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Human Right Note

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Unit One

Introduction to Human Rights

Human right is a right which drives from being a human person. This means everyone including the cruelest person is subject to a human right. Why we are worry about the legal frame work that governs human rights? However, there are philosophical understandings and backgrounds for human rights Regardless of this traditional definition of human rights.

Why we do care about the philosophical understanding of human right?

- To avoid confusion as to how they are acquired the existing status, developed and shaped
- To understand the moral justification to obey human right.
- To know the devising and translation formula of the development and explanation of human right.
- The justification for the protection and applications of human rights.

THEORIES REGARDING TO THE NATURE AND DEVELOPMENTS OF HUMAN RIGHTS BEFORE WW TWO

- The first one is **Religious justification of human right**. The holy bible states that Adam was created in the images of God. This means the holy bible has given the dignity for human being so it is one of basic right and principle of human right. And again, the holly Quran states that, we have accorded the dignity to the sons of the man.
- The second one is the **Natural law theory** which talks about the existence of autonomous individual that means the law is a right reason in agreement with nature. An absolute freedom and equality of law are emerged from this natural law theory. The French declaration and American declaration of independent. the right to life ,liberty and property emerged from this theory
- The third one is **Positivist theory**, arguing pos it argument, which advocates the state's authority regarding the incorporations of human right ideas with its law. It totally denies the natural existence of human right. They are not agreed with human right is an abstract concept. Such theory does not give credit for international law since it is not the command of the sovereign. For instance, Austin says that "law is the command of the sovereign backed by sanction". And also he expresses. Who is the sovereign organ which is either the king or the parliament? International law is merely an opinion of expression so IHRL is not a law.
- The fourth one is **Marxist theory**, which argues man as a species of being. This theory is merely focus on the socio economic and cultural right that is group rights. And the theory denies the natural existence of human right like that of positivists.
- The fifth one is **Utilitarian justifications** of human right which is highly advocated by Jeremy Bentham. According to him, utility is measured by pain and pleasure formula.

Criticism against utilitarian theory; the theory fails to take into consideration the individual right. Second, it is minimizing a reputable and dignified person into mathematical form.

THEORIES REGARDING TO THE NATURE AND DEVELOPMENTS OF HUMAN RIGHTS AFTER THE WW TWO

- **Natural right (core right approach)** which is developed by Emanuel cant, argued that, do not consider a human being a means rather we need to consider a human being as an end by itself. The core right principle is based on the intolerable principles of human right, which aren't subject to abuse. This means these kinds of rights are not the subject for abuse and modification. Most of international instruments including UDHR arising out of this principle.
- **The right based principle** which is developed by rawel, talks about the vial of ignorance principle. This means ignore your status whenever you are talking about human rights ignore your economic, social and religious status. And then you have to advocate the primary goals of human being or fundamentals of human rights. Based on this we can devise universal principle of justice, which taken in to account moral values.
- **The right based on equality, respect consent,** which is developed by Leonard docking contribute to Reconciliation between utilitarian theory and natural right. He said that "we need to retain the benefit of natural right theory meaning, we are not going to scarify basic individual rights at the expense of utilitarian theory but other rights maybe subjects of utilitarian theory".
- **The cultural relativist and universal theory**. The cultural relativist argued that, human right is not universal rather it is time and space specific. So they deny the very existence of universal understanding of human right. The Universalist argued that "the justification that human right is not universal emanates from the governments who have not rule of law and democracy because they are going use as a means to violate human rights".

Who deserves for protection?

Currently, human right is the subjects of international concern.

Development of human right at the national and international level

The concept of human right was institutionalized starting from the Magna Carta. After the Magna Carta, there was the declaration of independence declared by America. The human right was developed effectively During the French declaration on the right of men and citizen. E.g., Russoue said that, man is born free and we find everywhere in chain. John lock and other scholars argued for natural rights.

Before WW ii, international human right law was not the concern of the international community.

There are justifications for this stand;

- The first one is the justification of state sovereignty.
- The second one is that, the international convention at that time matters only the relationship between two sovereign states. This means the individuals were not the subjects of international law. Meaning, they were the object of the international law. But it had exceptions that are;
  - The league of nation convention on the right of minority in the occupied territory. There was the league of nation convention on labor rights in the mandate territory.
  - State responsibility for the injuries of aliens which means if the national of a certain state live in another state, the home state has the responsibility to treat its nationals.
  - There were also humanitarian laws which are connected with the doctrine of human right.
- After WW Two, the international community has taken the lesson about the human right need to approach. And accordingly, the UN charter came up with two things regarding human rights; it has brought status transformation meaning, it has changed the concept of individuals from object to subject of international law. The second one is that, the UN charter has changed the attitude of the international community regarding to human rights.

BASIC CHARACTERSTICS OF HUMAN RIGHTS

- They are universal which means, there is common standard of achievement for all people. Meaning, everyone is entitled to all human rights. Human rights are inherently attached to being a human person. But the critics raised by to not give hegemony for westerns.
- Human rights are basically inherent from being a human person.
- They are inalienable and inviolable. E.g., everyone is not allowed to exchange or renounce your human right either by yourself or others.
- Human rights are indivisible and interdependent

CLASSIFICATION OF HUMAN RIGHT

The classification is not based on hierarchical or their importance. The classification is based on their nature, importance, background and other factors.

- The first classification is the civil and political rights which are individual rights including the right to life, liberty, property etc. and socio economic and cultural right which are including the right to education, self determination, cultural right, societal right etc.
  - The person, who classifies the rights in this way, said that, the civil and political right imposes the negative obligation on the part of the government which means they impose

the obligation on the government the duty to respect or to refrain from doing something. On the contrary, social economic and cultural rights impose the government positive obligation.

