The Participating States recognise that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the Rule of Law, with a functioning independent judiciary." The Document outlines non-discrimination for those who identify as national minorities and mandates that governments take the appropriate steps to protect minorities' rights. It states that people have the right to "preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will" and that being a member of a national minority is not a disadvantage. Additionally, it is stated in the Document that states "will protect the ethnic, cultural, linguistic, and religious identity of national minorities on their territory and create conditions for the promotion of that identity." Discussions in various forums, including the UN and the CoE, were sparked by the Copenhagen document.

The most comprehensive international law addressing minority protection explicitly in the European setting is the Council of Europe's Framework Convention for the Protection of National Minorities. The Committee of Ministers endorsed the Convention on November 10, 1994, and by July 2004, 35 nations had ratified it. The Copenhagen Document and other OSCE (formerly CSCE) papers' promises to preserve national minorities form the foundation of the Framework Convention, which aims to "transform, to the greatest possible extent, these political commitments into legal obligations." The term "Framework" denotes that the concepts set out in the document will need to be implemented by national law and suitable governmental policies rather than being immediately applicable in the domestic legal systems of the states parties to the Convention. The Framework Convention outlines some overarching principles that address a wide range of topics, including non-discrimination, effective equality, conditions for the preservation and development of culture, religion, language, and traditions, freedoms of assembly, association, expression, thought, conscience, and religion, access to and use of the media, linguistic freedoms, education, cross-border contacts and cooperation, and participation in public life.

The focus is on the protection of "persons belonging to" national minorities, and the Convention expressly declares that it "does not imply the recognition of collective rights." However, both "persons belonging to national minorities" and minorities as a whole are included in the Convention's Preamble and Section 1 Article 1. The Convention connects the protection of national minorities to the subject of peace and security, much as the OSCE does. The preservation of national minorities is explicitly stated in the Preamble as being necessary

for stability, democratic security, and peace on this continent in light of the historical upheavals in Europe. However, unlike the OSCE High Commissioner for National Minorities, this does not imply that minority matters relating to peace and security are outside of its purview. The European Charter for Regional or Minority Languages (1992), which aims to protect languages "that are traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of that State's population; and different from the official languages of that State," is another CoE framework component worth mentioning in relation to minorities' protection. (1) (Article). The Charter's primary goal is to provide protection for currently spoken regional and minority languages including Breton, Catalan, Lower Saxon, and Frisian. The Charter expressly states that "dialects of the official language(s) of the State or languages of migrants" are not included in its purview. (1) Article The Charter does not guarantee the safety of any particular person or group of people, and the nations themselves specify which languages they regard as minorities. The Charter came into effect in March 1998, and 17 nations had ratified it by July 2004C[9].

A number of ECHR articles, such as Articles 5 (the right to liberty and security of person), 8 (privacy and family life), and 11 (freedom of expression), can be used to address minority issues despite the European Convention's lack of a specific provision for the protection of minority rights. Numerous minority claims, particularly those involving linguistic rights, have been brought before the European Court of Human Rights' oversight mechanisms throughout the years. Plans to create an ECHR protocol defending minority rights have not produced any tangible outcomes too far. The Vienna mechanism has addressed the issue of minority rights within the OSCE framework. For example, Austria and Hungary have both employed the technique in relation to the Kurdish minority in Turkey and the Hungarian minority in Romania, respectively. Additionally, Russia has employed the Moscow method in relation to the Russian minority in Estonia and the UK, acting on behalf of the EU, in relation to the former Yugoslavia.

The creation of the position of High Commissioner on National Minorities at the CSCE Follow-up Conference in Helsinki (1992) is crucial for the protection of national minorities within the OSCE framework (see I.6.D). States are required to report on their regional and minority language policies in accordance with the European Charter for Regional or Minority Languages.The Committee of Ministers then decides whether a breach has occurred with the help of a Committee of Experts (Articles 15–17). Thus, minorities that want to encourage the preservation and widespread use of their language in schools are given assistance in an indirect manner. The Charter imposes a number of responsibilities on the contractual parties that are not explicitly articulated in terms of the rights of (persons belonging to) national minorities, hence the assistance is indirect.

With assistance from an advisory committee, the CoE Committee of Ministers monitors the application of the Framework Convention for the Protection of National Minorities. States are expected to submit periodical reports detailing the legislative and other steps taken to put the principles into practice of the Conference. Upon adoption, the Committee of Ministers' findings and recommendations, together with any comments the state party may have made on the Advisory Committee's view, must be made public. 42 reports had been submitted as of July 2004, and the Advisory Committee had produced 28 country-specific views. Hopefully, these viewpoints will eventually contribute to greater advancements in standards and understanding of problems involving national minorities.

Although there have been improvements in many nations' handling of national minorities, official practises still vary widely. The various strategies heavily rely on the particular circumstance, the minority's identity, and its standing in society. Some governments continue

to promote assimilation of the different demographic groupings, a strategy that may strengthen state identity and might be in line with a government strategy that emphasises individual rights and equitable treatment. But using such a strategy runs the danger of ignoring or even suppressing minority identity. Other governments continue to follow a strategy that starts with the gradual emergence of a multicultural society. Such a strategy may run the danger of collapsing or damaging social cohesiveness.

