

“Lawyers for Lawyers”

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TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 1: FOCUS ON THE CONCEPT OF HUMAN RIGHTS

Defining human rights is not an easy task as there is no one agreed definition but many different definitions, which arise from the complexity of the concept. However, it is clear that the notion of human rights refers to the basic needs of human beings, which must be met if we are to have a dignified and free life.

Human rights are the consequence of a historical conquest and are constantly evolving.

Human rights are:

- **inherent** to all human beings : everyone is entitled to human rights merely by reason of their being human;
- **universal** : human rights belong to all human beings throughout the world, regardless of their sex, physical features, social or legal position, culture, religion or the place where they live;
- **inalienable** : they cannot be surrendered. Individuals must respect not only other people’s human rights but also their own. Human rights cannot be denied, but in certain exceptional circumstances, they can be restricted within clear legal boundaries;
- **absolute** : human rights take precedence over all other moral considerations;
- **indivisible** : human rights form an indivisible whole. All human rights are essential and have equal status. None has priority over the others;
- **interdependent** : improving or infringing one right has an effect on the other rights. The loss of one right can lead to the loss of another right; and
- **complementary** : human rights are complementary.

The universality of human rights was put in context as a result of the growing awareness that individuals cannot always be seen in the abstract. Individuals live in society and within a given culture. Accordingly, some human rights need to be adapted to fit the context in which individuals live and may also be specific to only one cultural group or a given culture.

They are based on the values of freedom, equality and solidarity and the concept of **human dignity** is cited as the ultimate justification for human rights.



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Their main purpose is to protect individual freedoms, limit State power and meet the basic individual and collective needs of human beings.

Human rights can be divided into several categories of rights, called “generations”, based on the historical period in which they first appeared. These categories also correspond to the function of these rights.

TYPE OF RIGHTS	HISTORICAL EVENT	FOUNDING VALUE	FUNCTION	MAIN FEATURES	EXAMPLES	EXAMPLES OF INTERNATIONAL LEGAL INSTRUMENTS PROTECTING THESE RIGHTS
Civil and political rights (First generation).	French Revolution. Demands for “liberty, equality and fraternity” and a desire to be a part of the decision-making process.	Freedom	Protecting individual freedoms and limiting the power of the State.	Individual rights held by all that may be asserted against those in power. They exist before the State, which is created solely to protect these rights. “Liberty rights”. These rights are fundamental to the exercise of citizenship.	- Individual civil liberties and rights: right to life, right to liberty and security of person, right to private property, right to freedom of movement, right to be presumed innocent etc. - Individual political freedoms and rights: right to vote, freedom of expression, freedom of assembly and association, right to strike, right to information etc	- Universal Declaration of Human Rights (1948). - European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). - International Covenant on Civil and Political Rights (1966). - American Convention on Human Rights (1969). - African Charter on Human and Peoples’ Rights (1981) etc.
Economic, social and cultural rights (Second generation)	Realisation that the first-generation rights, aimed at protecting individual freedoms, were not enough. First-generation rights cannot be effectively exercised, or lose all meaning, if certain basic needs cannot be guaranteed at the same time.	Equality	Help meet basic individual needs.	Individuals hold these rights vis-à-vis or over the state. Only the State can provide them. “Claim rights”.	Right to health, right to work, right to education, right to adequate housing etc.	- International Covenant on Economic, Social and Cultural Rights (1966). - Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (Protocol of San Salvador) (1988). - African Charter on Human and Peoples’ Rights (1981). - Convention on the

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						Protection and Promotion of the Diversity of Cultural Expressions (2005).
Third-generation rights	Response to the need to preserve certain interests (development, environment, peace) by taking account of humanity as a whole, over the long term, rather than isolated individuals (protection of future generations).	Solidarity	Help meet basic collective needs.	Collective beneficiary instead of an individual beneficiary.	<p>Right to development, right to a clean environment, right to peace, right to self-determination etc.</p> <p>Some writers have suggested that there is a fourth generation of rights, relating mainly to bioethics, but this category has not been clearly defined.</p>	<ul style="list-style-type: none"> - Convention concerning the Protection of the World Cultural and Natural Heritage (1972). - Rio Declaration on Environment and Development (1992). - African Charter on Human and Peoples' Rights (1981).