But there are arguments by alleging that, e.g., civil and political right imposes not only negative obligation but also imposes positive obligation. This means, when you protect these rights, you take positive measures. And also socio economic and cultural rights impose not only positive obligation but also impose negative obligation.

- The second classification is generational classification of human rights;
- Civil and political right is first generation
- Socio economic cultural rights are second generation
- The right to clean environment and the right to self determination are the third generation.

But when we see in terms of protection, Socio economic rights are considered as first generation. E.g. the right of labor is given first protection in league of nation. So this classification is also flout.

- Thirdly, based on the grounds whether restriction (derogation) is acceptable or not, they are peoples who classify human rights as an absolute and qualified right.

If the right is absolute, it is not allowed to derogate the right all together. This classification is well acceptable in the jurisprudence of international human right law. Because if we read different covenants, they stipulate the rights which are not subjects for derogation and the rights which are the subject for derogation.

- The fourth classification is based on the grounds of the number of person to claim the exercise of the right; human rights are classified into individual and collective right. Most of civil and political rights are claimed individually whereas group right claimed in group. E/g. the right to self determination is claimed in group.

There are also rights which may be claimed both in individual capacity and in group capacity e.g., religious rights.

- The fifth classification is based on Justiciability and non- Justiciability. This means whether the rights are the subjects of the judicial adjudication or not. Civil and political rights are Justiciable while socio economic cultural rights are Non-Justiciable

When they are asked why they have this stand

Firstly, The nature of civil and political rights are considered to be expressed in a very precise language, imposing merely negative obligations which do not require resources for their

implementation, and which, therefore, can be applied immediately whereas Economic social and cultural rights are considered to be expressed in a vague language, imposing merely positive obligation which requires resource for their implementation, and which, therefore, involving a progressive realization.

- To be more clear, the civil and political rights impose the government negative obligation if that is the case, you can brought your case to the court. But the nature of the socio, economic, cultural rights are not the subject of judicial adjudication since they impose on the government positive obligation.
- Civil and political rights are not required resource but socio, economic, cultural rights required resource. This justification is not acceptable since it is not only socio economic rights which are resource demanding this means to protect the civil and political rights, the government is going to establish a number of institutions.
- Socio economic rights are not actually precise and they are not clear whereas the civil and political rights are precise and clear. This argument is not also acceptable because it is not the fact that socio economic rights are inherently problematic or unclear rather it is because of non existence of such developed jurisprudence in the adjudication of socio economic rights in the cases of different developing countries.
- Socio economic rights are progressively realizable whereas the civil and political rights are imposing an immediate obligation on the part of the government. But we cannot say that the civil and political rights are purely imposing immediate obligation likewise, we cannot say that the socio economic rights are purely imposing a progressive obligation.

E.g. if we see in the cases of socio economic rights, there is the obligation of non-discrimination which is immediate obligation.

- ✓ The duty not to take Retrogressive measure is also an immediate obligation.
- ✓ And again, there is minimum core obligations which impose an immediate obligation on the government in the resource it have eg, the duty to fulfill basic needs of the society.

In all these grounds, the argument is unacceptable regarding the Justiciability of socio economic rights.

Secondly, the legitimacy and the competency of the judicial organ. They argued that, the judicial organ is not legitimate and competent to entertain socio economic rights why because, I socio economic rights are requiring foreign policy design ii it requires for resource allocations and accordingly, this kind of tasks must be given for political organs since it violates separation of power.

This kind of argument is also flout because;

- It is not only this group of rights requires allocation of resource meaning; the civil and political rights are also resource demanding so they require allocation of resource.

- The judiciary is going neither to design a policy nor is to allocate resource rather the court is going to do to test the appropriateness of the resource allocated and the policy designed.

Thirdly, courts are not expert in the area of economic rights and it will make the decision non-enforceable.

However this argument is not acceptable why because, the court is not expected to be an expert in every aspects of the decision and again, regarding to the enforceability, it is not only socio economic rights which are going to be executed by the executive organ of the government.

If we are going to test the justiciablities of socio economic rights, we have three objective criteria's.

A. The setting element which means i. the existence of independent judicial body. ii the non-existence of ouster clauses (it preclude the judicial adjudication right)for the adjudication of the right.
B. The existence of claimed element. Claim element which means whether the right is subject for protection or not.
C. The existence of remedy for the violation.

THE NATURES OF THE STATE OBLIGATION UNDER INTERNATIONAL HUMAN RIGHT LAW

The first group of obligation is the duty to respect which means the duty to refrain from doing something that is negative obligation. And the duty to protect, promote and fulfill that is positive obligation.

The other is the obligation of omission and the obligation of commission.

The duty to respect is the obligation of omission while the rests are the obligation of commission.

Thirdly, the obligation of conduct and the obligation of result.

When we talk about the obligation of conduct, we are saying that whether the state is expected to go through a certain procedure to achieve the protection of the right.

But when we say the obligation of result, the state is going to bring the result regardless of the procedure.

The other nature of state obligation is immediate and progressive obligation.

Unit Two

SOURCES OF INTERNATIONAL HUMAN RIGHT

As it is stated under art 38 of the ICJ, the source of international laws is: treaty, customary international law, general principles, judicial decisions, and writing of well-known scholars.

International Human Rights system

In the international human rights system, the first one is the UN charter.