**Indigenous Peoples**

Indigenous people have often requested the Human Rights Committee to consider potential violations of their human rights at the UN treaty level. Several instances have concerned concerns about the protection of indigenous communities' cultures, linguistic rights, and accessibility to appropriate remedies. The legality of laws requiring loss of membership in an indigenous minority after marriage to a non-indigenous person; the forced use of a language other than the indigenous language during official court proceedings; indigenous rights to natural resources; and state interference with traditionally indigenous lands are among the issues at stake (see, for example, Hopu v. France, Lovelace v. Canada, Diergaardt et al. v. Canada).

The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, the Working Group on Indigenous Populations, and the Permanent Forum on Indigenous Issues are the three charter-based UN bodies established to address issues pertaining to indigenous peoples. In response to growing international concern over the marginalisation and discrimination of indigenous people worldwide, the UN Commission on Human Rights appointed Rodolfo Stavenhagen, a Mexican, as a Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous Peoples in 2001 (Resolution 2001/57). The Special Rapporteur has addressed a variety of human rights problems during the course of his mandate.

For example, he has proposed a definition of indigenous peoples, discussed the role of non-governmental and intergovernmental organisations, the elimination of discrimination, fundamental human rights principles, and special areas of action in areas like employment, land, health, housing, education, language, culture, social and legal institutions, political rights, religious rights and practises, and equality in the administration of justice. His findings, suggestions, and recommendations represent a significant advancement in how the United Nations has approached the issues with indigenous peoples' human rights; some of these issues are still being addressed, while others have been included into Sub-Commission decisions.

The Working Group on Indigenous Populations has two objectives in addition to facilitating and promoting communication between governments and indigenous peoples: (a) to review developments relating to the promotion and protection of indigenous peoples' human rights and fundamental freedoms; and (b) to pay attention to the development of international standards regarding indigenous rights. The Permanent Forum on Indigenous Issues advises the Economic and Social Council on matters pertaining to economic and social development, culture, the environment, education, health, and human rights that pertain to indigenous peoples. The Forum focuses on the following issues: a) giving advice and recommendations on indigenous issues to the Council and, through the Council, to UN programmes, funds, and agencies; b) promoting the integration and coordination of activities relating to indigenous issues within the UN system; and c) preparing and disseminating information on indigenous issues.

An EU Council for Development Co-operation Resolution on Indigenous Peoples was published in 1998. The Council specifically highlights the important role that indigenous peoples play in protecting natural resources and their rights to a sustainable way of life. It also highlights their vulnerability and the risk that programmes for development may harm them. The Council issued conclusions on indigenous peoples in 2002, when it, among other things, emphasised the need to incorporate indigenous problems into EU policy and suggested include indigenous peoples' concerns in political discussions with partner nations.

The Inter-American Commission and Court have dealt with a number of disputes involving indigenous rights at the inter-American level. In the Mayagna (Sumo) Awas Tingni Community v. Nicaragua case, for instance, the court ruled that the state must take the necessary steps to establish an efficient mechanism for delimiting, demarcating, and titling the property of indigenous communities in accordance with their customary law, values, customs, and mores.The Court also ruled that the state had to abstain from any actions affecting the existence, value, use, or enjoyment of the land situated in the region where the members of the indigenous group resided and engaged in their activities up until such a mechanism was put in place.

**Migrant Workers**

People have travelled far from their homes throughout history in quest of employment. The cornerstone of economic development in many civilizations has been labour mobility, which has fueled both host and source nation growth and wealth. One out of every 35 people in the world today is an immigrant, and migrant labour are essential to the global economy. Unfortunately, tension is developing, especially in the receiving nations, as a result of the expanding migration as a result of increased migration from less wealthy to wealthier places. One issue is the misconception that migrant workers are transient visitors who will ultimately return "home," whereas in fact they settle down and become long-term members of society with the same rights as other residents.

Along with war, civil turmoil, instability, and persecution resulting from prejudice, poverty and the inability to make a good livelihood have historically been key drivers of international migration. But since they live and work outside of their state of origin, migratory workers and their families sometimes find themselves in precarious positions in their host nations. They share the economic, social, and cultural disadvantages of disadvantaged groups in the host nation since they are foreigners, who may be objects of suspicion and hate based only on that status. In terms of employment, migrant workers often experience discrimination, including being denied access to training programmes and contracts that are less favourable than those offered to citizens. It is also common knowledge that migrant employees have subpar working conditions, are denied the ability to join unions, and are often given positions that native people do not desire.

When migrant labourers are hired and employed illegally, sometimes with the involvement of criminal forces, they are very vulnerable. The majority of the time, exploitation targets are illegal immigration. They are at the whim of their employers, compelled to put up with circumstances that, in the worst situations, equate to modern-day slavery or forced labour, and they are unable to seek redress because they fear being expelled from the host nation. Furthermore, particularly when it comes to schooling in a new language, children of migrants often need extra assistance to help them adjust to a foreign language and traditions.Many receiving nations are torn on how to handle immigration; on the one hand, preservation of human rights and humanitarian concerns must be taken into account, while on the other, the impacts of rising nationalism, racism, and xenophobia must also be taken into account. Sadly,

the attitude of many receiving nations is rapidly shifting away from the defence of human rights and towards the defence of borders.

Based on international law controlling the treatment of nonnationals, migrant workers' rights have historically been covered by broad diplomatic protection. This system progressively gave way to more precise standards and norms, which were expressed in international and national documents. As a result, there is now a substantial body of instruments that deal with the rights of migrant workers either directly or indirectly. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) was approved by the UNGA in 1990 (see II.1.C.1). The Convention's primary tenet is that, regardless of their legal status, those who fall within its definition of migratory workers are allowed to exercise their human rights. The Convention does not provide immigrants any new rights; instead, it seeks to ensure that immigrants and citizens are treated equally and enjoy the same working circumstances, as well as that immigrants have the freedom to stay connected to their countries of origin.

