

Human Rights Law

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Human Rights Law

Chapter One:

Introduction to Human Rights Law

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. **Preamble, Universal Declaration of Human Rights**

Definition of Human Rights

1. What are human rights?.

- *The basic notion of human rights lies in people's recognition of the need to protect and affirm every other person's individual dignity. Human rights are important. No matter where people come from, or what their age, culture, religion or income may be, they tend to talk about their concerns in terms of human rights.*
- *Human rights issues are often seen as national or international in scope, but human rights are equally relevant at an individual and community level.*

Introduction Conti…

So what are human rights?

- **There is no universally agreed definition;** indeed, people's understanding of human rights is continually evolving.
- There are general understandings, though, of what is meant by the term. One way of looking at rights is to see them as a special kind of claim on others. For example, the right to education means that everyone is entitled to a good education and, in particular, that governments have an obligation to provide education facilities and services.

Rights are related to…

❖ **Rights are related to the values that societies live by.** These values have their origins in the world's great religions and philosophies. Value systems can vary in detail between one society and another but the fundamental ideas are very similar. ***Concepts of justice and human dignity*** are at the heart of these values.

❖ **Rights also relate to what is lawful:** that is, some rights may be laid down in law. If you have a legal right to something, you may be able to ***defend it in court***.

In many situations, though, rights exist but are not covered by law. These rights are often called **moral rights**. Moral rights are based on **people's sense of what is fair or just**.

Introduction Conti…

❖ **Who has responsibility for acknowledging human rights?**

- **Governments** (get students to think about how this might work in a totalitarian (**centralized and dictatorial)** state)
- **Organisations,** such as the United Nations, Amnesty International, the International Committee of the Red Cross, etc.
- **Communities,** such as school communities, town communities, club communities, etc
- **Individuals,** such as you and I.

Introduction Conti…

- **What are some terms that describe what human rights are concerned with?**

- dignity, respect
- responsibility
- values systems
- moral and legal rights
- justice, tolerance, equality
- interaction between people and their community.

Introduction Conti…

- **Where do human rights come from?**
  - philosophies put forward by thinkers of the ancient world (e.g., Plato, Marcus Aurelius, Cicero, St. Augustine)
  - religious principles from a range of world religions
  - philosophical positions from thinkers of the Renaissance and the Enlightenment periods (e.g., Locke, Bacon, Descartes, Voltaire)
  - political struggles, such as the French Revolution, the American Civil War, women's suffrage, collapse of apartheid system in South Africa.

Introduction Conti…

Do you think human rights are important? Why?

- unique value of each person and their common humanity
- the importance of recognising every individual's dignity
- the need for freedom of thought, movement, ideas
- the need to operate as part of a community
- the value of mutual respect between people
- a system of values by which individuals and communities can interact together constructively
- need for balance between rights, our duty to acknowledge and respecting rights of others.

Nature of Human Rights Law

- **Human rights are universal:** they are always the same for all human beings everywhere in the world. You do not have human rights because you are a citizen of any country but because you are a member of the human family. This means children have human rights as well as adults.
- **Human rights are inalienable*:*** *you cannot lose these rights any more than you can cease to be* a human being.

Conti…

- **Human rights are indivisible:** no-one can take away a right because it is ‘less important’ or ‘non-essential’.
- **Human rights are interdependent*: together human rights form a complementary framework.***

For example, your ability to participate in local decision making is directly affected by your right to express yourself, to associate with others, to get an education and even to obtain the necessities of life.

Conti…

- **Human rights must themselves be protected by law** (‘the rule of law’).
- Any disputes about these rights should be submitted for adjudication through **a competent, impartial and independent** tribunal, applying procedures which ensure full equality and fairness to all the parties, and determining the question in accordance with **clear, specific and pre-existing laws,** known to the public and openly declared.

Conti…

- **Human rights reflect basic human needs.** They establish basic standards ***without which*** people cannot live in dignity. To violate someone's human rights is to treat that person as though he or she were not a human being.

To advocate human rights is to demand that the human dignity of all people be respected.

- **In claiming these human rights, everyone also accepts responsibilities:** to respect the rights of others and to protect and support people whose rights are abused or denied. Meeting these responsibilities means claiming solidarity with all other human beings.

Conti…

In general:

The concept of human rights is based on the belief that every human being is entitled to enjoy her/his rights ***without discrimination***.

Human rights differ from other rights in two respects.

❖**Firstly, they are characterised by being:**

- ✓ ***Inherent in all human beings*** by virtue of their humanity alone (they do not have, *e.g.,* to be purchased or to be granted);
- ✓ ***Inalienable*** (within qualified legal boundaries); and
- ✓ ***Equally applicable to all***.

❖**Secondly,** the main duties deriving from human rights fall on states and their authorities or agents, not on individuals.

2. The origins of modern human rights laws

- Here we will discuss about the role of World War II in focusing the will of nations to establish a universal system to define, protect and promote human rights.

Note: By thinking about the human rights abuses that occurred during World War II, students will more fully appreciate the importance of the decision taken by the international community to establish the United Nations.

The question ‘How and when was the United Nations formed?’

The origins conti...

The wars that took place before World War II had an influence on the development of human rights. Students may think about issues such as:

- rebellion to combat monarchic oppression, e.g. the French Revolution
- rebellion to combat foreign power, e.g. the Boxer Rebellion
- development of statements about rights in the aftermath of war or revolution (e.g. the Magna Carta (UK), the Declaration of the Rights of Man (France)).

The origins conti...

Issues to consider when responding to the question – what issues of human rights abuses in WWII may have prompted the formation of the United Nations, could include:

- discrimination against particular groups of people (e.g. Jews, people with disabilities, homosexuals, communists etc.)
- torture, cruel and inhuman treatment (e.g. starvation, subjection to 'experiments', rapes, beatings etc.)
- genocide (e.g. the systematic destruction of races of people)
- contravention of the Geneva Convention of 1929 regarding treatment of prisoners of war.

Historical Development: Pre World War II Developments & Post World War II Developments

Pre World War II Developments

- The origins of human rights may be found both in Greek philosophy and the various world religions.
- Early developments:focus on freedom of religion
- the Magna Charta Libertatum of 1215,
- the Golden Bull of Hungary (1222),
- the Danish Erik Klippings Håndfaestning of 1282,
- the Joyeuse Entrée of 1356 in Brabant (Brussels),
- the Union of Utrecht of 1579 (The Netherlands) and
- the English Bill of Rights of 1689

Conti...

- The age of Enlightenment was decisive in the development of human rights concepts.
- The ideas of Hugo Grotius (1583-1645), one of the fathers of modern international law, of Samuel von Pufendorf (1632-1694), and of John Locke (1632-1704) attracted much interest in Europe in the 18th century.
- Locke, for instance, developed a comprehensive concept of natural rights; his list of rights consisting of life, liberty and property.
- Jean-Jacques Rousseau (1712-1778) elaborated the concept under which the sovereign derived his powers and the citizens their rights from a social contract.
- The term human rights appeared for the first time in the French Déclaration des Droits de l'Homme et du Citoyen (1789).

Conti...

- The American Declaration of Independence of 4 July 1776 was **based on the assumption that all human beings are equal.** It also referred to certain inalienable rights, such as the right to life, liberty and the pursuit of happiness.
- These ideas were also reflected in the Bill of Rights which was promulgated by the State of Virginia in the same year.
- The classic rights of the 18th and 19th centuries related to the freedom of the

Conti...

- assigned responsibilities to the government in the fields of employment, welfare, public health, and education. Social rights of this kind were also expressly included in the Mexican Constitution of 1917, the Constitution of the Soviet Union of 1918, and the German Constitution of 1919.
- In the 19th century, there were frequent **inter-state disputes** in connection with the protection of the rights of minorities in Europe.
- One of the first such arrangements was the Treaty of Berlin of 1878.
- The need for international standards on human rights was first felt at the end of the 19th century, **when the industrial countries began to introduce labour legislation.**
- Many more labour conventions were later drawn up by the International Labour Organisation (ILO),which as founded in **1919**

Post World War II Developments

- The atrocities of World War II put an end to the traditional view that states have full liberty to decide the treatment of their own citizens.
- The signing of the Charter of the United Nations (UN) on 26 June 1945 brought human rights within the **sphere of international law**
- Less than two years later, the UN Commission on Human Rights (UNCHR),which was established early in 1946, submitted a draft Universal Declaration of Human Rights (UDHR).
- The UN General Assembly (UNGA) adopted the Declaration in Paris on 10 December 1948. This day was later designated Human Rights Day.
- Since the 1950s, the UDHR has been backed up by a large number of international conventions. The most significant of these conventions are the International Covenant on Civil and Political Rights **(ICCPR)** and the International Covenant on Economic, Social and Cultural Rights **(ICESCR).**
- These two Covenants, together with the UDHR, form the International Bill of Human Rights.
- At the same time, many supervisory mechanisms have been created, including those responsible for monitoring **compliance with the two Covenants**.

In General

Once time passed and ideas and concepts about state were developed, political power, and right and freedom (the works of philosophers John Locke, Ch Montesquieu, Th. Hobbes, JJ Rousseau), appeared a fight against **monarchical absolutism**, struggle which will be successful, success expressed by documents with legal force as:

- Magna Charta in 1215
- Petition of Rights in 1628
- The Bill of Rights (Declaration of Rights) in 1689, England
- The American Declaration of Independence in 1776
- The French Declaration of Human and Citizen Rights in 1789.

Conti...

Through these documents of constitutional nature, were established early forms of limitation of absolute power in the sense that:

- There were established safeguards against the introduction of taxes by the king, without the approval of Parliament;
- also have established safeguards against arrest of persons and confiscation of assets without observance of procedure of courts;
- there were supported and declared the freedom of speech, that freedom of thought and the right to petition;
- there were stated principles of individualism, starting from the idea expressed by the French Declaration of Human and Citizen Rights in1789 as "*the purpose of each political associations is keeping natural and indefeasible human rights*."

Conti...

The French Declaration of Human and Citizens Rights from 1789 contained two new ideas:

- the idea that man as an individual, **benefits of "natural rights, inalienable and sacred”** including *liberty and equality;*
- The second idea is that the "purpose of all political associations is the preservation of the natural and indefeasible rights of

Classification of Human Rights

The term ‘human rights’, is used to denote a broad spectrum of rights ranging from ***the right to life to the right to a cultural identity.***

International consensus:

1. civil rights or human rights as:

- Freedom of opinion
- Freedom of expression and press
- Personals ownership
- The right to personal security in relation to justice and police
- Equality before the law

Conti...

Political rights, those that allow citizen participation at power, namely:

- Equal access to public
- Participation in elaboration of laws
- Control of taxes
- Citizen control over the administration

Conti...

International human rights law stresses that all human rights are **universal, indivisible and interrelated** (*e.g. Vienna Declaration and Programme of Action (1993), para. 5).*

The indivisibility of human rights implies ***that no right is more important than any other.***

- **CLASSIC AND SOCIAL RIGHTS**
- CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS
- Articles 1- 18 , 19 -21, 22 to 26 Articles and 27 & 28the UDHR.
- FUNDAMENTAL AND BASIC RIGHTS
- OTHER CLASSIFICATIONS
- freedoms & Civil liberties
- Individual and collective rights
- First, second and third generation rights

Conti…

- Consider the classification of human rights in greater detail, according to the following features: their content and time of occurrence.
- Civil (personal), political, social, economic, and cultural rights and freedoms are emphasized according to content.

1st generation

- **Personal (civil) and political rights**. For example, freedom of speech, protection of private life, freedom of religion, the right to a fair trial, the right to personal freedom and safety.

✓ Provide minimum safety protection of the person within a society, physical safety, and provide protection against intervention in private life.

2nd generation

- **Economic, social and cultural rights.**

For example, the right to health services, the right to social security, the right to a decent standard of living, freedom of employment.

✓ Provide minimum protection of social safety of the person.

3rd generation

Collective rights. For example, the right to development, ecological rights, the rights of indigenous peoples.

✓ Are not connected directly with "person-state" relations; define obligations of the community of states in relation to groups of people.

Questions

To which of the listed groups do the following rights and freedoms relate:

- The right to a fair trial and the right to fair legal representation in court
- The right to a favorable environment
- The right to information
- Creative freedom
- The right to receive social benefits?

Conti....

Divide the students into five groups and charge each group with one category of rights, and suggest filling in the following table:

Constitution of the Republic of Ethiopia

- 1st group - Civil (personal) rights
- 2nd group - Political rights.
- 3rd group - Economic rights
- 4th group - Social rights
- 5th group - Cultural rights

Civil and political rights

- ✓ **are related to the first generation**
- ✓ is the “oldest” generation of universal human rights.
- ✓ The right to personal immunity (freedom from illegal arrests), the right to private life protection, the freedom of speech, and freedom of religion, etc. were listed in the group of personal rights.
- ✓ **The political ones are:** the right to suffrage and to be elected, the right to state administration, etc.

NB:- The first generation of rights arose from European and American philosophy and the political-legal practice of the18th century.