It is the UN charter which has stated the international recognition of human rights and fundamental freedom under its preamble for the first time in the history of international community. Human right and fundamental freedom issues are listed in nine Place in the UN charter under its preamble, art. 1, art 3, art 8, art. 55, art 56, art. 62, art 68, art. 76.

The UN charter also tried to establish specialized agencies of the UN and accordingly, it has formed the general assembly and the ECOSOC now a day, Ecosoc was formed its subsidiary organ called human right council which follows up the enforcement of the human right: It has mandated to the responsibility of developing human right: and to make recommendation for the UN regarding to human right. The human right council is assisted by the UN high commissioner for human right.

Although the UN charter has stated the international recognition of human rights and fundamental freedom, it is difficult to say the UN charter has conclusively helped in the enforcement of human right. There are criticisms to say-so;

- **The first criticism** is The UN charter does not incorporated the human right concern in its pillar principles. This means the human rights might be violated. But the seven pillar principles are not going to be violated. What are the reasons to have this stand?

1. **The issue of non-intervention principle.**
2. **The victor nations themselves were committing brutal violations of human right in their colonies.**
3. **There was also legally recognized discrimination between blacks and whites e.g., under the French colony.**

- **The second criticism** is, it provides exhaustive lists of the grounds of discrimination. It close ended the grounds. But the grounds of discrimination shouldn't be listed in exhaustive.

- **Thirdly,** the organ tasking in the protecting the human right was the one which is considered as a weak under the UN specialized agencies. This power should been given to Security Council.
- **Fourthly,** the words employed under the UN charter itself weaken effectiveness of promoting and protecting human right. Meaning, the words are not strong. Instead of using the word protect, fulfill, respect and promote.
- **Fifthly,** there is no clear catalogue of rights in the UN charter. "But since the UN charter is not a human right instrument, it is not expected to have the list of rights".
- **Sixthly,** there is no sanction for violating the charter. Since sanction is not a prerequisite for every law, we may say that, this criticism is unacceptable.
- **Seventhly,** the strongest criticism is coming from art. 76 of the charter, which talks about trusteeship council. This council was formed to follow-up the human right issues under the colonial nations. The formation of this organization has two messages;

1. It has indirectly recognized colonialism.
2. Although there is colonialism, the international community thinks about the enforcement of the human right.

- **Eighthly,** it has failed to recognize minority rights expressly.

3. UDHR

The second human right system at the international level regarding human right is (UDHR) which is introduced in 1949. It is the first international document with catalogue of rights in addition to this, it has a holistic approach regarding to human rights. Holistic approach in essence, it consists the civil and political rights plus socio economic rights in one single document.

It talks about the grounds to restrict the rights;

- The principle of legality which means there should exist to the law that allows doing so. Not only has the existence of the law, the human right instrument adopted the ingredients of for the existence of the law such as certainty, clarity, and accessibility.
- The principle of legitimacy which means. The law itself should be legitimate for achieving legitimate objective. E.g. Art 19 of ICCPR.
- Issue of necessity which means the existing purpose that is going to be achieved must not be something which should be adverted otherwise.
- There is also issue of proportionality which means there must be strike balance between the purpose to be achieved and the right to be violated.

The UDHR is not a binding instrument because it is declaration.

The UDHR was introduced for two objectives;

1. To create common understanding of rights recognized under the UN charter.

2. To set common standard of achievement among the states.

The UDHR has acquired the customary international law due to the following

It serves as an authoritative document to interpret the UN Charter.

The reflections of UDHR is taken word by word in various conferences, covenants such as ICCPR, ICESCR, regional conventions, state constitutions. However, all rights incorporated in UDHR are not acquired customary international law status because there are stipulations in which from the very beginning has got the statuses of persistence objector. Religious rights incorporated under UDHR don't attain customary international law status.

The third human right system at the international level regarding human right is covenants

The first recommendation that was made by the ECOSOC to have holistic approach such approach of the UDHR however, faced serious oppositions from the member states of the UN. Since the UDHR was not binding instrument, the international community needed to have binding instruments. Later on, the ECOSOC was ordered to draft two separate instruments which talks about civil and political rights on one hand and socio, economic, cultural rights on the other hand. Finally, the covenant on civil and political rights on one hand and socio, economic, cultural rights on the other hand introduced and adopted in 1967. There was a delay of adoption and ratification of the covenants due to

- The then existing political ideology.
- The two groups of rights have different enforcement mechanism.

There are certain issues which are shared by the two covenants for instance self-determination and principle of non-discrimination.

ICCPR

It has provided 53 rights. The 27 articles states about normative rights and the rest provisions stipulated regarding the procedure. ICCPR has HR committee and it has two optional protocol the first optional protocol is deals about individual compliant procedure and the second protocol deals about abolition of death penalty. We can say that, ICCPR is specific and inclusive when we compare with UDHR. Illustrative for the inclusiveness of the ICCPR are

The right of detained [art. 10], freedom from imprisonment debt [art. 11], measures of protection for children [art. 12], the right of acquisition of nationality [art. 24], protection for the minority [art. 27].

However, when we say that, ICCPR is inclusive compared to UDHR, we do not mean that, it is in absolute manner. Eg, there are rights which are provided under UDHR but not in the ICCPR such as the right to seek asylum [art.14], the right to maintenance [art. 15], the right to property [art. 17].

Art. 4 of the ICCPR stated concerning the grounds to restrict the rights. In all instruments, there must be fulfilled legality, legitimacy, necessity and proportionality. It was opting more of specific limitation clause.