## CONCLUSION

The complexity of cultural variety and the effects of prejudice on these groups must be understood in order to analyse national minorities. The distinctive identities of the ethnic groups that make up national minorities are anchored in their cultural practises, customs, and traditions. Linguistic minorities often struggle to obtain public services such as education and work because of language difficulties, which play a significant role in determining their identity. There are several ways that prejudice, unfair treatment, and restricted chances against national minorities might take shape. The examination of national minorities sheds light on these groups' difficulties and the need of inclusive policy. It emphasises the significance of upholding national minorities' rights, advancing equality, and opposing prejudice. National minorities should be able to flourish and contribute to the country's cultural fabric in an inclusive society that is being worked on by governments and politicians.

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# CHAPTER 21

# ANALYZING RIGHT FOR DISABLED PERSONS

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**ABSTRACT:**

The study of different ethnic, religious, and linguistic groups within a nation and examination of their distinctive traits, difficulties, and contributions are part of the research of national minorities. People with disabilities are often denied their human rights and prohibited from participating in society due to long-standing discrimination against them. Limited educational possibilities are only one kind of discrimination against the handicapped; other more subtle forms include segregation and isolation due to physical and social constraints. The repercussions of discrimination are particularly obvious when economic, social, and cultural rights are concerned, such as in the areas of housing, work, transportation, cultural life, and access to public services. An overview of the examination of national minorities is given in this abstract.

**KEYWORDS:**

Cultural Diversity, Discrimination, Ethnic Groups, Identity, Language, National Minorities.

## INTRODUCTION

People with disabilities are often denied their human rights and prohibited from participating in society due to long-standing discrimination against them. Limited educational possibilities are only one kind of discrimination against the handicapped; other more subtle forms include segregation and isolation due to physical and social constraints. The repercussions of discrimination are particularly obvious when economic, social, and cultural rights are concerned, such as in the areas of housing, work, transportation, cultural life, and access to public services. The limitations placed on the disabled's ability to exercise their human rights are frequently the result of exclusion, restriction, or preference. For instance, when the disabled are denied access to reasonable accommodations because of their limitations, their ability to do so may be severely constrained. Numerous cultural and social obstacles must be removed in order for people with disabilities to freely exercise their fundamental human rights. Additionally, society as a whole must be encouraged to change its attitudes and promote greater understanding of disability [1], [2].

At the federal level, disability laws and regulations often take the premise that people with disabilities cannot enjoy the same rights as those without disabilities, placing a heavy emphasis on social security and rehabilitation. It is becoming more widely accepted that domestic policy must cover all facets of handicapped people's human rights, guaranteeing their full participation in society on an equal basis with those without disabilities, fostering opportunities for them, and eradicating discrimination. Although domestic law is primarily responsible for bringing about social change and advancing the rights of people with disabilities, international standards on disability may be extremely helpful in establishing baseline requirements for disability law. In the realm of international legal entities, violations of the human rights of people with disabilities have not consistently been addressed, but in recent years, the rights of the handicapped have started to be debated in a number of

international fora. Generally speaking, the principles of equality and non-discrimination are what international human rights treaties use to defend the rights of people with disabilities. The UDHR explicitly mentions people with disabilities, stating in Article 25 that "everyone has the right to security in the event of [...] disability," however its descendants, the ICCPR and ICESCR, do not do the same. However, many of the Covenants' provisions are directly relevant to ensuring equal opportunities and the full participation of people with disabilities in society, such as Articles 6 and 7 of the ICCPR (respecting the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment) and Article 2 of the ICESCR (establishing a general non-discrimination standard). The rights of children who are handicapped or disabled are expressly covered under Article 23 of the Convention on the Rights of the Child (CRC).

A general comment on people with disabilities has been approved by the Committee on Economic, Social, and Cultural Rights. General Comment 5 is especially significant since it indicates that disability is considered by the Committee to be a banned basis for discrimination because it comes within the category of "other status" in Article 2 ICESCR. In a similar vein, the General Recommendation 18 on women with disabilities was approved by the Committee on the Elimination of All Forms of Discrimination Against Women [3], [4]. Under the auspices of the AU, the African Charter of Human and Peoples' Rights states in Article 18(4) that those with disabilities shall be entitled to special measures of protection, and the African Charter on the Rights and Welfare of Children discusses the rights of children with disabilities in Article 13. According to the European Social Charter (revised), handicapped people have a right to independence, social inclusion, and community engagement. (Part I No. 15) and outlines actions nations must take to achieve this goal, such as encouraging access to work and education (Article 15). "States Parties undertake to adopt measures to make the right to work fully effective in particular, those directed to the disabled," according to Article 6 of the Protocol of San Salvador. The entitlement to social security in the event of incapacity is outlined in Article 9, as well. Furthermore, handicapped people are covered by provisions in human rights documents safeguarding members of vulnerable groups.

Two international treaties that specifically address the rights of people with disabilities have been adopted. One is the only regional convention of its sort in the world, the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (1999) (see II.3.B). States parties agree to take the necessary steps to end discrimination against people with disabilities, ensure their access to facilities and services, offer services to maximise their independence and quality of life, and conduct educational campaigns to raise public awareness of the need to end discrimination and promote respect for and coexistence with people with disabilities (Article 5). States parties also agree to work together and cooperate to end discrimination (Article 4), and to encourage organisations of people with disabilities to participate in the actions and policies taken to put the Convention into effect (Article 5). ILO 159: Vocational Rehabilitation and Employment (Disabled Persons) (1983) is the other convention. It outlines, among other things, the fundamentals of equal opportunity employment and vocational rehabilitation policies, as well as the steps that must be done at the national level to advance disability employment and rehabilitation services [5], [6].