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Special rights	Certain classes of people have special needs or require special protection, for example children, women, disabled people and refugees. Various legal instruments have been concluded to supplement all the existing rights granted in general instruments.	These rights are individual rights but only apply to individuals that are part of a specific group.	Women's rights, children's rights etc.	<ul style="list-style-type: none"> - International Convention on the Rights of the Child (1989). - Convention on the Elimination of All Forms of Discrimination Against Women (1979) - Convention on the Rights of Persons with Disabilities (2006). - African Charter on the Rights and Welfare of the Child (1990). - Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994). - Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (1999) etc.

Conclusion:

There are three dimensions to human rights. Firstly, they have an ethical dimension, as they are based on fundamental values. Secondly, they have a political dimension, as they constitute an essential aim of any democratic State, who must protect them. Finally, they have a legal dimension as they are legal rules and are enshrined in national constitutions, making them a benchmark for other rules. They guide State action and also set a limit on this action. They create duties and responsibilities and apply to the conduct of all citizens.

This is why it is so important to protect and defend human rights.

➤ *Can human rights be ranked?*

From a philosophical standpoint, all human rights are indivisible and therefore they all have equal status.

However, from a legal point of view (i.e. from their recognition in positive law), there is a set of “hard core” human rights. These rights are inviolable rights which form a type of minimum standard. A comparison of the main instruments protecting human rights shows that these rights are limited to the right to life, the right not to be subjected to torture or inhuman or degrading treatment, the right not to be held in slavery or servitude and the right not to be held guilty of any criminal offence that did not exist at the time of the offence. (Cf. Frédéric Sudre).

➤ *How can human rights be protected?*

The first step is to recognise human rights in positive law, through an international legal instrument, and then its ratification and implementation in domestic law (see File n° 6 on the implementation of international human rights law in domestic law), or its adoption as part of a State’s constitution.

In domestic law, procedures need to be implemented to allow individuals to assert their human rights before national courts. Other non-judicial procedures, allowing complaints to independent bodies established to protect human rights, such as an Ombudsman, may also be implemented.

Protection is also required at a political level, as respect for human rights is also dependent upon the democratic nature of a country, the operation of its government authorities and the independence of its judiciary, etc.

Finally, judicial and non-judicial mechanisms also need to exist at international level, in case a State or an individual (in the event of international crimes) breaches a right recognised in an international legal instrument.

➤ *What international and regional mechanisms exist to protect human rights?*

There are both judicial and non-judicial mechanisms. Their status determines their effectiveness.

- **Political and administrative mechanisms**

The first level of protection is accorded at political/administrative level and consists of **regular reporting by States to the body established to monitor the implementation of a treaty**, for example the United Nations Human Rights Committee under the International Covenant on Civil and Political Rights, the African Commission on Human and Peoples' Rights under the African Charter on Human and Peoples' Rights and the Inter-American Commission on Human Rights under the American Convention on Human Rights. In their reports, States must describe the steps they have taken to implement the treaties they have ratified and to protect the rights recognised in the treaties.

Some of these bodies, such as the Human Rights Committee and the Inter-American Commission on Human Rights can also issue observations or recommendations to States. The African Commission on Human and Peoples' Rights does not have this power.

Others have a wider remit and can carry out visits in member States (for example the European Committee for the Prevention of Torture).

This procedure has little effect in practice as the observations and recommendations issued following these reports are not legally binding.

Other bodies are directly responsible for preparing **reports on the general human rights situation** in a given country or continent (for example, the Universal Periodic Review conducted by the United Nations Human Rights Council, which involves a review of the human rights records of the 192 Member States once every four years).

Additionally, the use of **special rapporteurs** has greatly increased both in the universal human rights protection system and regional systems. Special rapporteurs are independent experts appointed to report on the implementation of a given legal instrument protecting human rights or to investigate the human rights record on a given theme (discrimination, food, education etc.) through reports. Some special rapporteurs are also authorised to receive communications (for example, the Special Rapporteur on the situation of Human Rights Defenders for violations committed against human rights defenders).

Finally, the **role** played by **non-governmental organisations** in the defence of human rights, in the political area, should also be highlighted, in particular through the reports they publish on human rights records or violations of human rights, and their advocacy work.

- **Judicial and quasi-judicial mechanisms**

The second level of protection is judicial or quasi-judicial and consists of two separate procedures: communications or complaints issued by States and communications or complaints issued by private individuals.