Restriction is limiting the right for the short term while derogation is limiting the right all together. There are requirements to apply derogation;

Declaration of state of emergency

Such Declaration of state of emergency must be necessitated based on the existence of exigency situations which threatens the very life of the nation and unable to be averted by the regular operation of the law.

This Declaration of state of emergency must be consistence with international obligation.

The Declaration of state of emergency should be Non-discriminatory.

Declaration of state of emergency shall not violate non-derogable rights Since In the ICCPR; there are rights which are not derogated. E.g. the right to life [art. 6], freedom from torture [art. 7], and freedom from servitude, protection from imprisons debt…

OBLIGATION OF THE STATE PARTIES UNDER THE ICCPR

The first obligation of the state is the duty to apply. This means the ICCPR requires the national application of the rights and obligations provided under such instrument. Nevertheless there are issues regarding to the application of the ICCPR which is theory of incorporation. Concerning to the incorporation, there are dualist and monist approaches, monist alleged that, the international law must be given an immediate and direct application at the national level. So ratification is sufficient to apply nationally. For dualist however, mere ratification is not sufficient so the state require further measures to incorporate the ICCPR. As a result, the application is not immediate.

The second obligation is the duty to ensure. Meaning, it imposes on the part of the government to take a positive measures to satisfy the realization of the right.

The third one is the obligation to give effective remedy. There are requirements to say effective remedy; the individual must be in actual possession of the remedy which means the remedy should be accessible, available, and sufficient. The court (the body) should have the power to grant such remedy. The national authority shall have the power to enforce the remedy.

The fourth duty imposed on the government is the obligation to make report which contains three issues; the measures taken regarding the right: The progress made in the realization of the right: The challenge faced in the implementation of the right.

ENFORCEMENT MECHANISM UNDER THE ICCPR

The first enforcement mechanism is reporting procedure. There are two kinds of reporting procedure under the ICCPR. . i. initial report is a report which is provided by the state within a year after it has ratified the treaty. ii. Periodic report. These reports are submitted to human right committee. What is the importance of periodic report? To obtain aids in the realizations of the right. It helps the national government or the member states of the ICCPR to share the experience. However, there are problems relating periodic report e.g. lack of genuine report meaning, the states are going to conceal facts about the actual situations. To reduce such kinds of problem, the human right committee is going to assess shadow report which is prepared by civic society organizations. The other problem relating to periodic report is lack of reporting in due time because of i. lack of expertise to prepare the report. ii. Lack of political willingness.

The solutions for lack of expertise to prepare the report are; I. the human right committee may provide expert to the state. ii. The human right committee may be allowed the state to adhere consolidated report. iii. The human right committee may invite the state to adhere a question and answer secession.

Solution for lack of reporting in due time caused by political unwillingness. There are scholars who argued that, the shadow report is going to be considered by the human right committee. But other scholars argued that, considering shadow report violates the principle of pacta sunt servanda. There are human right experts who are seriously opposing pacta sunt servanda justification by alleging that, the objective of the human right instrument after all is the realization of human right. According to them, when shadow report is going to be considered, i. the human right committee must give warning to the state. ii. The human right committee must be considered multiple shadow reports.

The second enforcement mechanism is inter-state compliant procedure which is a claim lodged by a member of the ICCPR to the human right committee regarding the status of the right violated that is ongoing in another state. To this effect, both of them are expected to be a party to

the ICCPR and they must deposit special declaration on the existence of inter-compliant procedure. There are requirements to claim inter-state compliant procedure; i. the plaintiff state should give three months warning to the defendant state. ii. If the defendant state is not giving a response within the prescribed period, or is inadequate as stipulated under the covenant, the state is going to take the case to the human right committee. The committee may entertain the case if the local remedies are exhausted. The committee is not giving binding decision rather regarding its finding; the committee is expected to report its recommendation and the way how it is adjudicated the case to the ECOSOC. If the states are not solving the problem through discussion, HRC is expected to form adhoc committee which receive and entertain the case. This committee is also expected to give views.

Admissibility requirements regarding to interstate compliant procedure; a. personal jurisdiction. Under the disposals of the state's jurisdiction means if the individual is practically under the jurisdiction of the state, the state is expected to protect the human right of that individual. b. the subject matter jurisdiction meaning, the right violated must be provided under the ICCPR. C. temporal jurisdiction meaning, the right should be violated after three months the state joined the ICPR.

Generally, interstate compliant procedure is not effective due to i. fear of retaliation. ii. Fear of diplomacy courtesy.

The third enforcement mechanism is individual compliant procedure. The individuals cannot take their case to the committee directly unless the state is ratifying the 1906 the individual compliant procedure establishing protocol In addition to be a member of ICCPR. The 1906 protocol has two procedural elements

Admissibility and merit stage. Admissibility stage is before admitting the case, the individual is required to fulfill prerequisites. Requirements for admissibility stage;

i. personal jurisdiction. The protocol prohibits *action popularizes*, which means the organization cannot lodge claim by representing the individual. ii. Subject matter jurisdiction. iii. Temporal jurisdiction. The other requirements are; IV. Local exhaustion of remedies. V. Unanimity of the

victim which means the victim must be known. vi. The case must not be pending in other international tribunals. vii. The case must be based on genuine violation.

ICESCR is the second covenant that is the tune covenant for the ICCPR. This covenant has around 31 articles and the first 15 articles talks about the normative character while the remaining 16 articles states about enforcement mechanism of the covenant. Unlike the ICCPR, rights which have provided under the ICESCR are progressive realizable.