At the international level, certain non-binding agreements addressing the rights of handicapped people have also been enacted. These instruments include the Declaration of the Rights of Mentally Retarded Persons (UNGA Resolution 26/ 2856 (XXVI), 1971); the Declaration on the Rights of Disabled Persons (UNGA Resolution 30/3447 (XXX), 1975);

the World Programme of Action concerning Disabled Persons (UNGA Resolution 37/52, 1982); the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability (UNGA Resolution 44/70, 1990); the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (UNGA Resolution 46/119, 1991); ILO Recommendations concerning Vocational Rehabilitation of the Disabled (1955) and concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983); the Sundberg Declaration on Actions and Strategies for Education, Prevention and Integration (1981); the Salamanca Statement on Principles, Policy and Practice in Special Needs Education (1994); and the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.

## DISCUSSION

### Towards A Human Rights Convention on The Rights of Persons with Disabilities

The United Nations Commission for Social Development created the post of Special Rapporteur on Disability in 1994. Monitoring the application of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities and advancing the status of persons with disabilities across the globe are the duties of the Special Rapporteur. In addition, the UN Secretariat's Division for Social Policy and Development serves as the focal point for issues connected to disability under UN auspices. The Division promotes national and international programmes, works closely with and supports governments and NGOs in the disability field, and deals with a variety of issues, including the promotion, monitoring, and evaluation of the implementation of the World Programme of Action and the Standard Rules. The UN Enable website for people with disabilities is also published by the division.

Promoting the quality of life for the underprivileged, especially those with disabilities, is one of the main UN development objectives. The World Programme of Action for Disabled Persons (WPA) was approved by the General Assembly at the end of 1982, the UN International Year of Disabled Persons. The WPA is a worldwide initiative to improve disability prevention, rehabilitation, and opportunity equality with the goal of ensuring that people with disabilities may fully participate in social life and country development. The WPA highlights how important it is to address disability from a human rights viewpoint and that people with disabilities shouldn't be treated differently than other members of the community, but rather as part of the framework of regular services. With suggestions for action at the national, regional, and worldwide levels, the WPA presented analysis of principles, ideas, and terminology connected to disabilities as well as an assessment of the status of people with disabilities across the globe.

The General Assembly declared 1983-1992 the United Nations Decade of Disabled Persons to provide the World Programme of Action a time period for execution. The establishment of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities was one of the Decade's key accomplishments. The rules serve as a policy tool and a foundation for economic and technical cooperation. They summarise the WPA's message, cover all aspects of disabled people's lives, and outline states' moral and political commitment to take action to achieve equal opportunities for the disabled [7], [8].

The Committee for the Elimination of All Forms of Discrimination Against Persons is a regulatory organisation established by the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (Article 6). The Committee is tasked with assessing the reports that the states parties make about "measures adopted by the member states pursuant to this Convention and on any progress made by the states parties in eliminating all forms of discrimination against persons with disabilities." The reports must

include any conditions or problems that impact how well the commitments resulting from this Convention are being fulfilled. Unfortunately, despite the fact that the Convention became effective in 2001, as of July 2004, the Committee has not met.Every year on December 3, disabled people throughout the world celebrate their rights. The objective is to increase awareness of disability problems and rally support for the rights, dignity, and general welfare of people with disabilities.

**Elderly Persons**

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In general, the values of dignity and non-discrimination are the foundation for the rights outlined for the aged in international agreements. Although older people are not specifically mentioned in either the UDHR or its descendants, the ICCPR and ICESCR, several aspects of these treaties are directly relevant to guaranteeing equal opportunity and the full participation of the elderly. Despite the fact that the Bill of Rights does not include older people's rights, the ICESCR Committee specifically addresses the economic, social, and cultural rights of older people in General Comment. In the General Comment, the Committee requests states parties to, among other things: pay special attention to older women as they frequently haven't engaged in a paid activity qualifying them for an old-age pension; institute measures to prevent age discrimination in employment and occupation; take appropriate measures to establish general regimes of compulsory old-age insurance; and establish social services to support the entire family when needed. The General Comment further notes that, while not being specifically listed as a banned basis for discrimination under the Convention, "other status" may be understood to include age. It goes without saying that the anti-discrimination principle entrenched in the ICESCR, ICCPR, CERD, and CEDAW forbids discrimination based on age.

Older people are specifically mentioned in three regional human rights agreements as a category in need of particular protection. The African Charter's Article 18(4) states that older people have the right to particular protective measures that are in line with their physical or moral requirements. Elderly women are given particular protection under the African Charter on the Rights of Women in Africa. Everyone has the right to special protection in old age under the Inter-American System, according to Article 17 Protocol San Salvador, which also calls on states to gradually provide suitable facilities, food, and medical care for elderly people who lack them, implement work programmes to allow the elderly to engage in productive activity, and support the establishment of social organisations aimed at enhancing the quality of life for the elderly. The right to social protection for the aged is outlined in Article 23 of the Revised European Social Charter. In accordance with this clause, states parties commit to taking action to: a) enable seniors to live independently for as long as possible by providing adequate resources and information about services; b) enable seniors to choose their lifestyle freely by providing adequate housing and services; and c) ensure support for senior citizens residing in institutions. In addition, Article 25 of the European Union's Fundamental Rights Charter (2000) outlines the rights of seniors to "lead a life of dignity and independence and to participate in social and cultural life."