Conti...

- Those were ideas of natural rights having arisen in antiquity in Western European countries.
- Their legislative declaration as being the natural and integral rights inherently belonging to everyone was performed for the first time in the Virginia Declaration of Rights on June 12, 1776, in the United States Bill of Rights, 1789-1791, and **the French Declaration of the Rights of Man and Citizen, 1789.**
- That is, above all, the right to life, liberty and safety of the person, right to open and fair legal investigation by an independent court.

Conti...

- These rights were acknowledged in United Nations documents — the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966).

Social and economic rights and freedoms of the individual (along with cultural ones)

- **are rights of the second generation**
- came to fruition in the course of the struggle against economic inequality for the material well-being of the population.
- **The right to work, freedom of choice of work, rest and leisure, sufficient salary level, the right to social assistance, professional and other social and economic rights became requirements of economic manifestations throughout the world at the end of the 19th century and beginning of the 20th century**

Conti...

- They are included in the 1917 Constitution of Mexico, the 1919 Weimar Constitution of Germany, and the 1931 Constitution of the Spanish Republic.
- Social ideas on world protection of the rights of workers are reflected in the 1936 Constitution of the U.S.S.R. and the Constitutions of the Union Republics.
- These rights are related to the maintenance and standardization of social and economic conditions of life of the individual, to determine his position in area of work and life, employment, well-being, social security with the purpose of creating the necessary conditions for the people to be free of fear and need.

Conti…

Features of social and economic rights:

- Abundance in certain social and economic area of human life
- Admissibility of recommended, “non-strict” formulations of basic provisions (for example, “decent life,” ***“fair and favorable working conditions,” “satisfactory existence,” Article 7 of the International Covenant on Economic, Social and Cultural Rights)***
- Dependence of the **realization of social and economic rights on conditions of economy and resources.** Article 2 of the International Covenant on Economic, Social and Cultural Rights says ***separately that these rights are to be ensured gradually and “to the maximum of its available resources.”***

Conti…

- Their number and implementation degree mainly depends on the condition of **the economy and resources** and, consequently, the **guarantees of their realization are less developed,** in comparison with **civil and political rights**, which are considered first generation rights.
- There was a widespread opinion that it is ***impossible to precisely define and to legally qualify*** these rights, as they cannot generate direct responsibilities on the state for their ensuring and legal protection.

Conti…

- This tendency was later replaced by **negating** the **equal status** of socio-economic and political rights.
- The value of social and economic rights for ensuring the legal status of the individual is indisputable today.
- As it is noted in the preamble of the International Covenant, *"the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."*

Conti…

- This point of view was acknowledged by the ***United Nations General Assembly (Resolution of December 4, 1986),*** having proclaimed ***"indivisibility and interdependence of economic, social, cultural, civil and political rights."***

Collective rights and community rights

- tied in with the third generation
- are the rights of minorities, the rights of nations, the right to development, the right to peace, the right to a favorable environment, and to reproductive rights, etc.

Note: *In the **1970s – '80s** of the last century, the United Nations ironed out documents on the rights of minorities and the rights of nations.*

Regional international norms were accepted; the **Helsinki process** made its contribution.

Conti…

- Some researchers and experts (defenders of the vertical theory) do not relate to collective rights — the rights of nationalities, nations, minorities — to human rights as the subject.

✓ In their opinion, the carrier of "human rights" is the individual.

- Except for **community rights,** rights of certain social groups, and so-called "**the new rights"** began to be related to the third generation.

Conti…

- Those are the rights of:
  - ✓ children,
  - ✓ aged,
  - ✓ disabled,
  - ✓ homeless,
  - ✓ jobless,
  - ✓ consumers,
  - ✓ tenants,
  - ✓ persons with certain gender preferences or even of certain hair color and lefthanders, etc.

Note:- The group of new rights was generated under the influence of the **constantly changing social relations.**

Conti…

Note:- These new rights **completed or elaborated** on the traditional rights:

- ✓ the right to sleep,
- ✓ the right not to be killed during war,
- ✓ the right to be different,
- ✓ the right to an individual lifestyle,
- ✓ the right to silence and peace,
- ✓ the right to self-education,
- ✓ the right to choose euthanasia (Painless killing to relieve suffering),
- ✓ freedom from discrimination,
- ✓ the right to create a family with a homosexual partner,
- ✓ the right to refuse military service, the right to due process, etc.

Conti...

- Under the influence of **globalization, scientific and technical progress** — especially in the fields of computer science, medicine, genetics, cloning, transplantation — the list of new rights keeps extending.

Note:- Consequently, statements on the ***formation of the fourth generation of rights, w***hich will become the ***legal answer to challenges of the 21st century***, when it will be a question of *"survival of humanity as a* ***biological species, maintenance of civilization, space socialization of humankind"*** appear.

Questions

- **Is there any hierarchy among human rights?**
- **No, all human rights are equally important.**

The 1948 Universal Declaration of Human Rights makes it clear that human rights of all kinds—economic, political, civil, cultural and social—are of equal validity and importance.

- **Human rights are also indivisible and interdependent.**

For Instance:

✓The principle of their ***indivisibility*** *recognizes that no human right is inherently inferior to any other.*

Conti…

Economic, social and cultural rights must be respected, protected and realized on an equal footing with civil and political rights.

✓ The principle of their ***interdependence recognizes the difficulty*** (and, in many cases, the impossibility) of realizing any one human right in isolation.

For instance, it is futile to talk of the right to work without a certain minimal realization of the right to education.

Conti…

- **Is there any difference between civil rights and human rights?**

- **Civil rights:** are endorsed by a government to citizens on all level, voluntarily and obligatorily. Social welfare, health-care, leisure, economy, defense and education lie in the realm of the civil rights.

- However, child-labor, women rights, workers and minority rights are the issues that are highlighted, time to time, by the human rights or interest groups, so that a government may take appropriate steps to regulate, whenever it is needed.

Conti…

■ **What is the main difference between conventional rights and moral rights?**

A conventional right:

✓ is one that allows a certain individual freedom without violating the rights of a fellow citizen.

✓are usually granted and formulated by the governing body in the nation that you reside in.

There are some conventional rights that may not be beneficial. but necessary. For instance, the right to drive an automobile

"Moral" right

✓ is an inherent right which should not be subject to civil government intervention.

✓E.g. The right to **hold a job**, **the right to obtain food**, clothing and shelter, the right to defend your life

Classification of HR

- Human rights can be classified in a number of different ways.
- Some rights may fall into more than one of the available categories
- However, the most widely used classifications distinguishes two general categories are:
  - classic or civil and political rights
  - social rights that also include economic and cultural rights

Classfication….

1. **What are the differences between classical and social rights?**

- both are a construct of man in a society

<u>However, that Classical rights</u>:

- Precede Social Rights, and that social rights (more often than not) are derived from classical ones.
- Are the most fundamental of all rights and were one of the first ones that were founded.

Example:- *The first and perhaps the most important document regarding which is perhaps the Declaration of Human Rights.*

Classfication....

- Are the rights that exist to preserve one's own identity and are in view of preserving the essence of mankind.

Examples: *Freedom of Speech, Assembly, Occupation, Religion and various others.*

The preamble of various constitutions of various nations of the world have these fundamental rights listed as their founding ideologies. In short, these are the rights that lay the founding set of ideologies that are key to a nation's existence.

Classfication….

- Are based on the philosophy of liberalism whereas social rights more or less are in context to the philosophy of socialism
- generally restrict the powers of the government in respect of actions affecting the individual and his or her autonomy (civil rights) and confer an opportunity upon people to contribute to the determination of laws and participate in government (political rights).
- Classic' rights are often seen to require the **non-intervention of the state (negative obligation),** and **'social rights'** as requiring active intervention on the part of the state

Classfication….

- Lawyers often describe classic rights in terms of **a duty to achieve a given result ('obligation of result')** and social rights in terms of a duty to provide the means **('obligations of conduct').**
- Classic rights, such as **civil and political rights**, often require considerable investment by the state
- The state does not merely have the obligation to respect these rights, but must also **guarantee that people can effectively enjoy them**

✓ Hence, the right to a fair trial, for instance, requires **well-trained judges,** prosecutors, lawyers and police officers, as well as administrative support. Another example is the **organisation of elections**, which also entails high costs.

Conti…

- On the other hand, most **'social' rights** contain elements that require the state to abstain from interfering with the individual's exercise of the right.
- **As several commentators note:**
  - the right to food includes the right for everyone to procure their own food supply without interference;
  - the right to housing implies the right not to be a victim of forced eviction;
  - the right to work encompasses the individual's right to choose his/her own work and also requires the state *not to hinder a person from working and to abstain from measures that would increase unemployment;*
  - the right to education implies the freedom to establish and direct educational establishments; and
  - the right to the highest attainable standard of health implies the obligation not to interfere with the provision of health care.

Classification…

Social Rights:

- are rights that are derived or that can be derived from classical rights
- Various constitutions interpret and construct these differently, enabling the citizens a right to social equity in general.

For example : Right to education, Right to healthcare, Right to a minimum wage, etc.

- can be interpreted in terms of the application of classical rights.

For example, right to healthcare is an application of the right to live.

Classification…

- the governments to act in a positive, interventionist manner so as to create the necessary conditions for human life and development
- The governments are expected to take active steps toward promoting the well-being of all its members out of social solidarity

For Instance:

Everyone, as a member of society, has the right to social security and is entitled to realization of the economic, social and cultural rights (ESCR) indispensable for his or her dignity and the free development of his or her personality.

Classification…

Note: A striking feature between the two is that social rights are **provided to individuals by the state,** whereas classical rights are those that **construct the framework for the working of social rights.**

Note: This positive versus negative dichotomy has been discredited recently in favor of the understanding that all human rights have both positive and negative components

Classification…

1. What kinds of human rights obligations are there?

Obligations are generally of three kinds: to respect, to protect and to fulfill human rights:

- **To *respect human rights: (Negative duties)*** *means simply not to interfere* with their enjoyment. For instance, States should *refrain from carrying out forced evictions* and *not arbitrarily restrict the right to vote or the* freedom of association.

- **To *protect human rights:*** *means to take steps to* ensure that third parties do not interfere with their enjoyment. For example, States must protect the accessibility of education by ensuring that parents and employers do not stop girls from going to school.

For example, a government must pass and enforce laws prohibiting private companies from releasing hazardous chemicals that impair public health

Classification…

- **To *fulfill human rights:*** *means to take steps progressively* to realize the right in question.

This obligation is sometimes subdivided into ***obligations to facilitate*** and to ***provide for its realization.***

✓ The former refers to the obligation of the State to engage proactively in activities that would strengthen people's ability to meet their own needs

For instance, creating conditions in which the market can supply the healthcare services that they demand.

Classification…

✓ The obligation to "provide" goes one step further, involving direct provision of services if the right(s) concerned cannot be realized otherwise

For example to compensate for market failure or to help groups that are unable to provide for themselves.

Note:

Human rights law recognizes that a lack of resources can

impede the realization of human rights. Accordingly, some

human rights obligations are of a *progressive kind, while*

others are ***immediate.***

Classification…

- ✓ For economic, social and cultural rights, States have a core obligation to satisfy **the *minimum essential level of each right.***
- ✓ However, in any situation where a significant number of people are being deprived of their right to health housing, food and so forth, the State has a duty to show that all its available resources—including through requests for international assistance, as needed—are being called upon to fulfill these rights.

Classification…

For socio-economic rights, the following obligations are of *immediate effect:*

- The obligation ***not to discriminate between different* groups of people** in the realization of the rights in question;
- The obligation to ***take steps (including devising* specific strategies and programmes)** targeted deliberately towards the full realization of the rights in question; and
- The obligation to ***monitor progress in the realization***

of human rights. Accessible mechanisms of redress should be available where rights are violated.

Classification…

- **What are the differences between civil and political rights, as compared to economic, social, and cultural rights?**

Answer

- The Universal Declaration of Human Rights lists 30 articles, expressing 27 rights. These rights are sometimes partitioned the way the question implies.

- The distinction is for **historical reasons**: human rights were ratified in two separate covenants, hence **"packages".**

Classification…

- The Declaration itself and the ratification process *do not imply any priority of Human Rights, neither a priority of the two packages.*

- You may consider the first package (civil, political) as having a focus of defending an individual against the state or other individuals, i.e. fair trials, freedom of religion, etc..

- The second package (economic, social, cultural) focuses on rights of demanding something from society, i.e. receiving things like fair pay, education, etc.

Classification…

Note: Although Human Rights often are considered interdependent and indivisible there may be different emphasis depending on ideology or geography.

Classification…

- **Fundamental and Basic Rights**
  - **Fundamental rights**

✓ are taken to mean such rights as the **right to life** and the inviolability of the person

✓ Are rights that are found within the UN, extensive standards have been developed which, particularly since the 1960s, have been laid down in numerous conventions, declarations and resolutions

  - **‘Basic rights’**

✓should be given **absolute priority in national** and international policy.

✓ These include all the rights which concern people’s primary material and non-material needs.