FEATURES OF ICESCR.

i. rights which have provided under the ICESCR are progressive realizable. ii. They are non-universal this means there is no common standard of achievement. iii. The enforcement of socio, economic, cultural rights is based on the existence of maximum available resource. iv. They demand nationally adoption of laws. v. they demand international assistance.

although socio, economic, cultural rights are imposing an obligation of progressive realization on the part of the government, there are situations which are imposing immediate obligations on the government. Eg, taking legislative measure, non-discrimination, the duty not to take retrogressive measure, the duty to fulfill minimum core obligations, to provide judicial remedy are an immediate obligations.

Lecture by Addisu G.

There are four enforcement mechanisms of the covenant: a. Reporting procedure. B. interstate compliant procedure. C. individual compliant procedure. D. inquiry procedure. Unlike the ICCPR, the ICESCR does not expressly introduce the committee which monitor the enforcement of the socio, economic and culturall rights. The enforcement of the ICESCR was tasked to ECOSOC before the establishement of the committee for the enforcement of the ICESCR. in 1985, however, the committee on the ICESCR was established. after 1985, the most working procedure was the reporting procedure. So state parties to the ICESCR was required to submit reports. So based on that report, the committee will assess and finalized its investigation on the report and will issue a conclusion observation on the state regarding the human right record of

the state regarding socio, economic rights. After 2013, the committee was tasked with receiving an individual compliant procedure. The enforcement mechanism of ICESCR is at infant level. The icescr has to establish the trend of having general comment regarding the icescr and they are serving as a working jurisprudence for the committee itself.

the right to food, the right to housing, the right to health, the right to education, the right to work, the right to social security are Among economic, social, cultural rights. these rights are very important to insure a dignified way of life. The nature of obligation related to these rights is positive obligation which means it is expected to be performed certain activities by the duty holder (state). in addition, the obligation of the state varies depending on the individual situation since these rights are associated with resource. and also the nature of obligation varies depending on availability of state resource. in general, the nature of obligation can be categorized into obligation to respect, protect, fulfill by considering the nature of socio, economic rights.

Obligation to respect requires a hands of approach which means the government must abstain from interfering the rights. eg, the state is required to refrain from evicting people from their living areas, farming areas, trading areas.

Obligation to protect refers to the state duty to protect third parties from violating the rights of individuals. Eg. employees are protected to unlawfull dismissal since the right to work is basic right of individuals.

obligation to fulfill which is classified by some scholars into obligation to facilitate and obligation to provide. Eg, obligation to facilitate imposes on the state to facilitate the realization of socio economic rights. whereas obligation to provide imposes on the state to give aid in case of disaster or some emergency situations.

There are principles in addition to these obligations applicable to socio, economic rights.

Equality and Non-discrimination is a core principle of human right instruments. this is provided under arts. 2 of ICCPR and ICESCR. This principle is to eliminate discrimination particularly,

direct and indirect discrimination. Indirect discrimination is called discrimination of result. So as to avoid indirect discrimination, afermative action is employed.

Progressive realization which is a typical feature of socio economic rights. Lack of resource should not be an excuse for fail to realize socio economic rights. which means there are certain rights that requires immediate realization. Among those exceptions: the right not to be discriminated under socio economic rights is not the subject to progressive realization. Adopting national policies and strategies relating socio economic rights is another exception.

Principle of subsidiarity which is all about the responsibility of adult individuals. in this regard, the responsibility of the government is subsidiary. This means the primary responsibility resides on the adult individuals. nevertheless the principle of subsidiarity comes whenever the individual is unable. Compared to the state, the responsibility of the international community is more subsidiary.

THE COMPONENTS OF ECONOMIC, SOCIAL, CULTURAL RIGHTS.

the right to adequate standard of living.which includes The right to food and shelter is provided under arts. 25 of the UDHR, 11 of ICESCR, 27 of CRC. If it is above poverty line, it is adequate standard of living. Poverty line is measured by the standards which is set by international monitary institutions. also it maybe evaluated by ability to participate in social life without shame and difficulty.

Relating food, it must be accessible and affordable.

The right to housing has provided under arts. 25 of the UDHR, 11 of ICESCR, 5 of racial discrimination convention, 27 of CRC, 14 of CEDAW, general comment no. 14 of committee on economic, social, cultural rights. when we talk about the right of housing, that is ability to live somewhere in security, peace and dignity.

Relating to the right to health, Everyone shall have the highest attainable standard of health. Attainability maybe determined by in terms of the individual capacity and also in terms of health services of a particular state. the right to health has provided under arts. 25 of UDHR, 12 of

ICESCR, 12 of CEDAW, 16 of the African charter on human and people's right. the health service must be available, accessible, acceptable in terms of medicl standards or medical ethics and with the required quality. The states are required to discourage the production of and marketing of harmfull substances.

The right to education which should be given freely. The issue of education has provided under arts. 13 and 14 of ICESCR, 10 of CEDAW, 28 of CRC, 17 of the African charter on human and people's right. education facilities must be available and accessible. Access of education should be given on the base of nondiscrimination. Primary education should free and compulsory which means no fee required to get primary education and Also parents are required not to prohibit children from attending school. It also includes free choice of education. There is the right to learn in the language of once own tribe.

The right to work. This right was firstly initiated by ILO. It has provided under arts. 6-8 of ICESCR, 8 of ICCPR, 5 of racial discrimination convention, 32 of CRC, 15 of the African charter on human and people's right.