A variety of actions have been made within the auspices of the United Nations to better the lives of older people, even though no treaty specifically addressing the rights of the elderly has been enacted, unlike in the case of women and children. The Vienna International Plan of Action on Ageing, the first international ageing instrument, was endorsed in 1982 during the World Assembly on Ageing, which was held in Austria. The UNGA Resolution 37/51 approved it. The Plan encourages international cooperation to improve nations' ability to deal with population ageing and to meet the developmental potential and dependent requirements of older people. It tackles education, training, and research and offers advice in the following fields: Aside from education, other important factors include: health and nutrition, family, protection of senior citizens, job and financial security, housing and the environment, and social welfare. The Plan must be carried out within the context of other global norms and human rights laws.

The General Assembly adopted the United Nations Principles for Older Persons (UNGA Resolution 46/91) in 1991 as part of the Plan of Action, encouraging states to adopt certain principles relating to the status of the elderly and promoting elderly people's independence,

participation, care, fulfilment, and dignity. Independence is defined as having access to enough food, water, housing, clothes, and medical care, as well as having the chance to work for pay and having access to education and training. In order to share their expertise with younger generations and to actively engage in the development and implementation of policies that influence their well-being, older people are encouraged to participate. Additionally, senior citizens should be allowed to form groups and organisations. Care: includes that older people should get support from their families and medical attention, and that their basic human rights and freedoms must be upheld while they are receiving care or treatment. Self-fulfillment requires that older people have access to resources for education, culture, spirituality, and leisure so they may seek chances for the full development of their potential. An elderly person should have the right to live in dignity, security, and freedom from exploitation and physical or mental abuse. They should also receive equal treatment regardless of their age, gender, race or ethnicity, disability, financial situation, or any other status, and they should be respected regardless of their ability to contribute financially.

The Proclamation on Ageing was approved by the General Assembly in 1992. The Proclamation, among other things, calls for older women to be supported and recognised for their contributions to society; older men to be encouraged to develop capacities that they might not have been able to during their years of earning a living; and families to be supported in providing care and encouraged to cooperate in caregiving. A second international plan of action on ageing was agreed in 2002 by the second world assembly on ageing. There are many major topics in this strategy that outline the aims, objectives, and commitments. These include: the achievement of secure ageing; the empowerment of older people; the provision of opportunities for individual development; ensuring the full enjoyment of all human rights and the elimination of all forms of violence and discrimination against older people; gender equality among older people; g) the recognition of the value of families; the provision of opportunities for individual development.

Human rights oversight organisations are paying more attention to how vulnerable those with HIV/AIDS are. Many rights, including those that are economic and social, like the right to employment and access to medical facilities, as well as those that are connected to the enjoyment of civil rights, such the right to privacy and the freedom of movement, are often violated by HIV positive individuals and AIDS sufferers. States must consequently take an integrated strategy since it is sometimes hard to distinguish between abuses of economic, social, and cultural rights and violations of civil and political rights. Since a successful response to the pandemic depends on the fulfilment of economic, social, and cultural rights as well as civil and political rights, HIV/AIDS serves as a powerful example of the interconnectedness of human rights. In populations who already experience lack of protection and prejudice, such as women, children, those who live in poverty, minorities, refugees, and internally displaced persons, the prevalence of HIV/AIDS is disproportionately high. For instance, the CEDAW Committee has emphasised the connection between women's reproductive responsibilities, their inferior social status, and their higher susceptibility to HIV infection in this respect.

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## CONCLUSION

In order to provide equal opportunity and full involvement in society, it is imperative that handicapped people have their rights upheld. Accessing basic services like healthcare, transportation, education, and work may be very difficult for those with disabilities. Physical obstacles, stigma, and discrimination all worsen these problems. The rights of those with disabilities are, nevertheless, intended to be protected and promoted by a number of legal frameworks, including the United Nations Convention on the Rights of Persons with Disabilities. These frameworks stress the need of eliminating obstacles, making acceptable modifications, and encouraging inclusion and accessibility in every facet of life. Societies may work towards a more inclusive and equitable future where everyone can participate fully and contribute to their communities by recognising and respecting the right of handicapped people.

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# CHAPTER 22

# ANALYSIS OF HUMAN RIGHTS AND ITS DEVELOPMENT

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**ABSTRACT:**

Understanding the complexity of cultural diversity and the effects of prejudice on these groups is necessary for analysing national minorities. National minorities' ethnic groups each have unique identities based on their cultural practises, rituals, and traditions. Since language limitations sometimes make it difficult for linguistic minorities to obtain public services like education and work, language is vital in determining their identity. Different manifestations of discrimination against national minorities include unfair treatment, prejudice, and less opportunity. The study of national minorities sheds light on the difficulties these communities experience and the need of inclusive policy. It emphasises how crucial it is to advance equality, fight prejudice, and defend the rights of national minorities. Governments and politicians should seek to build a more accepting society where members of national minorities may prosper and enrich the fabric of the country.

**KEYWORDS:**

Challenges, Development, Human Rights, Progress, Protection.