Classification…

■Other Classifications

Freedoms

✓ It is a preconditions todignified human existence, (*e.g.*, freedom of movement, freedom from torture, and freedom from arbitrary arrest).

✓United States President, **Franklin D. Roosevelt,** summarised these preconditions in his famous **'Four Freedoms Speech'** to the United States Congress on 26 January 1941:

- **Freedom of speech and expression;**
- **Freedom of belief** (the right of every person to worship God in his own way);
- **Freedom from want** (economic understandings which will secure to every nation a healthy peace-time life for its inhabitants); and
- **Freedom from fear** (world-wide reduction of armaments to such a point and in such a thorough fashion that no nation would be able to commit an act of physical aggression against any neighbour).

Classification…

■ Group Rights vs. Individual Rights?: Navigating the tension in Western Liberal States

Group Rights/ Collective /

- The collective element is even more evident when human rights are linked specifically to a membership of a certain group, such as the right of members of ethnic and cultural minorities to preserve their own language and culture.

For instance: Freedom of association and assembly, freedom of religion and, more especially, the freedom to form or join a trade union, fall into this category.

The most notable example of a **collective human right** is the right to **selfdetermination,** which is regarded as being vested in peoples rather than in individuals (see Articles 1 of the ICCPR and ICESCR).

Classification…

Individual Right

Although the fundamental purpose of human rights is the protection and development of the individual (individual rights), some of these rights are exercised by people in groups (collective rights).

Note: It is generally accepted that collective rights may not infringe an universally accepted **individual rights,** such as the right to life and freedom from torture.

Sources of Human Rights Law

A. Religion

To be sure, the term "human rights" as such is not found in traditional religions. Nonetheless, theology presents the basis for a human rights theory stemming from a law higher than that of the state and whose source is the Supreme Being

If one accepts the premise of the Old Testament that Adam was created in the "image of God," this implies that the divine stamp gives human beings a high value of worth. In a similar vein the Quran says, "surely we have accorded dignity to the sons of man."

Source…

B. Natural Law: The Autonomous Individual

C. Positivism: The Authority of the State

D. Marxism: Man as a Specie Being

C. The Sociological Approach: Process and Interests

F. Rights Based on the Value of Utility

Source…

The internationally accepted **classification of sources of international law is formulated in Article 38** of the Statute of the International Court of Justice.

Forming one of the regimes of international law, **human rights law has the same source with the former.**

- International conventions, whether general or particular;
- International custom, as evidence of general practice accepted as law;
- The general principles of law recognised by civilised nations;
- Subsidiary means for the determination of rules of law such as judicial decisions and teachings of the most highly qualified publicists.

Source…

A. International conventions, whether general or particular;

- ✓ International treaties are **contracts signed between states**.
- ✓ They are legally binding and impose mutual obligations on the states that are party to any particular treaty (states parties)

The 'International Bill of Human Rights:



consists of the Universal Declaration of Human Rights, the ICESCR, and the ICCPR and its two Optional Protocols. is the basis for numerous conventions and national constitutions.

Source…

Besides the International Bill of Human Rights, a number of other instruments have been adopted under the auspices of the UN and other international agencies. **They may be divided into three groups:**

a) Conventions elaborating on certain rights, *inter alia*:

- ✓ The Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- ✓ ILO 98 concerning the Right to Organise and to Bargain Collectively (1949)
- ✓ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

b) Conventions dealing with certain categories of persons who may need special protection, *inter alia:*

- ✓ The Convention relating to the Status of Refugees (1951), and the 1967 Protocol thereto
- ✓ The Convention on the Rights of the Child (1989)
- ✓ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (2000)

Source…

- ✓ ILO 169 concerning **Indigenous and Tribal Peoples** in Independent Countries (1989)
- ✓ The International Convention on the Protection of the Rights of All **Migrant Workers and Members of Their Families** (2000)

c) Conventions seeking to eliminate discrimination

- ✓ ILO 111 concerning Discrimination in respect of Employment and Occupation (1958)
- ✓ UNESCO Convention against Discrimination in Education (1960)
- ✓ The International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- ✓ International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)
- ✓ The Convention on the Elimination of All Forms of Discrimination Against Women (1979) and its Optional Protocol (2000)

Source…

B. International custom

- ✓ Customary international law
- ✓ The Statute of the International Court of Justice refers to ‘general practice accepted as law’.
- ✓ Customary law is binding on all states (except those that may have objected to it during its formation), whether or not they have ratified any relevant treaty.

C. General principles of law

- ✓At the international level, general principles of law occupy an important place in case-law regarding human rights.

Source...

- ✓ General principles of law play two important roles: on the one hand:
  - they provide guidelines for judges, in particular, in deciding in individual cases;
  - on the other hand, they limit the discretionary power of judges and of members of the executive in their decisions in individual cases.

D. Subsidiary means for the determination of rules of law

- ✓ According to Article 38 of the Statute of the International Court of Justice, *judicial decisions and the teachings of the most qualified publicists* are 'subsidiary means for the determination of rules of law'.

Summary of the Chapter

1. What is the difference between International Customary Law and Treaty?

Answer

- **International customary law:** is the set of general principles or norms of international law that bind all States.
- **Treaties**: are written and, as such, clear and relatively precise.
- **Custom**, on the other hand, is vague and its content is subject to argument. It is identified from State practice; how States act and whether they so act because they consider themselves obliged to do so.

Summary....

2. Are there differences between individual rights and collective rights?

Answer:

Yes. Sometimes the equal worth and dignity of all can be assured only through the recognition and protection of individuals' rights *as members of a group.*

- *The term collective rights or group rights refers to the rights of such peoples* and groups, including ethnic and religious minorities and indigenous peoples, where the individual is defined by his or her ethnic, cultural or religious community.

Summary....

■ However, there may often be obstacles to people claiming collective rights. The challenges are:

✓ **partly of a legal kind**: the problem of identifying *who is entitled to claim what,* and

✓ **also of a political kind:** with collective rights in many situations being perceived as a threat to the interests of the majority or of individuals within the group.

For Instance:

The right to self-determination, can raise difficult questions about the control and use of resources, and hence is often a matter of heated debate. Strategies to claim collective rights must take account of these kinds of limitations and

sensitivities.

Questions

1. What is the relationship between human rights and human development?
2. What is the relationship between human rights, the Millennium Declaration and the Millennium Development Goals in Ethiopia?
3. What is the relationship between human rights and poverty reduction?
4. What is the relationship between human rights and good governance?
5. Does the realization of human rights require big government?

Summary

Major Ideological Tensions within Human Rights Doctrine

- The UN asserts that human rights are, *inter alia, universal and inalienable, interdependent and*

indivisible (“What are Human Rights?”).

- However, tensions between categories of and

perspectives on rights present significant obstacles to the acceptance of -- much less the realization of -- universal human rights.

Summary

- **Major ideological conflicts include:**

✓ positive vs. negative rights;

✓ rights vs. duties;

✓ individual vs. group rights; and t

✓ The problem of universality as Western imperialism.

Human Rights

Chapter Two:

Human Rights Systems :(Substantive Rights, Institutions and Procedures)

The International Bill of Human Rights consists of:

- ✓the Universal Declaration of Human Rights
- ✓ the International Covenant on Economic, Social and Cultural Rights, and
- ✓the International Covenant on Civil and Political Rights and its two Optional Protocols.

Human Rights Systems :(Substantive Rights, Institutions and Procedures)

2.1 The Universal System: The UN System

Introduction

- The international human rights system is generally described in terms of its **two branches.**

1. The Charter based system
2. The Treaty based system

Human Rights Systems :(Substantive Rights, Institutions and Procedures)

■ of two wings

✓ **Substantive rights incorporated in treaties:** charters, declaration, conventions and other documents

✓ **Institutions and procedures**

a) Treaty-based mechanism: supervisory mechanisms enshrined in legally binding human rights instruments or conventions.

b) Non-treaty- based mechanisms: supervisory mechanisms is based on the **constitution or charter of an intergovernmental human rights forum, or on decisions taken by the assembly or a representative body of the forum in question.**

Introduction....

1. The Charter-based system:

- has developed under the UN Charter and the various organs and bodies of the UN.

✓ **The principal organs of the UN**

- The General Assembly (GA),
- The Security Council (SC) and
- The Economic and Social Council (ECOSOC) – all have responsibilities that relate to human rights.
- **The Human Rights Council (HRC)**, established in 2006 as the successor to the **Commission on Human Rights.**

Some also categorized IHRI as follows:

International Human Rights Instruments

Declarations

Not legally binding, though they can, over time, obtain the status of customary international law. Carry moral weight because they have been adopted by the international community

International agreements concluded between States in written form and governed by international law, which come into force upon ratification by a certain number of States. Used synonymously with ***'Covenant' /***

Introduction…

2. The treaty-based system:

- ✓ is built upon those core human rights treaties.
- ✓ Each of the treaties has a treaty monitoring body (TMB) that is responsible for the **promotion of the treaty, its interpretation and monitoring compliance.**
- ✓ The TMBs also receive and deal with ***complaints of treaty violation.***

Human rights and the UN

- The UN is an intergovernmental organization of States that provides forums for political discussions among States and academic discussions among independent experts.
- It has legislative power because it promulgates international treaties and standards and other expressions of the will of the international community.
- However, unlike States, it has no executive or military power independently

Conti...

The UN has three pillars with a high-level specialist council responsible for each pillar.

- The SC is responsible for international peace and security.
- The ECOSOC is responsible for development.
- The HRC is responsible for human rights.

Substantive rights/The Legal Framework

A. UN Charter Preamble

- WE THE **PEOPLES OF THE UNITED NATIONS DETERMINED**
  - to reaffirm faith in **fundamental human rights,** in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
  - to promote social progress and better standards of life in larger freedom,

The Legal Framework

The UN Charter

- Adopted on 26 June 1945
- was designed to establish the foundations of a new peaceful world order
- Drawing lessons from the appalling atrocities of the Second World War
- It's primary aim was thus to save succeeding generation from the scourge of war and to ensure the maintenance of international peace and security.

Conti...

- The Charter has demonstrated not only a move towards the lasting and stable internationalization of human rights but it has also implied their contribution to ensuring the establishment of the peaceful, post-war world order.
- during the San Francisco Conference, more extensive references to human rights were included in the Charter
- the Charter refers to human rights in altogether seven provisions of diversified content and character Paragraph 3 of the preamble, Article 1(3), Articles 55 and 56, Article 76(C), Article 13(1)(b), Article 62(2) and (3), and Article 68).

Conti…

UN Charter Article 1

- **The Purposes of the United Nations are:**

2. To develop friendly relations among nations based on respect for the principle of **equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;**

3. To achieve international cooperation . . . **in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;**

Article 55

With a view to the **creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:**

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- c. **universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.**

Article 56

- All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in **Article 55.**

Generally...

More specific rules of conduct aimed at the accomplishment of these tasks are contained in three sets of provisions of the Charter:

- on international economic and social cooperation (Articles 55 and 56),
- on the international trusteeship system (Article 76(c) and
- on the functions and powers of the UN organs in this sphere (Article 13(1)(b), Article 62(2) and (3), and Article 68).

UN Organs

The functions and powers of number of UN organs:

1. The General Assembly

- Chap IV initiates human rights studies and makes recommendations
- was assigned the tasks of initiating studies and making recommendations for the purpose :
  - ✓ promoting international cooperation in the economic, social, cultural, educational, and health fields
  - ✓ assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (Article 13(b).

Conti...

2. The Economic and Social Council

- was entrusted in Article 62 with a function to make recommendations for the purposes of *promoting respect for, and observance of, human rights* and fundamental freedoms for all (paragraph 2)
- to prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence) paragraph 3).

Article 68 provides that [T]he Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Conti...

3. Human Rights Council

- has been responsible for the development of **international human rights law, i**ncluding the core human rights treaties, and of the international human rights system.
- 47 members, elected by majority vote in General Assembly (including countries with questionable human rights records)
- 13 seats Latin America & Caribbean
- 6 Eastern Europe
- 7 Western Europe and others
- Africa & Asia have majority
- To promote human rights education
- Serve as a forum for dialogue on thematic issues

Conti...

- Make recommendations to the General Assembly on developing new human rights standards
- Prevent human rights violation through dialogue and cooperation
- Respond promptly to human rights emergencies
- Responds to human rights situations
- Special sessions on Israeli Occupied Territories, Darfur, Congo, Myanmar, Sri Lanka and Haiti (imbalance in countries addressed)
- Thematic sessions: effect of global economic crisis, world food crisis

Conti...

- Some argue that its work is politicized because of regional/ideological blocs (Organization of Islamic Conference)
- Adopted the International Convention for the Protection of All Persons from Enforced Disappearance
- Adopted Optional Protocol to the ICESCR

Conti...

- It may be concluded that both the number and the scope of human rights provisions in the UN Charter is prima facie quite impressive in itself.
- **For instance**

✓ the UN Charters is contrasted with its predecessor, the Covenant of the League of Nations, which was entirely silent on human rights issues.