CRC (child right convention) talks about the rights of the children whether it is civil and political or socio, economic, cultural rights in a single document. So there is no separation in terms of nature of the rights. Basically, there are four principles under this convention; i. non-discrimination which means the treatments of the children must be equally provided. ii. Best interest of the children which means there must be given a primary consideration. iii. The right to life, survival, development. The three conditions (right to life, survival, development) are inseparable. iv. The right to be heard if he/she can speak.

Unit -3

REGIONAL HUMAN RIGHT SYSTEM

When we say regional human right system, we are saying that, the human right convention system at the continental level. Prominent among the existing regional human right system is the European human right system, the African human right system, and the Latin American human right system. The European human right system was established under the auspices of the European Union. As well as the African human right system was established under the sponsorship of the AU. And also the organization of the American states supported for the development of the Latin America human right system.

REASON OF ESTABLISHING REGIONAL HUMAN RIGHT SYSTEM

1. There is a physical accessibility to bring a compliant procedure and to access various human right monitoring procedures.
2. The existence of effective protection. Most of the human right monitoring body as regional level provides a binding decision. E.g. the African human and people's right and the European human right courts provide a binding decision.
3. It helps to obtain the consents of the state in terms of enforcing the decisions of the monitoring body. Because, probably there is homogeneity in terms of economical, political ideology or the way how they understand human right.
4. Specific cultures of the region will be absorbed in the human right system.

The European human right system has mainly two kinds of systems: The first one is the European charter on human rights and fundamental freedoms which talks about civil and political rights whereas the second one is the European social charter which stated about socio,

economic, cultural rights. It is advanced because the European human right system was introduced in 1953 before the introduction of the tune covenants (ICCPR and ICESCR)

The European convention on human rights and fundamental freedoms was introduced under the guidance of European Union. This charter comprises of specific limitation clause and derogation clause which means restriction and derogation clauses have provided in each provisions if the right is subject for restriction and derogation. But it has not general limitation clause unlike e.g. UDHR.

In that specific limitation clause, the convention has provided the state the power to limit the rights with the fulfillment of the three fact tests (the principle of legality, necessity (proportionality), legitimate purpose . and Art. 15 of the convention has provided derogation clause and accordingly, there are conditions to apply derogation of the right those are: i. existence of exceptional threat against the state. ii. No possibility to avert the existing threat otherwise. iii. the measure must be compliance with other international obligations of the state. iv. the ristriction must be non-discriminatory. v. it should not affect non-deroggable rights. arts. 2, 3, 4(1), and 7 of the european human right charter are non-deroggable rights. vi. The duty to notify the secretary of the union concerning the rights derogated and the measure taken. These requirements are additional to the three fact tests.

The convention has two additional protocols and the first one is protocol nine which is introducing the individual compliant procedure. The second one is protocol 11 which avoids the requirement that requires special declaration to access the court in case of individual compliant procedure. So the individuals have the right to directly access the court without having a special declaration. However, the court is going to assess the admissibility requirements: I. unanonymity of the individual which means the individual must be known. ii. The issue of compatibility which means the right violated must be provided under the Convention. iii. The compliant must not be based on manifested In founded ground. This means there must be a valid ground for the allegation. iv. The applicant must not abuse his right to application. V. the case must not be pending in another tribunal which means the issue of res judicata. vi. The exhaustion of local remedies. vii. The issue of period of limitation. The individual should take his case to the court within six months after the incident is happened (the right is violated). But this period of

limitation is not applicable if two conditions are satisfied: A. if the violation of the right is being continued. B. if the violation has no internal remedy.

There are four benches which are going to entertain the case: i. One judge formation which has two functions: 1. It receives applications on individual complaints. 2. It is also working on the determination of admissibility requirements. If one judge formation believed that the case is not admissible and no need of further investigation, it can struck out the case. But If One judge formation believed that the case is admissible and need of further investigation, it refers the case to the committee of three judges. ii. Committee of three judges is going to determine the admissibility of the case which is referred by one judge formation. Sometimes, the individual may directly access the committee of three judges regarding the admissibility. Committee of the three judges may also directly entertain the merit of the case if there is well-known precedent on the case. iii. If there is no well-known precedent, committee of the three judges is going to refer to the chambers of the seven judges which is the third judge's formation. The chambers of the seven judges are tasked to entertain the merits of the case. iv. The chambers of the seven judges may refer cases to the grand chambers of the seventeen judges if there are exceptional circumstances.

What are exceptional circumstances? A. serious cases which invited interpretation and the case is brought within three months after the incident is happened. B. if the chamber made a contradictory decision between precedents.

The decisions of the court at each level are going to be followed up by the committee of ministers.

The other one is European social charter which has nine mandatory provisions. When we read the preamble of the European social charter, it states that socio economic rights are aspiration. This means these rights are not imposing immediate obligation in principle. From nine mandatory provisions, each state is required to enforce six stipulations. The states can also select the paragraph.ss all rights incorporated in the convention are subjects for limitation and derogation which means there is no non-derogable rights under this convention.

Regarding the enforcement mechanism, there is the committee of European social experts. The states are expected to submit periodic report on accepted provisions and occasional reports of non- accepted provisions. After 1996, individual compliant procedure including NGOS was allowed.

THE INTER AMERICAN HUMAN RIGHT SYSTEM.

There are people who argued that, this human right system is one of the earliest regional human right system why because there is a declaration of men at the continental level that is comprising of the human right and fundamental freedoms of the individuals which must be protected and it imposes the member states of the continent. But later on, following the advancement of the human right system like the international and regional human right systems, the organizations of American states have agreed to have a certain convention that protect and enforce human right.