## INTRODUCTION

When the relationship between human rights and development cooperation was established in the 1970s, it was frequently associated with discussions about cutting off aid to a nation whose government had committed flagrant human rights violations, and the punitive aspect of the relationship seemed to prevail in public opinion. The majority of donors have dealt with the withdrawal of aid, which is often a contentious and ineffective response. Actively promoting human rights by, for example, support for the court or human rights organisations might be seen as interfering in domestic matters. The link between human rights and development cooperation started to change during the 1980s. Growing focus has been paid to the use of development cooperation to advance human rights, such as via increased support for democratising governments, assistance to human rights NGOs, or decentralised cooperation. Human rights were eventually discussed by both donors and receivers.

The Lomé III Convention between the European Community and its partner governments in Africa, the Caribbean, and the Pacific (signed in 1984) was one of the first documents legally defining the connection and validating the growing human rights strategy. The Preamble of the Convention makes reference to human rights, and the joint declarations that are linked to it go into more detail. Governments' perspectives on the connection between human rights and sustainable development were impacted by the profound changes that occurred in Central and Eastern Europe in 1989, leading to an approach that put the person at the centre and made them the primary protagonist and beneficiary of development. It became clear that long-term growth and fair distribution depend on upholding human rights, the rule of law, political pluralism, and efficient, accountable democratic institutions [1], [2].

The 'Millennium Development Goals' (MDGs) were a significant step in demonstrating the link between human rights and development. World leaders endorsed a set of quantifiable,

time-bound objectives and targets for eradicating poverty, hunger, illness, illiteracy, environmental degradation, and discrimination against women during the United Nations Millennium Summit in 2000. These objectives seek to make quantifiable progress in a variety of distinct areas that are seen to be crucial for human development and many of which promote the enjoyment of human rights, such as elementary education.

The objectives provide a framework for development cooperation institutions to collaborate effectively on a shared objective. Since the vast majority of countries can only achieve the MDGs with significant outside assistance, close cooperation is essential. Regular measurements are made of the MDGs' progress. Emphasis on human rights-based approaches to development and poverty reduction has expanded as a result of the MDGs. While addressing the content of development assistance efforts, a human rights-based approach focuses on how development is being done. In essence, the human rights-based approach mandates that institutions and policies striving to promote development and reduce poverty base their actions on the commitments made under the international human rights treaties (ICCPR, ICESCR, CERD, CEDAW, CAT, and CRC). Human rights are defined as those that are inalienable, belong to every human being equally, and must be realised via an open, inclusive, and transparent process. The Universal Declaration of Human Rights and other human rights documents provide a cogent foundation for effective international and local action to combat poverty. The ideals of universality and indivisibility, empowerment and transparency, accountability and participation are upheld by the human rights-based approach to reducing poverty [3], [4].

Within the UN, the United Nations Development Programme (UNDP) is crucial to the realisation of the human rights-based development paradigm. It concentrates on this strategy for its policy, programming, and capacity development assistance. It specifically: Encourages everyone to use a human rights-based strategy when adapting and personalising the MDG objectives to the local environment.

1. Emphasises the abilities of duty-bearers to carry out their responsibilities to uphold, defend, and fulfil rights as well as the abilities of right-holders to assert their rights.
2. Strengthens the interplay between democratic government and the eradication of poverty.
3. Pro-poor poverty programming will include efforts for local governance, justice access, institutional capacity, grassroots community development initiatives, and human rights education.
4. Participates in the work of UN Treaty Bodies; it works especially hard to integrate relevant and well-chosen suggestions from periodic assessments into the development of its programmes.
5. Encourages and promotes participatory assessment techniques that relate rights, challenges, and assets that help the poor secure their way of life.
6. Develop internal resources to conduct multidisciplinary reviews and analyses that optimise the poor's meaningful involvement.

Historically, democracy and human rights have been seen as quite distinct phenomena existing in various parts of the political domain. Competitive elections, multi-party democracy, and the separation of powers are often associated with democracy. Democracy also attempts to give the people more authority so that they may govern society. On the other hand, human rights seek to empower the person and to provide the very minimum circumstances for living a life that is distinctly human. Moreover, human rights are global in scope, subject to international definition, and governed by all 'humans'. The fundamental

elements of "sovereignty" have traditionally been seen as the internal affairs of the state, including the constitutional arrangements of governments, including democracy [5], [6].

Democracy and human rights are now recognised as firmly standing together in the wake of the fall of the Berlin Wall and the downfall of the majority of communist governments. As a result, democracy was the focus of many international conferences throughout the 1990s. The General Assembly, the Secretariat, and the UN Commission on Human Rights have all made comments on how to improve democracy. The General Assembly asked the Secretary-General to "examine options for strengthening the support provided by the United Nations system for the efforts of the Member States to consolidate democracy, including the designation of a focal point" in its Resolution 56/98 of December 14, 2001. Additionally, five conferences on newly established or restored democracies have been held in close collaboration with the UN, the most recent of which was held in Ulaanbaatar, Mongolia, in 2003 and focused on democracy, good governance, and civil society. The participants adopted a plan of action in which they affirmed, among other things, the need to continue working towards the consolidation of democracy by constructing societies that are just and responsible, inclusive and participatory, open and transparent, that respect all human rights and fundamental freedoms of all, and that guarantee accountability and the rule of law.

The UN Commission on Human Rights requested the OHCHR to convene an expert conference to look at how democracy and human rights are intertwined in resolution 2001/41 on Continuing discourse on measures to promote and strengthen democracy. The 2002 seminar had two goals: (a) to conceptually contribute to the current discussion on democracy and how it relates to all human rights; and (b) to participate in a more practical exchange on specific strategies for advancing and strengthening democracy [7], [8].