✓ However, as a reflection of the compromise reached at the San Francisco Conference in 1945, the human rights

Conti....

- Human rights clauses in the Charter exhibit also clear signs of weakness and vagueness both politically and legally
- the Charter has not adequately addressed the problem of colonialism.
- The whole arrangement concerning a trusteeship system and human rights (Article 76) was nothing but a reflection of the then colonial powers double standards.

- The international community learned much about the inhumanity of Nazism and Communism, but at the same time accepted colonialism as another malaise and enemy of human rights based on a respect for inalienable and inherent human dignity.

Conti...

- In assessing the seven human rights provisions of the Charter one should also point to certain weaknesses in their legal character.
- While the Charter refers throughout its text to the concept of human rights and fundamental freedoms, their definition is missing, nor does the Charter make any mention of the machinery to be used to secure their observance.
- These demands were largely remedied and satisfied with the adoption of :

✓ the Universal Declaration of Human Rights,

✓ the International Covenants and other instruments, including the establishment of conventional and extra-conventional monitoring procedures.

- all these provisions of the Charter, whatever their wording, are legally binding treaty provisions, their imperative and binding force is diverse in nature.
- In the human rights clauses of the UN Charter there is a somewhat general, cautious and open-ended manner in the way they were drafted
- There is actually no doubt that the factor which mostly determined the open-ended formulation of human rights clauses was the prohibition, contained in Article 2(7), of intervention by the United Nations in matters which are essentially within the domestic jurisdiction of States.

Conti...

- *the very discussion, study, enquiry or making recommendations on human rights problems does not constitute an intervention in the sense of Article 2(7).*

Conti…

B. The UDHR

- It is the first comprehensive human rights document
- It is widely accepted that some of the declaration's provisions are now rules of customary international law. **Example:** bans on torture and racial discrimination .
- Non- discrimination of in enjoyment of human rights

Note:

Eleanor Roosevelt, former First Lady and widow of Franklin Delano Roosevelt, lead the working group that would put together this document.

Conti...

- It took two full years, 81 meetings, 168 amendments, and nearly 1,400 votes for the document to be accepted.
- It was adopted by he General Assembly adopted the in its resolution 217 A (III) of 10 December 1948,
- it has consists of a preamble and 30 articles, setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination.
- the human rights identified in its provisions dehumanizing technique sand conditions imposed by Nazi Germany on Jews and other marginalized populations prior to and during World War II

Importance and influence of the Declaration

It has become just that:

- ✓ a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards
- ✓ Since 1948 it has been and rightly continues to be the most important and far-reaching of all United Nations declarations,
- ✓ a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms.

Conti...

- ✓ It has set the direction for all subsequent work in the field of human rights
- ✓ has provided the basic philosophy for many legally binding international instruments designed to protect the rights and freedoms which it proclaims.

Conditions

The UDHR affirms that the exercise of a person's rights and freedoms may be subject to certain limitations:

- which must be determined by law,
- solely for the purpose of securing due recognition of the rights and freedoms of others and

Conti...

- of meeting the just requirements of morality, public order and the general welfare in a democratic society
- Rights may not be exercised contrary to the purposes and principles of the United Nations, or if they are aimed at destroying any of the rights set forth in the Declaration (arts. 29 and 30).

The principles and values of the UDHR

- The law codifies the values of UDHR: covenants, mechanisms and national legislation.
- the human rights system encompasses both values and laws, and
- human rights education is related to both the promotion of the values as well as the assurance of justice through law.
- Human rights education must connect to the values of the UDHR,

Note: The principles of the UDHR have been used in the fight against colonialism, African liberation movements, and in many national constitutions.

Conti...

- It is important to connect the universal values to local ethical systems, traditions and customs.

The UDHR: contradictions and recent trends:

- The UDHR refers to all people (regardless of race, colour, sex, language, religion, etc.).
- Free countries and their citizens

Conti...

Note: Becoming a member of the UN and implementing the UDHR was a sign of prestige at the time.

- **Recent trends:**

The cultural and political context of various countries had a significant impact on their treatment of the UDHR.

Many new nations adopted the UDHR in principle, they opted out of the articles that were in conflict with their particular **religious or philosophical beliefs.**

Example: Pakistan did not implement certain articles, such as:

- ✓ **the article on freedom of choice in marriage,**
- ✓ **the right to work,**
- ✓ **freedom of religion,**
- ✓ **right to equal pay, etc.**

Conti...

- The United Nations realized that states would be the implementing bodies of human rights instruments, and therefore permitted states to implement their human rights commitments as **their national resources allowed**.
- **The Universal Declaration was adopted through Resolution 217(III)** which contained **five parts:**
  - ✓ Part A, the text of the Declaration as such;
  - ✓ Part B, Right of Petition;
  - ✓ Part C, Fate of Minorities;
  - ✓ Part D, Publicity to be Given to the Universal Declaration of Human Rights; and
  - ✓ Part E, preparation of a Draft Covenant on Human Rights and Draft Measures of Implementation.

The Preamble to the Declaration

- ✓ is significant for several reasons.
- ✓ also reflects its pre-1945 roots by pointing out that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.
- ✓ Another important element of the Preamble is the recognition, in its final paragraph, of the rights and freedoms contained in the Declaration as a common standard of achievement for all peoples and nations.

Conti....

The operative part of the Declaration can be divided into **three groups** of provisions.

1. **The first group (Article 1)** contains an affirmation of the **philosophical foundations of human rights** by saying that [A] 11 human beings are born free and equal in dignity and rights.

They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Conti....

2. The second group of provisions proclaims a number of general principles.

- ✓ One is the principle of **equality and non-discrimination (Article 2),** the principle that plays a fundamental role in the whole of human rights law.
- ✓ The second principle relates to the concept of the **duties of States in the form of the right of everyone** to a social and international order in which the rights and freedoms set forth in the Declaration

Conti....

3. **The third principle spells** out a concept of the **duties of everyone to the community (Article 29(1))** and permissible limitations in the exercise of the human rights and freedoms (Article 29(2)).

4. the fourth principle provides for the prohibition of activates by any State, group or person aimed at the destruction of the rights and freedoms set fourth in the Declaration (Article 30).

Conti...

- **As far as substantive rights are concerned the Declaration contains:**
  - the catalogue of civil and political rights and freedoms (from Articles 3 to 21).
  - the catalogue of economic, social and cultural rights (Articles 22 to 27).

The legal and political status of the UDHR:

❖The legal and Political status of the UDHR:

There are, however, ongoing discussions among legal scholars as **to whether the Declaration has, over the years, become a legally binding instrument**.

- **Proponents**

✓ argue for its status as a customary law.

✓ argue that *its binding customary nature stems* ***from the absence of opposition to its principles by States as reflected in their constitutions and official government statements.***

Conti...

❖ Opponents

✓ *argue that the establishment of a customary international legal rule requires: the existence of general, uniform and consistent practice by States followed by the mergence of an* ***opino iuris*** *that is of* ***a conviction or belief by States in the obligatory character of such a practice****.*

Example: the practice of world-wide violations of human rights ***before and after 1948 fails to satisfy the condition***

Conti...

- The Declaration itself has proved its fundamental importance without necessarily being recognized as a part of **customary international law**.
- Members of the United Nations have made a **political commitment** to implement the rights contained in UDHR
- The Declaration permeated (spread through) domestic legal systems of numerous States by the incorporation of its provisions into national constitutions and other legislative instruments.
- In several newly independent States (e.g. In Africa), the Universal Declaration was included as a whole or in extensive parts in their constitutions.

Conti...

- The domestic impact of the Declaration has thus been ***much wider than might have been expected of a non –binding instrument.***
- The legal and political significance of such a function of the Declaration has further been strengthened by its adoption by the General Assembly of the United Nations.
- *The Declaration has become the main basis and references sources for establishing the communications and*

Conti...

- *As a resolution, and not a treaty, adopted by the General Assembly, the Declaration has become* ***applicable to all the UN Members.***

Note: *If the text of the Declaration had been adopted as a treaty, its binding force and palpability* ***(intense****) would have become very much more limited.*

Case studies – Conflicting human rights

Case 1

Tade is an eight-year-old boy who was seriously wounded in an accident and urgently needs a blood transfusion at a hospital. However, his father forbids the hospital staff to carry it out for religious reasons. His mother and the doctors would like to save his life.

Case 2

In a hospital, only a limited number of people work in the emergency department. It is a hectic evening and there is only room for one more person to have immediate emergency treatment. Since the lives of two people are still in danger, the doctors have to decide whether to treat a young child or a successful businessman.

Conti...

Case 3

Youtchou lives in a Third World country. He is poor and is able to meet his basic needs, but nothing more. He would like to start studying, but cannot find the necessary means to do so. His country is not able to provide him with the resources needed, as the state of the economy is very bad and it has to use all the resources available to cover the basic needs of the population.

Case 4

The local authorities are planning to build a new school on a piece of land which is one of the rare places where children can still play.

Questions:

1. Which human rights are involved in the conflict?
2. What solution do you think it is the most appropriate for each case? Why?

Hypothetic Case...

Human rights in the UK press *"The Sunday Telegraph: Give us back our rights"*

The Afghans who hijacked a civilian airliner are rewarded with a judgment that they are entitled to stay in Britain at the taxpayer's expense. Foreign terrorists who reportedly plot the murder of hundreds of British civilians cannot be deported back to their countries of origin, nor may they be detained here. Murderers and rapists are entitled to have any decision to keep them in prison reviewed by a judicial hearing, at which they must be represented by a lawyer – and as a result, an intimidated Probation Service frees killers who go on to murder fresh victims.

Conti....

The British public is increasingly worried by judgments whose effect is to rank the 'rights' of criminals higher than those of law-abiding citizens. As a result, the whole notion of human rights is becoming discredited. Rather than basic protections against arbitrary power, 'human rights' are now seen as legal fictions that prevent the police, the intelligence services and other government agencies from doing what they believe needs to be done in order to safeguard the nation.

Conti….

Note: the activists heading their claim with struggle “***Give us back our rights” have argued that :***

Human Rights Act as **'a nutters' charter', 'crazy legislation', or 'barmy laws‘**

Prepare your analysis of two one page on the above view.

Conti…

- Broadly speaking, the Universal Declaration sets down two broad categories of rights and freedoms -the **ICCPR, and the ICESCR**

The ICCPR and ICESCR

- The two Covenants have a similar structure and some of their articles adopt the same, or very similar, wording.
- The preambles to both recognize the interdependence of all human rights, stating that the human rights ideal can be achieved only if conditions are created whereby everyone may enjoy their economic, social, cultural, civil and political rights.
- Part I of both Covenants, on the right of all peoples to self-determination and to

Conti…

- In both, part II sets out general provisions prohibiting discrimination and asserting the equal rights of men and women with regard to the enjoyment of the rights set forth in each Covenant, as well as the permissible limitations on such enjoyment.
- Part III of each Covenant contains the substantive provisions, which elaborate on rights contained in the Universal Declaration of Human Rights.

1. The ICCPR (1966)

- Although the text of the Covenant was adopted in 1966, it took another 10 years before the necessary 35 States had become parties to it and it formally entered into force on 23 March 1976 for those States.
- As of June 2004, a further 117 States had become parties to the Covenant, making for a current total of 152 States parties.
- Updated lists of States parties to all the treaties may be found in the Treaty Bodies database of the Office of the United Nations High Commissioner for Human Rights ***(http://www.unhchr.ch/tbs/doc.nsf)*** and also in the United Nations Treaty Collection at ***http://untreaty.un.org*** (subscribers only).

Conti…

1. **How does a State agree to be bound by the terms of a treaty such as the Covenant and its Optional Protocols?**

A State can become party to a treaty in one of two main ways:

1st . it can sign the treaty, following which, according to the rules of international law,

- ✓ the State may not act contrary to the objects and purposes of the treaty.
- ✓ Signature is followed by ratification.
- ✓ In depositing an instrument of ratification, a State formally indicates its intent to be bound by the treaty.

Conti…

- ✓ Alternatively, a State can accede to a treaty.
- ✓ Accession, whereby a State that has not signed a treaty agrees to be bound by it, is equivalent to ratification.
- ✓ The treaty in question typically provides a short period of time after the date of ratification or accession before the State is actually bound by the terms of the treaty.

For instance: In the case of the Covenant, this is three months.

See

http://untreaty.un.org/ola-internet/Assistance/handbook_eng/hbframeset.htm.

Conti…

- Parties to the Covenant may also become parties to either or both of its **two Optional Protocols.**

❖ The first Optional Protocol:

- ✓ came into force on 23 March 1976 and currently has 104 States parties,
- ✓ sets out a system by which the Human Rights Committee can receive and consider complaints from **individuals** who allege that their human rights have been violated
- ✓ Individuals who make such a claim, and who have **exhausted all available domestic remedies,** are entitled to submit a written communication to the Committee (art. 2).