The organizations of American states have led for the development of the inter American human right convention. There was not only this convention but also there were two protocols that have been adopted following the adoption of the convention. The first protocol is devoting on socio and economic rights whereas the second protocol so called as elsalvador protocol is mainly relaying on the abolition of death penalty. The convention comprises of both general and specific limitation and derogation clauses. The conditions that must be satisfied for imposing limitation and derogation clauses are similar with the European human right system with the exception of period of limitation which means the European human right convention required period of limitation as one condition for imposing limitation and derogation but the same is not true for inter American human right convention. The convention has introduced around twelve non-deroggable rights.

ENFORCEMENT MECHANISM OF THE CONVENTION

There is the court and the commission system which monitor the enforcement of the convention. The court and the commission have their own separate tasks.

Inter American human right commission has comprising of seven members who are acting in the personal capacity. The commission has tasked with four functions: i. to work on the promotion and respects of the human right. ii. To receive mandatory individual petition or compliant

procedure and to entertain the compliant. iii. To receive interstate compliant which requires the existence of special declaration among the states those are bringing the compliant to the commission IV. To request advisory opinion from the inter American human right committee.

The inter American court of human right have two tasks: i. to entertain the case and giving binding decision on which is submitted by the states and commission. States are expected to approach the commission before they are going to take their case to the attention of the court. And also the individuals are not directly accessed the court. Fortunately, the inter American human right system introduced the modality of actio poprairies. Therefore, the inter American human right system has empowered the people to bring action against actio poprairies.

THE AFRICAN HUMAN RIGHT SYSTEM

The African charter on human and people's right is introduced under the auspices of the AU. The charter has imposed on the member states two kinds of duties: i. the duty to recognize rights which are provided under the African charter. ii. The duty to take positive measure to realize the enforcements of the rights. When we say measure, it may be legislative measure which means the states are expected to enact laws on the manner and commissions of the protecting human right.

The African human right system has a certain unique features: i. it emphasizes on the African conception of rights in other speaking, it has recognized the African cultural conceptions of rights. ii. It has explicitly recognized people's right and make it justiciable right additionally, it has recognized actio poplaries. iii. It has explicitly imposed obligation on individuals. iv. It refers to domestic laws repeatedly which is clue back clause. The clue back clause leaves the fate of the right is under the whim of the local government. Whenever the commission respond on this point, the clue back clause does not give a deliberate right for the state rather the state party is expected to take into account international standards'. Non-existence of explicit derogation clause. Even if it is not explicitly provided in the charter, the state is expected to refer other international laws. vi. All rights are justiciable. vii. Actiopo plaries is allowed at the level of commission but not in the court.

ENFORCEMENT MECHANISM OF THE CHARTER

The first mechanism is reporting procedure which has provided under art. 62 of the charter. The state is expected to provide reporting for the commission in every two years. The state is expected to report whether they are taking legislative measure on the enforcement and realization of the right. The commission has mainly three functions: a. promotion function which includes creating awareness, studying, and analyzing and makes recommendation. For the enforcement of the right. B. it interprets the African charter when it is required by the states and AU. C. protecting function which means it adjudicates for the complaints. The commission is going to receive interstate compliant procedure if both states are party to the African charter. the commission is also going to receive individual compliant procedure which is sufficient to be a party to African charter. As per art. 60 of the charter, the tools for interpreting African charter are: 1. African charter. 2. UN charter. 3. The AU charter. 4. UDHR. 5. Any other treaty in which the state is a party. According to art. 61, as subsidiary interpretation tools, the commission is empowered to take into consideration soft laws. In both interstate and individual compliant procedures, there are admissibility requirements which means before it is going to pass to the main stage, the African commission on human and people's right is expected to check the admissibility requirements as per art. 56. i. the author of the communication must be known. the African charter says that, the unanimity of the individual must be established during the trial instead of the application phase. ii. The issue of compatibility which means the violation must be established based on the charter. iii. The applicant must not employed offensive words. iv. The application must be based on genuine facts than mere news. v. the exhaustion of local remedy must be there. vi. There must be a reasonable time between the incident that has happened the violation and the time that is going to bring the allegation.

The second monitoring body at the African level is that, the court system.

The court system was not contemplated under the African charter on human and people's right but later on, has been introduced by the establishment protocol which is the court establishment protocol on the African human and people's right. The court is named the African human and people's right court which gives binding decision. It has three main functions: i. protective mandate which means the court has the power to entertain cases and gives binding decision. Protective mandate may be arising out of either the individual or interstate compliant procedure. The issue of compatibility is going to be determined by the African charter and the protocol. ii. It

gives advisory responsibility to the states and specialized agencies of the AU. When we see art. 5 (3) and 5 (1 E) of the protocol, it resembles on entitling the NGOS to written for an advisory jurisdiction from the court. iii. Issue of contentious jurisdiction as per art. 5 (1) of the protocol. Contentious jurisdiction is arising out of a. when the commission refers the case. B. victim's nation state may bring the case to the attentions of the court. C. states which first bring the case to the commission.

It is not only sufficient to ratify the protocol to bring individual compliant to the court but also it is needed to have deposited a special declaration to that effect as per art. 34 of the protocol. The court is going to apply the admissibility requirements.