## DISCUSSION

The seminar approved a conclusion paper (E/CN.4/2003/59) that, among other things, discusses the interdependence between democracy and human rights and emphasises the importance of the rule of law, parliaments, the media, and civil society to both. Democracy is not a model to be copied from certain states," the Secretary-General asserts (A/50/332), "but a goal to be attained by all peoples and assimilated by all cultures." Peace or democracy cannot be attained by a single method. Although the choice and results of democratic procedures depend on the particulars of each country or culture, it is now generally acknowledged that democracy is a need for the full fulfilment of all human rights, and vice versa. However, the UN Commission on Human Rights did not acknowledge the right to democracy until its fifty-fifth session in 1999, when it made the following statement: "Democracy is based on the freely expressed will of the people to determine their own political, economic, social, and cultural systems. Development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing." The following rights of democratic government are listed by the UN Human Rights Commission in an effort to identify key components of the right to democracy: the rule of law, which includes the legal protection of citizens' rights, interests, and personal security, as well as fairness in the administration of justice and the independence of the judiciary;

The transparent and responsible use of power and management of resources by governments is known as good governance. In their foreign policy and interactions with emerging nations as well as those that are transitioning to a market economy and democracy, many governments aspire to advance good governance. Three fundamental responsibilities of government must be fulfilled for there to be good governance: Ensuring the safety of all citizens and the society as a whole; Managing an efficient framework for the public sector,

the private sector, and civil society; and Advancing economic, social, and other goals in accordance with the wishes of the populace.

Human rights and good governance are strongly intertwined. Both are concerned with the rule of law and with equality in the results of governmental policy, and they overlap in some areas, so they may mutually support each other in significant ways. However, they continue to be unique since human rights aim to defend the intrinsic dignity of each and every person, while good governance is about giving society a framework for the efficient and fair development and distribution of resources. Good governance has changed in recent years from being a subject of significant worldwide discussion to being an official policy objective of many international bodies. The effectiveness of economic and social policies of governments for sustainable development is asserted through the use of the Enhanced Structural Adjustment Facilities of the International Monetary Fund and the International Development Assistance (IDA) lending activities of the World Bank. This definition is based on a number of UN human rights documents, most notably the Universal Declaration of Human Rights (UDHR), which affirms that "everyone has the right to equal access to public service" and that "the will of the people shall be the basis of the authority of government."

The UNDP's concern for governance directly affects the laws, governmental and non-governmental organisations, and procedures that have an impact on human rights. Public management plans, which address problems like accountability, openness, involvement, decentralisation, legislative competence, and judicial independence, are one example of how concern for human rights and good governance is portrayed. For instance, the state, the private sector, and civil society are identified as three areas in the UNDP's governance programme as having a special role in fostering sustainable development and good governance. The work of the UN Commission on Human Rights has further refined the idea of good governance. The Commission outlined the essential characteristics of good governance in Resolution 2000/64 as being: transparency, responsibility, accountability, participation, and responsiveness to the demands of the people. Human rights may be enjoyed in an environment that is "prompting growth and sustainable human development," according to Resolution 2000/64. The resolution serves as an implicit support for the rights-based approach to development by tying good governance to sustainable human development, emphasising accountability, participation, and the enjoyment of human rights, and rejecting prescriptive approaches to development assistance [9], [10].

In addition to the resolution described above, there is a sizable body of human rights norms that are directly applicable to issues with good governance. The Declaration on the Right to Development (1986) (see V.1.C) further explains the nature of these duties and lays forth significant goals for governance. This is a requirement of the ICCPR, which says parties must "respect and uphold." States are required to "formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free, and meaningful participation in development and in the fair distribution of the benefits therefrom," according to the mandate.

Additionally, states must "take, at the national level, all necessary steps for the realisation of the right to development" and "ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment, and the fair distribution of income." 'Effective steps' are to be taken to guarantee that women play a significant part in the development process, and 'necessary economic and social reforms' are to be implemented with a view to eliminating all social inequities. In conclusion, the Declaration mandates that nations "take all necessary measures, including the formulation, adoption and implementation of policy, legislative and other measures at the national and

international levels, to ensure the full exercise and progressive enhancement of the right to development." The civilian oversight of military operations and expenditures is a crucial component of effective government, and spending limits on the military may be one such measure. Excessive military spending may lead to heightened regional tensions and transgressions of international law in addition to reducing cash available for other uses. Additionally, the military is often used to suppress internal dissent and deny human rights.

An Independent Expert on the Right to Development was appointed by the UN Commission on Human Rights in 1998. His duties include researching the present status of the right to development's implementation and creating studies that are country-specific. The Expert has proposed a step-by-step strategy for the realisation of the right to development through the achievement of three fundamental rights: the right to food; the right to primary education; and the right to health. The Expert defines the right to development as "a right to a particular development process, which enables all fundamental freedom and rights to be realised, and expands the basic capacities and abilities of individuals to enjoy their rights." Additionally, the Independent Expert has advised that coordinated action between the concerned developing nations, the donor countries, and international financial institutions is required to fulfil the right to development. A "development compact" should commit poor nations to upholding their human rights duties while the international community contributes the necessary funds.