Conti…

- ✓ The Human Rights Committee considers the **admissible communications,** at closed meetings, in the light of all written information made available to it by the individual and the State party concerned.
- ✓ Within **six months,** that State must submit to the Committee **written explanations** or statements clarifying the matter and **indicating the remedy,** if any, that it may have applied (art. 4).
- ✓ It then forwards its views to the State party and to the individual (art. 5).
- ✓ A summary of the Committee's activities under the Optional Protocol is included in the report which it submits annually to the **General Assembly through the Economic and Social Council (art. 6).**

Conti…

The Second Optional Protocol:

- ✓ aiming at the abolition of the death penalty,
- ✓ was adopted by the General Assembly by its resolution 44/128 of 15 December 1989.
- ✓ Under its article 1, no one within the jurisdiction of a State party to the Protocol may be executed.

Note: Article 5 of the Second Optional Protocol provides that, with respect to any State party to the first Optional Protocol, the competence of the Human Rights Committee to receive and consider communications from individuals subject to that State's jurisdiction shall extend to the provisions of the Second Optional Protocol, unless the State party concerned has made a statement to the contrary at the moment of ratification or accession.

Conti…

Note

- The ICCPR had been ratified or acceded to by 132 States including Ethiopia As at 30 September 1995,
- The first Optional Protocol had been ratified or acceded As at 30 September 1995, 85 States parties but not Ethiopia
- The Second Optional Protocol had been ratified or acceded As at 30 September 1995 by 28 states but not Ethiopia

Conti…

✓ **The final Parts** deal with the establishment of the Human Rights Committee, the Committee's monitoring functions and a variety of technical matters.

NOTE:

Unlike the UDHR and the ICESCR, the ICCPR contains no general provision applicable to all the rights provided for in the Covenant authorizing restrictions on their exercise. However, several articles in the Covenant provide that the rights being dealt with shall not be subject to any restrictions except those which are prescribed by *law and are necessary to protect national security, public order, or the rights and freedoms of others.*

Conti…

Certain rights, therefore, may never be suspended or limited, even in emergency situations. These are:

- ✓ The rights to life,
- ✓ to freedom from torture,
- ✓ to freedom from enslavement or
- ✓ servitude,
- ✓ to protection from imprisonment for debt,
- ✓ to freedom from retroactive penal laws,
- ✓ to recognition as a person before the law, and to freedom of thought, conscience and religion.

Conti…

❖the ICCPR :

✓ allows a State to limit or suspend the enjoyment of certain rights in cases of officially proclaimed public emergencies which threaten the life of the nation.

✓ Such limitations or suspensions are permitted only "to the extent strictly required by the exigencies of the situation" and may never involve discrimination solely on the ground of race, colour, sex, language, religion or social origin (art. 4).

Note: The limitations or suspensions must also be reported to the United Nations.

2. The ICESCR (1966)

Key economic, social and cultural rights:

- Right to non-discrimination
- Right to work
- Just and favourable conditions of work
- Trade union rights
- Right to social security
- Protection of the family
- Right to an adequate standard of living
- Right to health
- Right to education
- Right to participate in cultural life

Conti…

The ICESCR:

- **develops the corresponding rights in the Universal Declaration in considerable detail**
- **specifying the steps required for their full realization.**
- **Part IV requires all State parties to report periodically to the Economic and Social Council.**

Example 1: on the right to education, it mirrors the language of the Universal Declaration of Human Rights, but devotes articles 13 and 14 to its different dimensions, specifying the obligation to secure compulsory primary education free of charge and to take steps towards achieving free secondary and higher education.

Conti…

Example 2. The right to health, which the Declaration covers as part of an adequate standard of living, has a separate article in the Covenant: article 12 recognizes the right to the highest attainable standard of physical and mental health, and includes specific health-related issues such as environmental hygiene and epidemic and occupational diseases.

Example 3: Article 6 on the right to work is complemented by article 7, elaborating the right to just and favourable conditions of work, providing for health and safety at

Difference between ICCPR and ICESCR:

- One notable difference between the two Covenants is the principle of progressive realization in part II of the ICESCR

✓ Its article 2 (1) specifies that a State party "**undertakes to take steps,** […] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in [the Covenant]"

✓ The principle of progressive realization acknowledges the financial constraints State parties may face.

✓ However, it also imposes an immediate obligation to take deliberate, concrete and targeted steps towards the full realization of the rights of the Covenant.

Conti…

Note: Its Optional Protocol, of 2008:

- enables State parties to accept additional procedures.
- It establishes a fully fledged complaint procedure, including individual petitions, inquiries and inter-State complaints.

3. The CEDAW (1979)

- Sex discrimination, like racial discrimination, is proscribed under the two Covenants in general terms.
- However, CEDAW sets out in more detail what is meant by sex discrimination from the perspective of equality between women and men.
- It addresses a range of programmatic and policy aspects.

What is discrimination against women?

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (art. 1).

Conti…

- It contained a number of innovations about women's right,
- The initial articles oblige State parties both to refrain from sex-based discrimination in their own dealings and to take measures towards achieving factual as well as legal equality in all spheres of life, including by breaking down discriminatory attitudes, customs and practices in society.

Article 6 explicitly requires them to suppress all forms of trafficking in women and exploitation of prostitution, even though these phenomena may implicitly fall within the prohibition of slavery and forced labour covered by other instruments.

Conti…

- **Articles 7 and 8** detail obligations to ensure equal participation of women and men in public and political life.
- **Articles 15 and 16** expand on the right to equality before the law and in marriage and family relations.
- **The Convention, in part V,** requires all State parties to report periodically to the Committee on the Elimination of Discrimination against Women on the measures they have taken to give effect to the Convention.

4. The UNCRC (1989)

- The first treaty to deal comprehensively with the rights of children was the Convention on the Rights of the Child.
- Apply for children below 18 years of age
- Both article 24 of the ICCPR and article 10 of the ICESCR provide that children are entitled to any special measures of protection that they require as children.
- The CRC sets out these measures in much greater detail.
- Recognizing the particular vulnerabilities of children,

Conti…

- the Convention explicitly stipulates their protection from economic exploitation (art. 32), drug abuse (art. 33), sexual exploitation (art. 34), and abduction, sale and trafficking (art. 35).
- Article 23 provides particularly for the care of children with disabilities.
- Article 38 reaffirms States' obligations in armed conflict under international humanitarian law, and requires them not to recruit and, where possible, not to use children under 15 years of age as soldiers

Conti…

- The Convention recognizes children as subjects of rights capable of exercising their own rights in accordance with their evolving capacity, age and maturity.
- For example, children have full rights to freedom of expression (art. 13), to freedom of thought, conscience and religion (art. 14), to free association and peaceful assembly (art. 15), to privacy (art. 16), to access to information (art. 17),

Four “general principles” for implementing children’s rights

The Committee on the Rights of the Child has identified four general principles contained in the Convention which should guide the way States implement children’s rights:

1. Non-discrimination: (art. 2);
2. The best interests of the child: (art. 3);
3. The right to life, survival and development: (art. 6);
4. The views of the child about his or her own situation: (art. 12).

For more information, see the **Committee’s general comment No. 5 (2003).**

Conti…

❖ The involvement of children in **armed conflict,** the **sale of children, child prostitution** and **child pornography** are covered in more detail in two optional protocols to the Convention, adopted in 2000.

1st

1. The Optional Protocol on the involvement of children in armed conflict complements article 38 of the Convention as well as international humanitarian law.

❖ It establishes that no person under the age of 18 shall be subject to compulsory recruitment into regular armed forces (art. 2) and imposes an obligation on States to raise the minimum age for voluntary recruitment further (art. 3).

Conti…

2. The Optional Protocol on the sale of children, child prostitution and child pornography extends the measures that State parties must take **to protect children from these violations of their human rights.**

- The Optional Protocol not only defines the sale of children, child pornography and child prostitution (art. 2), but also provides a non-exhaustive list of acts and activities that State parties must criminalize (art. 3).
- This criminalization should also cover attempts to commit such acts or activities and complicity and participation in them.

Conti…

3. the Optional Protocol on a communications procedure was adopted by the General Assembly in December 2011 and will be open for signature in 2012. It establishes the right to individual petition, inquiries and inter-State complaints.

5. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- The UDHR states in Article 5 that ”no one shall be subjected to torture or cruel, inhumane or degrading treatment or punishment.”
- In 1949, the four General Conventions included a prohibition against “Cruel treatment and torture” as well as “outrages upon personal dignity, in particular humiliating and degrading treatment” in their common article 3.
- In 1955 the Standard Minimum Rules for Treatment of Prisoners were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Prisoners

Conti…

Challenges to the absolute prohibition against torture:

- The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute under international law.
- is non-derogable even in states of emergency threatening the life of the nation under international and regional human rights treaties

NOTE: ***In practice, however, States have often adopted policies and methods to confront terrorism that, in effect, circumvent and undermine this absolute prohibition***

Conti…

For example,

- the use of torture and other cruel, inhuman or degrading treatment to elicit information from terrorist suspects is absolutely prohibited, as is the use in legal proceedings of evidence obtained by torture, whether **at home or abroad**, and of "secret evidence" put forward by prosecuting and other authorities in judicial proceedings, *in violation of the principle of non-admissibility of evidence extracted by torture*, contained inter alia in article 15 of the Convention against Torture.

Conti…

OUTSOURCE:

States' policies that aim to exclude the application of human rights law to individuals outside their territory may effectively erode the absolute prohibition of torture, cruel and degrading treatment or punishment.

Note:

The International Court of Justice (ICJ) has stated that, while the jurisdiction of States is primarily territorial, the rights enshrined in the Covenant extend "to acts done by a State in the exercise of its jurisdiction outside its own territory."

Conti…

Regarding conditions of detention practices such as:

- ✓the use of secret and incommunicado detention,
- ✓ prolonged solitary confinement and
- ✓ similar measures aimed at causing stress, may amount to torture, cruel, inhuman or degrading treatment.

To realize these right :

- ensuring the enactment of full range of legal and practical safeguards
- the right promptly to challenge the lawfulness of one’s detention before a court must be ensured.

Conti…

- procedural guarantees
- right to access in a regular bases to medical doctors and legal counsel.
- allowing the regular and independent monitoring of detention centers are expected from the member states

Conti…

The entry into force of the Optional Protocol to the Convention against Torture on 22 June 2006:

- is a significant development towards ensuring the practical protection of detainees against torture and other cruel, inhuman or degrading treatment.

- It establishes an **international Subcommittee** on Prevention of Torture with a mandate to visit places of detention in States parties and requires States parties to set up national preventive mechanisms, which are also to be provided with access to places of detention and prisoners.

Convention on the Rights of Persons with Disabilities (2006)

- entered into force in 2008
- Its purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity
- It does not define **persons with disabilities** , but instead identifies that "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

Conti…

- It therefore views disability as the result of an interaction between an individual's condition and an inaccessible society.
- The barriers confronting persons with disabilities are many—for example, they might be environmental such as a staircase, or attitudinal such as a belief that persons with disabilities cannot learn.
- The Convention therefore identifies these barriers as discriminatory and requires their removal.
- In adopting a **rights-based approach** to disability, the Convention moves away from viewing disability as a sickness inherent in the individual requiring either a medical intervention (medical approach) to fix the person, or a charitable intervention (charity approach) based on voluntary assistance rather than individual right.

Conti…

❖ **The Optional Protocol to the Convention entered into force in 2008.**

✓ It gives the Committee the authority to receive communications from individuals alleging violations of any of the provisions of the Convention.

✓ It also allows the Committee to undertake inquiries when it receives reliable information indicating grave or systematic violations of the Convention.

International Convention for the Protection of All Persons from Enforced Disappearance (2006)

- Adopted by the General Assembly in December 2006 and entered into force four years later.
- It combines traditional human rights provisions with international humanitarian and criminal law provisions.

Conti…

1. What is enforced disappearance?

"The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a *refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person*, which place such a person **outside the protection of the law" (art. 2).**

Conti…

Article 1, the Convention defines **the non-derogable** and **non-revocable provision:**

*"No exceptional circumstances whatsoever, whether a **state of war or a threat of war**, **internal political instability or any other public emergency**, may be invoked as a **justification for enforced disappearance."***

❖ Article 5 also affirms that enforced disappearance *constitutes a crime against humanity when practiced in a widespread or systematic manner.*

Conti…

- It mentions the express **prohibition of** secret detention and the maintenance of official registers of persons deprived of their liberty.

Note:

- Individuals may submit complaints to the Committee, provided that the relevant State has accepted the competence of the Committee under **article 31. Article 32** gives competence to the Committee to entertain inter-State complaints.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Article 2, of UDHR

"Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the ! right to be free from any kind of discrimination, in the exercise of their rights, ! in particular that based on their indigenous origin or identity."

Conti…

The Convention:

- Entered into effect January 4, 1969, and is one of nine major human rights treaties adopted by the UN
- Provides a legally binding framework that Indigenous Peoples, organizations and human rights activists can use to call attention to cases of racial discrimination by States.
- Does not distinguish between **intentionally discriminatory acts and those that have discriminatory effects.**
- Was the first UN human rights Treaty to establish a **compliance-monitoring system** for the "State parties" or Countries which have ratified it.