Firstly, States can submit an **inter-state communication** to a treaty-based body alleging a violation of a right recognised in a treaty by another State. This type of communication can be submitted to the United Nations Human Rights Committee for violations of the International Covenant on Civil and Political Rights, the African Commission on Human and Peoples' Rights for violations of the African Charter on Human and Peoples' Rights and the Inter-American Commission on Human Rights for violations of the American Convention on Human Rights.

These proceedings generally have an adversarial nature. However, this procedure is often subject to prior acceptance by the States of the competence of the supervisory body, by declaration, and, when it is not possible to resolve the case through a friendly settlement, the report or recommendations issued at the end of the procedure are not legally binding. One exception to this is the Inter-American Commission on Human Rights. If recommendations are not implemented by the violating State, the Commission or the State that submitted the communication can refer the case to the Inter-American Court of Human Rights, whose decisions are binding. Also, where decisions of the African Commission on Human and Peoples' Rights are published in their annual report, the decision can become binding on the State concerned.

In addition to this, **State applications** may be filed before judicial bodies responsible for compliance with and interpretation of legislation. The decisions of these bodies are legally binding. Examples of this type of court are the African Court on Human and Peoples' Rights (for violations of the African Charter on Human and Peoples' Rights and other relevant legal instruments on human rights ratified by the States concerned), the Inter-American Court of Human Rights (for violations of the American Convention on Human Rights) and the European Court of Human Rights (for violations of the Convention for the Protection of Human Rights and Fundamental Freedoms). It is worth noting that, as with the communications mechanism, the court only generally has jurisdiction where the relevant States have previously declared that they recognise its jurisdiction (or have ratified a special protocol).

Finally, certain bodies also handle **individual communications** and some of the courts have jurisdiction to hear **individual applications**, or **applications made by NGOs** (subject to certain conditions) where a State has violated a right protected under the relevant legal instrument, ratified by the violating State.

- Individual communications

-Universal system: human rights treaty bodies: Human Rights Commission (HRC), Committee on the Elimination of Discrimination Against Women (CEDAW), Committee Against Torture (CAT), Committee on the Rights of Persons with Disabilities (CRPD), Committee on the Elimination of Racial Discrimination (CERD).

-*African system*: African Commission on Human and Peoples' Rights – NGOs can also file complaints.

-*American system*: Inter-American Commission on Human Rights – NGOs can also file petitions.

- Individual applications

-*European system*: European Court of Human Rights – applications by NGOs allowed.

-*African system*: African Court on Human and Peoples' Rights - applications by NGOs allowed.

-*American system*: Only the Inter-American Commission on Human Rights and the State parties can file an application with the Inter-American Court of Human Rights.

The role of the Court of Justice of the European Union should also be mentioned in this section. Although it was not established as a court for the protection of human rights, the fundamental rights form an integral part of the general principles of EU law which are enforced by this court.

Finally, the role of the International Criminal Court should not be overlooked in this review of judicial bodies protecting human rights. This court, established by an international treaty, has jurisdiction to judge serious crimes of concern to the human community as a whole (war crimes, crimes against humanity, genocide, crimes of aggression) committed by individuals (this court therefore deals with the individual responsibility of private individuals and not the collective responsibility of States). Although individuals cannot file an application before the court directly, they can send information on these types of crimes to the Prosecutor of the Court, who can initiate investigations if the crime and the perpetrator are within the jurisdiction of the Court. Also, States that have ratified the Statute of the Court and the United Nations Security Council can, in certain circumstances, ask the Prosecutor to initiate an investigation.

It is clear that, under the treaty-based mechanisms, it is often civil and political rights that are afforded the most protection. However, there are more and more initiatives being taken to improve the protection of economic, social and cultural rights, such as the adoption in 2008 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights which authorises the Committee on Economic, Social and Cultural Rights to consider individual complaints relating to the violation of rights protected under the Covenant (this protocol has not yet entered into force).

In light of the above, there is no doubt that lawyers also have an essential role to play in the defence of human rights.

Sources:

-Henri Oberdorff, *Droits de l'Homme et Libertés Fondamentales*, LGDJ, 2010.

-Gregorio Peces Barba, *Curso de Derechos Fundamentales, Teoría General*, Carlos III University of Madrid, 1995.

-Frédéric Sudre, *Droit Européen et International des Droits de l'Homme*, Puf, 2008.

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