Chapter 4

RESPONSE TO GROSS HUMAN RIGHT VIOLATION

There is no common definition for gross human right violation that is accepted by either in the jurisprudence of the court or in the international law. The 1993 UN vena declaration and program of action however, has tried to provide an illustration on how gross human right violation is provided. according to the UN declaration and program of action, the enumerations for gross human right violation are e.g. torture, cruel inhuman or degrading treatment or punishment, enforced disappearance, arbitrary detention, all form of racial discrimination, foreign occupation or alien domination, xenophobia, poverty or hunger, tererism etc. We can understand two things from the list of UN vena declaration and program of action: i. There is no exhaustive list of gross human right violation. ii. gross human right violation incorporated civil and political as well as economic, social, cultural rights.

By taking into account the existing stands, we can classify gross human right violation into two departures;

The first departure is gross human right violation below the levels of core international crimes..

As it is construed by ILC (international law commission), art. 40 of the draft state responsibility puts two basic requirements for the existence of gross human right violation:

1. The character of the obligation that is bridged by the state must be attained a peremptory norm (giscogence) (urga omnis). However, when we see the practice, this requirement is not working for serious human right violation. Eg, in the world organization against torture Vs Zaire, the african human right commission is considered the case and according to the commission, the closure of the universities and secondary schools for two years constitutes a sereous or massive violation of the right to education.

   In conclusion, 1. gross human right violation incorporated civil and political as well as economic, social, cultural rights. 2. It should not matter on the character of the right rather on the intensity of the violation.
2. intensity of the bridge. Whenever we are saying intensity, we need to see the existence of the pattern violation; i. We may consider or take into account the number of victims. ii. The type of the victim. iii. The impact of violation. iv. There must be a multiple victims. V. The number of bridges occurred spread over time. vi. The element of planning is there on the part of the perpitrater.

These are not cumulative requirements.

The second departure is gross human right violation at the levels of core international crimes. In the jurisprudence of international criminal law, As per arts. 6-9 of the ICC statute, core international crimes are genocide, crime against humanity, war crime, crime of agration. But there are also other international crimes such as, acts of terrorism, organized crime, piracy, torture, and etc.

art. 2 of the convention against genocide cumulative with art. 6 of the roam statute, genocide is committed with the specific intent (duels specialis) to destroy in whole or in part national, ethnical, racial, or religious group. Requirements are: i. Killing members of the group. ii. Causing serious bodily or mental harm. iii. Deliberately inflicting condition of life calculated to bring about physical distruction. iv. Major to prevent versus to the group.

the liability is established under art. 4. Persons committing genocide maybe either state officials or individuals (state actors and non-state actors). There is no a bright line rule regarding the number of individuals that must be the subject of attack to say there is genocide.

Crime against humanity is another international crime which has no separate instrument. If that is the case, we can drive crime against humanity from scattered laws. the roam statute under art. 7 has provided the definition of crime against humanity and accordingly, it stated that, the acts such as merder, extermination, slavery, deportation… this list of crimes must be committed in either systematic or widespread manner. These are widely known as contextual elements.

The old idea crime against humanity must consides with the armed conflict has been removed. So the crime against humanity may be committed both in peace time and war time.

Crime against humanity may be committed when:

The accused must commit prohibited acts.

There must be the element of systematic or widespread attack. Whenever we are saying widespread, we look into consideration a. massiveness. b. frequency. C. relatively large scale. D. it must be carried out with considerable seriousness. E. it must be directed against multiple victims. Whereas whenever we are saying systematic, we are going to consider the organization of the acts. Or in other speaking, we are going to consider the existence of methodological plans in the conducts of the acts.

The attack must be directed against the civilian population.

There must be a nexus between the attack and the consequence of the act.

What are the options if the crime against humanity is committed in peace time?

There are two options:

To apply war time stipulations.

To apply arts. 269 which regulated genocide for crime against humanity.

Another international crime is war crime.

Whenever we are talking about war crime, it is committed when there is an armed conflict. So the applicability of war crime is limited with the existence of armed conflict. The applicable laws are GCS and the additional protocols.

Art. 8 of the roam statute stated that, serious violation of the law and customs of the war such as attacking the civilian population, terrorizing the civilian population, least treatment of the wounded members of the combatants. But these lists are given to the ICC to be entertained. Meaning, war crimes are not only these lists but also there are other war crimes.

In general, regarding core international crimes, there is arguments specially related to the principle of legality "no law no offense". The nurenburg trial however, concluded that, there is principle of foreseenability that is inherent with international criminal law.

When we see the response for the gross human right violation, we can classify into national and international response.

the principle is that, the state is expected to respect, protect, fulfill of human right of the person. When the state response, that state is expected to bring the perpetrator to the attention of the court: the state is expected to protect the safety and security of the persons from the survivors.

When we see the international response, there are two modalities:

Responding based on adhoke tribunals. And also Responding based on permanent tribunals. Eg, ICC which has complimentary jurisdiction. ICC entertained the case when: 1. If the member or non-member state itself referred to it. 2. If the UN security council referred to it. 3. The prosecutors of the ICC themselves may initiate the case which is most of the time applicable on the member state and if the state is unable or unwilling.

The second modality regarding core international crimes is universal jurisdiction. When we examine genocide convention, GCS, customary international law, universal jurisdiction has been provided.

Whenever we are talking about gross human right violation, it is important to talk about transitional justice. So whenever we are looking the importance of having transitional justice, 1. It brings justice between victims and perpetrators. 2. It is relevant to know about the truth. 3. It is relevant to establish prosecution.

Response regarding the Ethiopian legal framework.

Ethiopia is the party to genocide convention.

It is also the party to GCS and the additional protocols.

Art. 28 of the FDRE constitution.

Arts. 269-273 of the criminal code.

Hate speech proclamation is also other modality of law.