Conti…

❖The Committee on CERD could give Early Warning and Urgent Action at any time when violations of the provisions of ICERD are imminent, developing or getting worse and have not received adequate response by States.

States must respond to these submissions.!

e.g. Right to land of Indigenous people

2.2.1.Restrictions,derogations and Nonderogable Rights

Limitation Clauses:

A. General Interpretative Principles Relating to the Justification of Limitations

B. Interpretative Principles Relating to Specific Limitation Clauses

- ✓ "prescribed by law"
- ✓ "in a democratic society"
- ✓ "public order (ordre public)"
- ✓ "public health"
- ✓ "public morals"
- ✓ "national security"
- ✓ "public safety"
- ✓ "rights and freedoms of others," or "rights and reputations of others"
- ✓ "restrictions on public trial"

Questions

1. *Is it possible in the legal system within which you work to derogate from, or suspend, the full enjoyment of human rights and fundamental freedoms?*

If your answer is in the affirmative:

- ✓ *In what circumstances can this be done?*
- ✓ *Which body decides?*
- ✓ *Which rights can be affected by a decision to derogate from, or suspend, the full enjoyment thereof?*

Conti…

2. If a state of emergency/state of exception/martial law, etc. is declared in the country in which you work, what remedies are available

- ✓ *to challenge the decision to declare the state of emergency/state of exception/ state of alarm/state of siege/martial law, etc.?*
- ✓ *to challenge the decision to derogate from, or suspend, the full enjoyment of specific human rights?*
- ✓ *to examine the full enjoyment of non-derogable rights?*
- ✓ *to challenge the necessity of an emergency measure as applied in a specific case (e.g. extrajudicial deprivation of liberty for a suspected terrorist)?*

Conti...

3. In your view, what is, or should be, the purpose of the declaration of a state of emergency and the derogation from human rights obligations?

4. In your view, why could it be necessary to suspend the full enjoyment of human rights and fundamental freedoms in order to deal with a severe crisis situation?

5. Could there, in your view, be any reason why it might be counterproductive for a Government to suspend the full enjoyment of some human rights in order to deal with a severe crisis situation?

6. In your view, are there any human rights that might be particularly vulnerable in a crisis situation?

7. Might there, in your view, be means other than derogations from human rights obligations whereby States could deal constructively with a severe crisis situation?

The flexibility of human rights law

- The promotion and protection of human rights while countering terrorism is an obligation of States and an integral part of the fight against terrorism.
- National counter-terrorism strategies should: above all, seek to prevent acts of terrorism, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law.
- Ensuring both the promotion and protection of human rights and effective counter-terrorism measures nonetheless **raises serious practical challenges for States.**

Conti…

EXAMPLE:

One such example is the dilemma faced by States in protecting intelligence sources, which may require limiting the disclosure of evidence at hearings related to terrorism, while at the same time respecting the right to a fair trial and the right to a fair hearing for the individual.

Note:

These challenges are not insurmountable (difficult to overcome)

Conti...

I. Restrictions/Limitation

- As provided for by international human rights conventions, States may legitimately limit the exercise of certain rights.
- the limitations must be prescribed by law, in pursuance of one or more specific legitimate purposes and “necessary in a democratic society.

(a)Prescription by law

(b) In the pursuance of a legitimate purpose

(c) Necessity and proportionality

Conti…

- Many restrictions or limitations to the rights are contained in Conventions: However, the restrictions must be:

  - ✓ Used only to ‘establish the proper limits of the protected right and not as an excuse for undermining the right itself or destroying it altogether’

  - ✓ Proportionate relationship between the restriction of the right as such and the reason for the restriction.

Conti...

When a right is subject to a limitation, no other limitations are permitted and any limitation must comply with the following minimum requirements:

- ✓ The limitation must not be interpreted so as **to jeopardise the essence of the right concerned;**
- ✓ The limitation must be interpreted **strictly in the light and context of the particular right;**
- ✓ 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;**

Conti...

✓ **The restriction must be necessary;** there must be a pressing social need, assessed on a case-by-case basis.

e.g. **That the law would be useful is in itself not sufficient; it must be consistent with other protected rights.**

✓**The restriction must be justified by the protection of a strictly limited set of well-defined public interests:** on grounds of:

- *national security,*
- *public safety, public order (ordre public),*
- the *protection of health or morals,* and
- the *protection of the rights and freedoms of others.*

Conti...

II. Derogations

- It is for a limited and exceptional, set of circumstances
- In cases of public emergency which threatens the life of the nation,
- It is to *derogate* from certain human rights
- Is temporary measure to which may be resorted only if there is a genuine threat to the life of the nation.
- Strictly Required by the Exigencies of the Situation

Conti…

Derogations have to meet several criteria:

- There must be a war or general state of emergency threatening the life of the nation;
- The state of emergency must be officially proclaimed;
- Measures may not go beyond the extent strictly required by the situation;
- Measures may not be inconsistent with other obligations under international law; and
- Measures may not be discriminatory solely on grounds of race, colour, sex, language, religion or social origin.

Conti…

III. Non-derogable human rights

Derogation from certain human rights set out in international human rights treaties is prohibited, even in a state of emergency.

Article 4 (2) of the ICCPR Article 15(2) of ECHR and Article 27(2) of ACHR) identifies as non-derogable:

These rights are often called *notstandsfest* - a German term

- **the right to life,**
- **freedom from torture or cruel, inhuman or degrading treatment or punishment,**
- **the prohibition against slavery and servitude,**

Conti…

- **freedom from imprisonment for failure to fulfill a contract,**
- **freedom from retrospective (Previous) penalties,**
- **the right to be recognized as a person before the law, and**
- **freedom of thought, conscience and religion.**

Conti…

1. *What is a "public emergency which threatens the life of the nation"?*

The ability to derogate under article 4 (1) of the Covenant is triggered only in a time of "public emergency which threatens the life of the nation." In its general comment N° 29, the Human Rights Committee has characterized such an emergency as being of an exceptional nature. Not every disturbance or catastrophe qualifies as such. The Committee has commented that, even during an armed conflict, measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation. Whether or not terrorist acts or threats establish such a state of emergency must therefore be assessed case by case.

Reservations and Declarations

When becoming party to a treaty, a state may, by formulating **reservations, declarations** and **interpretative statements,** seek to limit its domestic application beyond what is permissible under the limitations referred to above.

Reservation :

- is a statement made by a state by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that state.

- However, the International Court of Justice stated in its Advisory Opinion on the Genocide Convention (1951): 'Object and purpose of the Convention limit both the freedom of making reservations and that of objecting to them.'

Conti…

- . Article 19 of Vienna Convention on the Law of Treaties which sets out the general rule on reservations:

A state may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) The reservation is prohibited by the treaty;

(b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) In cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Conti…

Declarations:

- Some conventions allow or even require states parties to make declarations concerning the extent to which they are bound by a certain provision.
- For instance, Article 41 ICCPR stipulates that a ‘ *state party may choose (not) to recognise the competence of the Human Rights Committee to receive state complaints regarding its human rights performance.’* This type of declaration, as provided by the instruments, does not pose major problems.

Conti…

. Official languages and working languages

While the official United Nations languages are: *Arabic, Chinese, English, French, Russian and Spanish,* the committees generally choose to work in only some of these languages, depending on their membership and in order to cut costs in relation to documentation.

Core documents, such as concluding observations, rules of procedure and reporting guidelines, are always ***translated into all six.***

The working languages of the Secretariat at Geneva are English and French.

2.2. Regional Human Rights systems

NOTE

The importance of a regional mechanism lies in the fact that it is designed 'to articulate: a common approach to a complex problem, an approach that will assist States, from a position of shared regional values, to address shortcomings in their national frameworks so as to allow individuals the means to enjoy their rights in full, and to obtain effective redress when those rights are denied.'

Conti…

The rationale :

for the development of regional human rights institutions with powers ranging from ***advisory to investigation and enforcement*** - their creation often triggered by **shared histories of subjugation and the aftermath of war** - is that the cultural, political, economic and legal commonalities frequently endemic

to geographic regions permit a relatively high degree of consensus regarding the content of rights, the process for their protection, and the framework for sanction and redress.

Conti..

- Regional systems are a product of the international concern for human rights that emerged at the end of the Second World War in 1945.

- Regional systems drew inspiration from the human rights provisions of the United Nations Charter and the Universal Declaration of Human Rights

Note: *Historical and political factors encouraged each* ***region to focus on human rights issues.***

Conti…

EXAMPLES

- **America:** There was the movements for independence which has created regional solidarity
- **Europe**: had been the theatre of the greatest atrocities of the Second World War and felt compelled to press for international human rights guarantees as part of European reconstruction
- **Africa:** there was a claims to self-determination became a recognized part of human rights agenda. From colonization and continued struggle for national cohesion.

2.2.1. The European Human Rights System

❖ **The oldest and most advanced regional human rights grouping, the Council of Europe, was established in 1949.**

❖The European Union (EU) is the main regional body for Europe and is made up of **five main institutions:**

- the European Parliament (elected by the people of the member states);
- the Council of the European Union (representing the governments of the member states);
- the European Commission (the general Secretariat of the EU);
- the Court of Justice (which ensures compliance with the law); and
- the Court of Auditors (which oversees the EU budget).

Conti…

Note: ***These are supported by other bodies, including those with a specific mandate related to human rights.***

The Council of the European Union:

✓ Have the obligations incumbent on its members, we described as the consolidation of pluralist democracy, respect for human rights, and the assertion of the rule of law

Note: *Twelve states signed the EHCR in Rome on 4 November 1950. It entered into force in September 1953, and has now been ratified by all member states.*

Conti…

- The most important human rights document in the region is the Convention for the **Protection of Human Rights and Fundamental Freedoms**, which was developed by the Council of Europe, entered into force in 1953 and has 45 ratifications.
- **This Convention:**

✓ focused on civil and political rights, but the more recent European Social Charter, which focuses on socio-economic rights, complements it.

✓ also sets up a mechanism for ensuring that States fulfill their obligations under the Convention.

Conti…

Note:- The European Court of Human Rights has been working under its current format since 1998 and has amassed considerable human rights jurisprudence. Any State that has ratified the Convention or any individual who believes their rights under the Convention have been violated can lodge a complaint directly with the Court.

The Charter

- In 2000, to further strengthen the human rights regime in the region, the European Union adopted the Charter of Fundamental Rights of the European Union.
- The Charter – unlike the Convention – is an EU document and the EU itself is bound by the provisions

as well as member countries.

- It also covers some additional areas, not covered in the Convention, although it states that any rights in the Charter that correspond with those in the Convention should have the same meaning and scope, to avoid discrepancies between the two documents.

Conti...

- Although the Charter relates just to members of the

European Union rather than to any State within the broader geographic region that has ratified it, it is still an important document – particularly as it, for the first time in the European Union's history, sets out in one text the whole range of civil, political economic and social rights of European citizens and all people resident in the EU. It covers six areas: dignity, freedoms, equality, solidarity, citizens' rights and justice

2.2.2 The inter-American Human Rights System

- The Organization of American States (OAS) was established in 1948 by the Charter of the Organization of American States as the main regional body including North, South and Central America.
- The OAS is responsible for the overall development and oversight of regional human rights standards and mechanisms and it has established bodies for this specific purpose.
- This human rights system provides recourse to people in the region who have suffered violations by the State and who have been unable to find justice in their own country.

Conti…

1. The American Declaration of the Rights and Duties of Man:

- adopted in 1948
- lays out not just the human rights of individuals but also their corresponding duties to participate respectfully in society.
- While originally adopted as a declaration and not as a legally binding treaty,
- is now considered a source of international obligations for OAS member states.

Conti…

Note:- *Over time, however, States decided that this system needed to be strengthened and in 1960 agreed to prepare an American Convention on Human Rights, and an Inter-American Commission on Human Rights.*

2. The Inter-American Commission on Human Rights

- was established in 1960
- The current statute under which it works was adopted in 1979.
- The Commission is based in Washington DC, USA and investigates themes of human rights concern as well as individuals' complaints of violations, which can involve visits to the country concerned.

Conti…

- In investigations, the Commission uses the American Convention if the State has ratified it, and otherwise uses the American Declaration.
- It also promotes human rights in the region, and makes recommendations to member countries.
- The Commission also submits cases to the Inter-American Court on Human Rights.

3. The American Convention on Human Rights:

- was adopted in 1969 and entered into force in 1978.
- It strengthens the regional human rights system by making the **Commission more effective, creating a Court,** and **changing the legal nature** of the instruments upon which the system is based.

Conti…

There are also been protocols to the Convention, available for ratification. These are:

- the Additional Protocol to the American Convention on Human Rights in the Area of *Economic, Social and Cultural Rights adopted in 1988, **to provide a balance to the Convention's focus on civil and political rights;***
- the Protocol to the American Convention on Human Rights to **Abolish the Death Penalty**, adopted in 1990.