The "compacts" should be strengthened by giving developing nations more access to trade and markets, reducing their debt, transferring technology and resources, protecting migrants, upholding labour standards, and increasing their influence in the global financial system. The Expert explores, among other things, the key characteristics of the increasingly globalised world and how they relate to the process of the right to development in his 2003 Preliminary research on the influence of international economic and financial difficulties on the enjoyment of human rights. In order to make the global economic climate more supportive of the requirements of developing nations, he lists some of the obstacles that must be removed throughout the process of trade liberalisation. In order to enable trade and liberalisation policies to implement a rights-based process of development, he researched the operation of the World Trade Organisation (WTO) and other trade arrangements in this context (E/CN.4/2003/WG.18/2).

Many organisations have been driven to combine the principles of development and human rights in their work because of the interdependence and mutual dependence of the two. For instance, the United Nations Development Programme (UNDP) has claimed that capacity building, maintaining livelihoods, advancing gender equality, safeguarding the environment, and reducing poverty would all help to incorporate human rights in the development sector. The UNDP has come to the conclusion that a human rights-based approach to development will lead to a win-win situation that improves the accomplishment of both universal human rights and development objectives. It should be highlighted that despite several efforts, only little progress has been achieved between 1998 and 2004 in gaining agreement on a particular "binding" instrument relating to the right to development owing to its complexity and controversial problems.

**Human Rights and Economic Co-Operation**

A person's ability to exercise various human rights, including those related to education, due process, social security, and a reasonable standard of living, may be impacted by their economic situation. However, there is no easy way to quantify this link, and economic success is neither a need for nor a warranty of the observance of human rights. The idea that

less developed nations cannot be expected to uphold traditional freedoms until they have achieved a certain level of economic development, allowing them to realise social and economic rights, must be disregarded because it suggests that citizens of less developed nations have fewer rights than citizens of wealthier nations. A restrictive society cannot support long-term effective economic and social progress, as history has shown. Extreme poverty may sometimes be considered as a violation of human rights. Poverty also has an impact on dignity.

All human rights matter in international relations; they cannot be entirely dependent on national economic interests. Governments have always shown a distinct aversion to meddle in the financial affairs of private individuals and organisations operating in market economies. States are expected to take action when human rights are under jeopardy because they are accountable for the framework in which international relations are created. However, due to the possibility of meddling in situations where the government is not the only player, some care is advised. At the same time, all state and non-state actors whose actions may have an impact on people's lives are accountable for upholding human rights. The state continues to have the primary duty for ensuring that domestic human rights are respected. However, both national and international institutions must shoulder part of the blame. Positive and reactive actions should be distinguished in the context of economic cooperation. All actions that help to strengthen economic ties are considered positive measures under this definition. Promoting business relationships based on private efforts may be particularly helpful in fostering economic variety.In the context of this section, "reactive measures" refers to any limitations placed on economic ties with a certain nation, including economic sanctions. Such actions may be used as a tool for human rights policy, to apply political pressure to end human rights abuses, as a form of retribution, or as a method of avoiding taking part in such abuses.

The upkeep of globally recognised human rights norms, such as labour standards, at the national and sub-national levels is a crucial component of economic cooperation. The ILO has established rules that, from the perspective of human rights, are significant positive steps in the international social and economic sector. The ILO serves as an entity that creates a framework for international economic interactions. By way of its Declaration on Fundamental Principles and Rights at Work (1998), which tackles universally applicable fundamental workplace principles and rights, the ILO has also early on directly addressed enterprises engaged in international dealings. All international cooperation must uphold labour norms, but they must not be exploited as a tool for trade protection. In Chapter VI, we'll talk about the norms that multinational corporations must uphold while making investments abroad.3. International trade agreements are increasingly include human rights provisions. The EU has a provision stating that respect for human rights is a "essential element" of all agreements with other parties, including trade and cooperation accords. The most current iteration of the phrase was included in the Cotonou Agreement, which was signed on 1 April 2003 and includes 77 African, Caribbean, and Pacific nations. The creation of a Subgroup on Governance and Human Rights under the cooperation agreement with Bangladesh, which is the first time such a structure has been implemented in this context, was an innovation that was launched in 2003. The group gives EU and Bangladeshi authorities a chance to have in-depth discussions on human rights problems (see V.2.C).

The EU Generalised System Preferences (GSP) should be discussed in relation to economic cooperation. This mechanism, in place since 1971, provides developing nations with the opportunity to get tariff discounts for exports. The System takes into account the granting of extra preferences or the removal of preferences in regard to matters of human rights. In 2001,

the grounds for temporarily withdrawing general preferences were expanded to include flagrant violations of all ILO core treaties. To nations that have adhered to ILO 87 regarding freedom of association and protection of the right to organise, ILO 98 regarding the right to organise and collective bargaining, and ILO 138 regarding the minimum age, extra preferences may be awarded within the system. Additionally, under this system, it is feasible to look into infringements of the relevant ILO conventions and ultimately apply fines based on the results of the inquiry.

## CONCLUSION

The study of basic freedoms and rights that each person is entitled to by virtue of their humanity is included in the examination of human rights. It entails comprehending how human rights have evolved historically, starting with the Universal Declaration of Human Rights and continuing with later international treaties and conventions. The examination also explores obstacles to advancing and defending human rights, such as prejudice, inequality, and abuses by both state- and non-state actors. The evolution of human rights represents the advancements achieved in broadening the application and recognising rights. It includes lobbying work, legislative changes, and the creation of enforcement and monitoring systems. The examination looks at how these changes have affected people's lives and society as a whole, indicating opportunities for growth and enduring difficulties. In conclusion, assessing the success done in preserving the rights and dignity of people throughout the globe depends on a study of human rights and its growth. It emphasises the importance of ongoing initiatives to solve problems, advance equality, and guarantee the full realisation of everyone's human rights.

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