Conti…

4. The Inter-American Court on Human Rights:

- is a crucial organ of the regional human rights system as it is an independent judicial institution that applies and interprets the Convention.
- It was established in 1969 by the adoption of the Convention (although the statute it works under was adopted in 1979 and more recent rules of procedure were adopted in 2003) and is based in San Jose, Costa Rica.
- Hearings of the Court are public, along with the decisions, although deliberations remain secret.

Conti…

- In its advisory role in interpreting the Convention,
- It is available to all States, although in adjudicating cases,
- it has jurisdiction only when the particular State involved has accepted the Court's binding jurisdiction.

Note: Over time, other instruments have been adopted in the Inter-American region to better protect specific areas of human rights concern. These are:

- Inter-American Convention to Prevent and Punish Torture, which entered into force in 1987

Conti…

- the Inter- American Convention on Forced Disappearance of Persons, which entered into force in 1996; and
- the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which entered into force in 1995.

2.2.3 The African Human Rights System

- The regional African human rights system is based on: *"the African Charter on Human and Peoples' Rights (the African or Banjul Charter), which entered into force on October 21, 1986,"* upon ratification by a simple majority of member states of the Organization of African Unity (OAU).

- **The African Charter on Human and Peoples' Rights (the African Charter) was adopted on 27th June 1981 by the Organisation of African Unity (OAU), predecessor to the African Union (AU), at its Assembly of Heads of States and Government in Nairobi, Kenya.**

Conti..

- In June 1998, the OAU adopted the Protocol to the African Charter on Human and Peoples‘ Rights on the Establishment of an African Court on Human and Peoples' Rights
- The African Human Rights Court is intended to complement the African Commission on Human and Peoples' Rights, the body that has exercised continental oversight over human rights since 1987.

Note: *The Protocol suggests that the African Human Rights Court will make the promotion and the protection of human rights within the regional system more effective.*

Conti..

The African Charter: A Diagnosis

- is not an accident of history.
- Its creation by the OAU came at a time of increased scrutiny of states for their human rights practices,

For African states, the rhetoric of human rights had a special resonance for several reasons:

1. Post-colonial African states were born out of the anti-colonial human rights struggle, a fight for political and economic self-determination.

Conti..

2. Black-ruled African states deployed human rights arguments to demonize and delegitimize the colonial and minority white-ruled states of Angola, Mozambique, Namibia, Rhodesia (now Zimbabwe), and Apartheid South Africa.

3. The atrocities of some of the most brutal dictatorships the African continent has ever known heightened the urgency for a regional human rights system.

Conti..

The most serious flaw in the African Charter:

- Is concerning about its “clawback” clauses.
- These clauses permeate the African Charter and permit African states to restrict basic human rights to the maximum extent allowed by domestic law.
- This is especially significant because most domestic laws in Africa date from the colonial period and are therefore highly repressive and draconian (too harsh).

Conti..

- The post-colonial state, like its predecessor, impermissibly restricts most *civil and political rights, particularly those pertaining to political participation, free expression, association and assembly, movement, and conscience*

Note: Ironically, it is these same rights that the African Charter further erodes.

Conti..

"Clawback" clauses:

Is qualifications or limitations, permeate the provisions [of the African Charter] dealing with fundamental freedoms.... These fundamental civil and political rights are severely limited by clauses like "except for reasons and conditions previously laid down by law," "subject to law and order," "within the law," "abides by the law," "in accordance with the provisions of the law," and other restrictions justified for the "protection of national security."

Conti..

1. The African Human and peoples Rights Charter

- It is also the ***most widely accepted of the regional*** charters, with **53 ratifications or accessions**.
- In its provisions, it covers a variety of civil, political, economic, cultural and social rights, as well as the right to self-determination, development and the environment.
- the first human rights treaty to refer to the right to development, although it did not define this right.

Conti…

2. Problems and the Challenges of African Charter:

- at the time that human rights, especially civil and political rights, were viewed by some political leaders a s a “western construct with limited applicability.”
- The general consensus among postcolonial African leaders at the time was that the enjoyment of civil and political liberties would slow down economic development or, in the extreme, fuel political and social strife.
- Although the African Charter is ratified by all AU Member *‘is not only the least developed but also the least effective as compared with its Inter-American and European counterparts.’*

Conti…

- does not have a general derogation clause.
- This omission is all the more serious because the Charter in effect permits states through the "clawback" clauses to suspend, de facto, many fundamental rights in their domistic laws
- In any event, nothing in the Charter prevents African states from denying certain rights during national "emergencies.”

Conti…

Note:

Another controversial question in the Charter concerns its language of duties. The African Charter takes the view that individual rights cannot make sense in a social and political vacuum, unless they are coupled with duties on individuals. In other words, the Charter argues that the individual egoist is not the center of the moral universe.

Challenges facing the African human rights system

- **The lack of independence and impartiality of the Commissioners** who are governmental employees in their own countries, some in charge of dealing with human rights cases in their countries

- lack of professionalism,

- the part-time nature of the African Commission and **the lack of regular**

Conti....

- The lack of resources that have severely handicapped the African Commission and forced it to rely on donors from outside Africa, rather that on the regular contributions of the AU

- the failure of the African Commission to adequately enforce its decisions

- dependence on political organs.

Conti....

Procedural factors of admissibility for a case to be heard by the Commission under Article 56 of the Charter

Two things are expected under Article 56 of the charter -These are:

- After exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged; and

- submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter.

Conti....

What are the criteria for exhausting local remedies?

The Commission has established that a complainant must only exhaust domestic remedies that are '**available, effective, and sufficient**' before bringing a case under the Charter.4

- A remedy is '**available**' if the petitioner can pursue it without **impediment in practice**.
- A remedy is '**effective**' if it offers **a reasonable prospect of success to relieve the harm suffered.**
- A remedy is '**sufficient**' if it is capable of **producing the redress sought by the complainant.**

Conti....

Exceptions to the domestic remedies requirement:

- the Commission and the Court recognise that domestic remedies are not available or are ineffective under certain circumstances.
- Under international law, there are limited exceptions to the exhaustion requirement.
- The complainant must convincingly demonstrate that no local remedies are available, such that there is no domestic legal action which can lead to resolving the complaint at the national level.

Conti....

Note:

If domestic remedies do not meet the criteria of 'available, effective and sufficient', the complainant should claim this by providing full details of the existing conditions in the respondent State.

These means:

- ***if Domestic remedies are unavailable***
- ***if Domestic remedies are ineffective***
- ***if Domestic remedies are insufficient***
- ***if Domestic remedies are unreasonably delayed:*** ***only*** there is no fixed defined period that can be understood at appellate court as 'undue prolongation,

Conti....

Additional criteria to admissibility to exhaustion of local remedies:

1. Where there is a 'state of emergency' in the country where the complainant has suffered grievances which would hinder the administration of justice.

2. Where human rights violations are so extensive or pervasive that it is neither practical nor advisable to pursue domestic remedies. E.g :

- ✓ widespread torture,
- ✓ institutionalized practices of human rights violations,
- ✓ Extrajudicial executions and restriction to fundamental freedoms.

Conti....

3. The exhaustion of domestic remedies is not 'logical' or when access to justice is obstructed.

4. The legal framework of the State prevents an available, effective and sufficient domestic remedy.

Case 1

Decisions on Admissibility

Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria

November 2010, ACHPR, 338/07, 48th Ordinary Session

Inadmissible under article 56(5): failure to exhaust local remedies

The complainant brought the complaint against the Federal Republic of Nigeria on behalf of the people of the Awori Community (the victims), alleging that the respondent state violated the rights of the victims by failing to address the consequences of a pipeline explosion which resulted in the loss of numerous lives, permanent injuries, and environmental degradation. The complainant also claimed that the state had failed to address the problem of fuel scarcity in the aftermath of the explosion, repair damaged pipelines, and provide adequate treatment to the injured.

Conti....

The complainant alleged breaches of articles 2 (right to freedom from discrimination), 4 (right to life), 5 (prohibition of torture), 14 (right to property), 16 (right to health), 20 (right to self-determination) and 24 (right to a general satisfactory environment) of the African Charter.

The commission found that the requirements of article 56(5) were not satisfied. The complainant argued that domestic remedies were unavailable, ineffective, and insufficient due to the scale of the human rights violations, the number of victims, and the inaccessibility of the Nigerian legal system to the poor and marginalized. However, the commission found no evidence in support of this argument and held that the complainant made 'generalized statements about the unavailability of legal remedies in the respondent state without attempting to exhaust them'. **The communication was declared inadmissible.**

Case 2

ARTICLE 19 and Others v. Zimbabwe

November 2010, ACHPR, 305/05, 48th Ordinary Session

Inadmissible under article 56(6): failure to submit within reasonable time period

The complainant brought a complaint against the Republic of Zimbabwe, alleging that Capital Radio Private Limited (CRPL) was unable to broadcast in Zimbabwe due to legal restrictions and political opposition. In October 2000, police raided CRPL's broadcasting studio and seized its equipment, thereby ending CRPL's broadcasting. In June 2001, CRPL instigated legal proceedings in the Supreme Court, challenging the constitutionality of the newly instituted Broadcasting Services Act (BSA) of April 2001 on the grounds of inconsistency with the provisions of the constitution guaranteeing freedom of expression.

Conti....

Two years later, in 2003, the Supreme Court upheld the bulk of the BSA, ruling that only 4 of the 17 contested provisions were unconstitutional. As of 2005, no broadcasting licenses had been granted in The complainants alleged that the BSA violated articles 1 (obligations of member states), 2 (right to freedom from discrimination), and 9 (right to receive information and freedom of expression) of the African Charter. The commission found that the communication was not filed

Conti....

The complainants submitted the communication in August 2005, just under 2 years after the Supreme Court delivered its final ruling. The complainants argued that it was reasonable to wait and see how the Supreme Court judgment would be implemented and whether any broadcasting licenses would be issued. The commission rejected this reasoning stating that the CRPL itself had not applied for a license, and that the matter before the commission did not turn on the refusal to grant licenses, but rather the incompatibility of provisions of the BSA with the African Charter. The commission held that the complainants knew as far back as September 2003 that they had reached ‘a dead end’ at the domestic level and waiting for two years without a compelling reason is unjustifiable.

Case 3

Interights (on behalf of Gizaw Kebede and Kebede Tadesse) v. Ethiopia

16 December 2011, ACHPR, 372GTK/2009, 10th Extra-ordinary Session

Inadmissible under article 56 (5): failure to exhaust domestic remedies

The complaint was brought on behalf of Gizaw Kebede (first applicant) and Tadesse Kebede (second applicant). The applicants were issued with licenses for the production of river washed sand which were later effectively revoked by a directive of the Federal Ministry of Mines and Energy.

Conti....

The applicants petitioned the District Court, which found in favour of the applicants on the grounds that the respondent state's directive was meant to regulate a different kind of mine, rather than the kind run by the applicants. In 2005, the District Court ordered the applicants' licenses be reinstated. The respondent state failed to comply with the District Court's judgment and the applicants re-applied to the court in March 2007, requesting reinstatement of their licences. This time their application was refused on the grounds that the judgment should have been executed within a year of its pronouncement (despite a provision of the Ethiopian Civil Procedure Code that provides a 10 year limit for the execution of judgment).

Conti....

The applicants made further appeals to the High Court which ordered the District Court to execute its initial 2005 judgement. The District Court declined to comply.

The complainant alleged a violation of articles 1 (obligation of member states), 7 (right to a fair trial), 14 (right to property), and 26 (duty to guarantee the independence of the courts) of the African Charter.

The commission found that the requirements of article 56(5) had not been satisfied because the applicants had not attempted to exhaust all available domestic remedies. The next step in the domestic court process would have been to appeal to the Regional Supreme Court. The commission found that the complainant's argument, that past cases prove that the Regional Supreme Court only considers cases where there was an error of law, was not sufficient to excuse the failure to attempt to exhaust domestic remedies.

Conti…

The commission cited the Constitution of Ethiopia, which states that decisions of the Regional High Court are appealable to the Regional Supreme Court and reasoned that it is not sufficient to “cast mere aspersions on the ability of the Regional Supreme Court, its Cassation Bench, and the Cassation Bench of the Federal Supreme Court due to past incidences,” including past cases.

The following elements comprise the system leading to human rights violations in Africa:

- undeveloped economies, with limited resource bases and insufficient employment/income opportunities.
- wide-spread poverty
- high population growth rates which results competition for resources
- ethnic diversity and/or regional factionalism promoting local/particularistic identifications, while hindering the development of a national identification;

Conti…

- ethnic and/or class politics involving competition among leaders of different language, cultural, or regional populations for state positions of political and economic power with the spoils of victory going to supporters;
- **lack of regime legitimacy as those large segments of the population not culturally and/or politically affiliated with the ruling elite and not sharing in the spoils refuse to recognize the regime as legitimate;**
- resort to military/police force to maintain power by **suppressing political opponents** and **disgruntled civilians;**
- violation of economic, civil, and political rights by the regime on the pretext of **"national security"**

Conti…



Questions:

1. **What do you understand from this picture?**
2. **Does the UN truly exercise its mandate of protection, promotion, and ensuring up to the gate of the palace of African leaders?**
3. **Discuss on the drawback of the mechanisms of the UN where there is violation of human rights by the leaders of the states?**

Paper title: "Human Rights and Politics in Africa: Exploring their conflicts"

2.2.4 The Arab and Asian Human Rights Systems

1. The Arab Human Rights Systems

- The first draft declaration on Arab human rights was **drafted in 1971** by a committee of experts established by the Council of the League of Arab States, but the project did not materialize.
- the initiative to 'modernize' the Arab Charter on Human Rights (ACHR) as adopted in 1994 was announced and then endorsed by decision 6302/119 (Part II) of 24 March 2003 of the League of Arab States' Council (LASC).
- The Council tasked its **intergovernmental human rights body,** the Arab Standing Committee on Human Rights, **with the redrafting of the Charter.**

Conti…

- In many of its articles the **new draft set** out the **principle of the primacy of domestic law** in cases of conflict between the normative provisions of the Charter and those of the internal legal system of a Member State

- There is also the case of the inclusion of an additional paragraph in Article 2 of the Charter, directly inspired by the Declaration on Human Rights in Islam, stipulating that **'men and women are equal in human dignity, rights and duties within the framework** of the objective differences set forth by Islamic law (Shari'a) and by other revealed laws'.

Conti…

The Arab Human Rights Committee:

- was established in 2009
- Unlike committee of other regional human rights systems:
  - ✓ **is not competent to receive and adjudicate individual complaints on violations of the Charter's rights.**
  - ✓ **it does review State reports**,
  - ✓ it has so far declined to meaningfully consider alternative reports, for example from civil society, regarding the human rights situation in member States.

Conti…

- ✓ there is not any established procedures by which the Committee might seize itself of crisis situations, in response to which they might take robust action, such as conducting an inquiry or recommending a political response by the LAS.

Conti…

Steps to Success:

- ✓ the popular uprisings that erupted in several countries in the Middle East and North Africa (MENA) region from 2011 onwards (the "Arab Spring"), is seems the ring bell for ….human rights
- ✓ calls and initiatives for reforming the LAS system, including the human rights system,
- ✓ reform proposals, was made for the establishment of a regional judicial body to adjudicate complaints of human rights violations, the Arab Court of Human Rights (the Arab Court) which was highly welcomed.

Conti…

1. Positive prospects of the Arab Charter

- is a mile stone for human rights protection in LASC region
- Adequately incorporates global human rights standards, and in some respects exceeds them: For instance:
  - ✓ rights to individuals with mental or physical disabilities
  - ✓ prohibits violence against women and children in the family,
  - ✓ guarantees the independence of the

Conti…

■Problems related to the Arab Charter:

- ✓ there seems to be little public knowledge about the Charter
- ✓ Its protections have so far remained illusory;
- ✓ the rights contained in it, have gone largely unrealized, and
- ✓ the LAS human rights system remains predominantly ineffective.

Conti…

Drawbacks of Arab Human Rights Charter:

- Imposition of Death penalty on Children under age of 18
- Allow positive discrimination on women while CEDAW did not allow all forms of discrimination
- Did not mentioned what does torture, cruel and inhuman treatment.
- Limitation on the rights of thought, ***conscience*** and religion are not prescribed by law but in law.

Iran continues to apply the death penalty against persons who were under 18 at the time of their crime – and even sometimes at the time of the execution





Questions

Paper Title: Religion, human rights and Death penalty: Exploring the challenges and prospects.”

Conti…

2. The Arab Charter:

- falls short of international human rights standards. For instances:

allows for the imposition of a death sentence for individuals under the age of 18,

Note:

- The UN Convention on the Rights of the Child, to which all LAS States are party, absolutely prohibits in article **37(a) the imposition of a death sentence, or life imprisonment without the possibility of release, for crimes committed when a person was under 18 years of age.**
- Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which most of the LAS States are party,10 provides that a *"sentence of death shall not be imposed for crimes committed by persons below eighteen years of age."*

Conti…

Class Work:

Article 3 of the Arab Charter provides

"Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shari'a, other divine laws and by applicable laws and legal instruments."

Thus, this provision is not in conformity with international standards on equality of men and women, including under the ICCPR and Convention on the Elimination of all forms of Discrimination against Women (CEDAW), to which almost all LAS States are party.

Some say: Limiting equality within the framework of *Shari'a and other divine laws has the* potential of impairing or nullifying the recognition, enjoyment and exercise of human rights by women on a basis of equality with men, in particular on issues relating to marriage, family relations and personal rights.

Question: What is your position?

Conti…

Class Work 2

"while the right to freedom of thought, conscience and religion is guaranteed under international law, including the freedom to *"have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching,"(Art 18 of the ICCPR)*

But

under the Arab Charter, the right to freedom of thought, conscience, and religion is guaranteed in article 30(1)*"except as provided for by law."*

This provision clearly conflicts with international human rights law and standards, and has the potential to erode the very essence of these rights.

In case of conflicts of law domestic laws could prevail in LAS States. So how could you mitigate the tension between the two?

Conti…

Note: Scholars have recommended that:

"Given these concerns, the Charter should be amended with a view ***to establishing its full conformity with universal human rights standards,*** *including in particular* ***the right to life, the prohibition of cruel, inhuman or degrading punishment*** *and* ***freedom of thought, conscience and religion."***

Conti…

2.The Asian Human Rights Systems

“Tongue but not Teeth!” Region

- the peoples of Asia suffered from gross violations of their rights and freedoms during the colonial period,

But

- The it is the only region in the world without an intergovernmental regional **mechanism for the protection of human rights.**

However

- Because of the **marketization** and **globalization of economies** are changing the balance between **the private and the public**, **the state and the international community,** and **worsening the situation of the poor and the disadvantaged.**

Conti…

- In November 2007, leaders of the **ten Association of South East Asian Nations ('ASEAN')** Member States signed the *Charter of the Association of South East Asian Nations ('ASEAN Charter') designed* ***'to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and freedoms'.***
- In support of the *Vienna Declaration and Programme of Action, a meeting of ASEAN Foreign Ministers in Singapore in 1993 agreed that* ***ASEAN should consider the establishment of a human rights mechanism appropriate to the region***

- In the same year, a similar agreement was reflected in the *Declaration of Human Rights, issued by the ASEAN Inter-*Parliamentary Organisation, which stated that it was the *'task and responsibility of Member States to establish an appropriate regional mechanism on human rights'*

Conti…

- In Asia, despite efforts by NGOs and the U.N., **governments in the region have been unwilling in general to ratify global human rights instruments, or create a regional human rights system.**

For Instance:

As of March 1998, for instance, **27 states in the region**, including virtually all Pacific Island States, **had not signed or ratified either the UN Covenants or the Torture Convention.**

- **Challenges to the creation of an Asian- Pacific regional system**
  - ✓ **the vastness of geographical scope of the region,**
  - ✓ **The recent economic crisis**
  - ✓ **a lack of a regional organization**
  - ✓ **the vast differences in culture,**
  - ✓ **language, political ideology and economic development among nations,**

Conti…

Note:

There is ***yet no regional human rights mechanism in Asia.***

The idea of drafting an Asian convention has been raised ***on several occasions at gatherings of nongovernmental organizations and at meetings convened by the United Nations.***

However, Asian governments remain quite oblivious ***(ignoring)*** *as to the need to* ***co-operate to better protect the human***

Conti…

Major Drawbacks in Asia to have Regional Human Rights System:

1. is the lacks of an existing regional inter governmental organization, similar to the OAU, the OAS or the Council of Europe.

- ✓ This is to brings together all the countries of the region for political or socio-economic co-operation.
- ✓ *Because of there is no discernible common identity among Asian countries.*
- ✓ *Scattering in* ***sub-regional alliances***

Note:

Within the existing ***sub-regional alliances*** *such as the* ***League of Arab States,*** ***Association of South-East Asian Nations(ASEAN)*** *and* ***South Asian Association for Regional Cooperation (SAARC),*** *a common understanding on human rights* ***does not appear to be even remotely possible, having regard to current human rights records of some of the participating governments.***

Conti…

2. is the fact that Asia encompasses a widely heterogeneous community

- ✓It extends from Syria and Iraq in the West to the Philippines, Japan and the Islands of the Pacific in the east, from China and Korea in the north to India and Sir Lanka in the south

- ✓Asia is a conglomeration (mixture of different nations) of countries with radically different social structures, and
- ✓diverse religious, philosophical and cultural traditions; their political ideologies, legal systems and degrees of economic development vary greatly; and above all, there is no shared, historical past even from the times of colonialism.

- ✓It is quite unrealistic to think of the regions as a single unit with a common identify.

Phnom Penh, Cambodia: the forced eviction of residents of the Borei Keila settlement (2012) was carried out outside legal rules and procedural safeguards regarding the right to adequate housing provided for by national and international law (@ photo ADHOC).



Conti…

However, in some countries like India, *Sri Lanka* and Malaysia there are:

1. ***Long experience with colonial legal systems has given these countries a strong legal profession***
   - ✓ *a relatively independent judiciary, an ability to utilize the judicial process to assert and vindicate individual freedom.*
2. ***existing constitutional framework of several countries in the region,***
   - ✓ *A justifiable Bill of Rights is an integral part of the national constitution in each of these countries.*

Conti…

3. *the fact that within Asia there are sub-regional clusters of some states that have already ratified both the ICCPR and the ICESCR and thereby demonstrated a willingness to submit to the international human rights regime and its monitoring procedures.*

4. is an ***abiding spiritual heritage*** *based upon the tenets of the fourth principal religions of the world which sprang forth form the soil of Asia Hinduism, Buddhism, Christianity and Islam*

2.3. National Systems of Protection

2.3.1. Constitutional Recognition

- A state based on rule of law is characterized by:
  - ✓ **foreseeability,** accessibility, **accountability, separation of power**s, as well as **recognition and protection of rights of every person.**

Note: Consequently, rule of law is **fundamental for the fulfilment of human rights..**

Conti….

- **The constitutional framework plays an important role to that effect:**
  - ✓ by regulating the relationship between the **various branches of government**
  - ✓ by regulating the relationship between the power and functions of the organs of government
  - ✓ ensuring an appropriate **balance between the state and the people, and**
  - ✓ regulating the relationship between **domestic and international law**

Conti….

- ✓ Since the beginning of the 20th century, human rights have become intensively internationalized.
- ✓ Therefore: more recently some constitutions, often due to the domestic political agenda, also contain a type of obligation upon the state to ensure basic social services to the people.
- ✓ While the **national constitutional rights and freedoms initially influenced the international agenda,** the creation of the United Nations and the adoption of the Universal Declaration of Human Rights (UDHR) have been fundamental and an inspiration for many post World War II national constitutional processes all over the world.

Conti....

NOTE

The State Parties are obliged **to respect and ensure** the rights effectively and in good faith according to their international obligations, cf. **article 26 of the Vienna Convention on the Law of Treaties.**

However

Lack of respect for the constitutional values, rights, and enforcement mechanisms may often **go hand in hand with the presence of authoritarian regimes**, absence of rule of law, lack of accountability, scarcity of resources and low public awareness about rights and duties in a particular country.

Inter-Linkage between Constitutional protection and effective and efficient protection of human rights

- It requires an adequate constitutional framework that has been adopted after a participatory national process.
- There **is no universal standard** for such constitutional framework but a number of factors may contribute to the effective and efficient protection of human rights.
  - ✓ **The constitution has to effectively address the actual rights.**

Conti….

If the constitution does not favour the protection of human rights:

- A bill of rights are not sufficient instruments for an effective and efficient protection of human rights.
- The risk of debilitating the rights could not to be minimalized.
- the possibility of amending or suspending the constitution will happen either in force or through democratic means

National Human Rights Institutions

- The majority of existing national institutions can be grouped together in two broad categories:
  - ✓ **"human rights commissions" and**
  - ✓ **"ombudsmen".**
- Another less common, but no less important variety are the **"specialized institution."**

- **Human rights commissions:** are concerned primarily with the protection of nationals against discrimination and with the protection of civil and other human

Conti....

- The precise functions and powers of a particular commission will be defined in the legislative act or decree under which it is established
- One of the most important functions vested in a human rights commission is to receive and investigate complaints from individuals (and occasionally, from groups) alleging human rights abuses committed in violation of existing national law.
- **The ombudsman:** is generally appointed by the parliament acting on constitutional authority or through special legislation.

Conti….

- The primary function of this institution is to protect the rights of individuals who believe themselves to be the victim of unjust acts on the part of the public administration.
- Accordingly, the ombudsman will often act as an impartial mediator between an aggrieved individual and the government.
- **Specialized institutions:** Members of the community who are most often recognized by governments as needing **specialized human rights institutions to protect their interests are persons belonging to ethnic**, *linguistic and religious minorities, indigenous populations, aliens, migrants, immigrants, refugees, children, women, the poor and the disabled*

Conti....

Chapter 3 will Conti…