

Study Session 4

UNIT-IV ENFORCEMENT & REMEDIES OF HUMAN RIGHTS

Study Session Outline

- i. Enforcement Mechanisms of Human Rights
- ii. Broad Categories of Enforcement Mechanisms
- iii. Human Rights Reporting (Communication), Complaint Procedures and Monitoring
- iv. Human Rights Remedies

Study Session Duration

Each Study Session requires a 2 hours of formal study time.

INTRODUCTION

Dear learner, welcome to session four of this module! This unit covers the following subtopics. It addresses the enforcement mechanism of human rights in both generations of human rights that includes the civil, political rights and social and economic rights. It also highlights the existing broad categories of enforcement mechanisms in human rights. Then, the human rights reporting, communication and complaint handling procedures and the monitoring of these activities are discussed. Finally, it addresses the potential remedies that may be sought by individuals, state actors and international organizations.

Enjoy attending this unit!

Learning outcome of study session four

After studying this unit, students will;

- Appreciate the procedures to be following in enforcing human rights
- Be acquainted with the exhaustion of remedies standards

- Discuss the remedies and forms of justice

Unit Four-Enforcement and Remedies of Human Rights

Introduction

The respect, protection, fulfillment, and human rights promotion is the core objective of all human rights endeavors. The life and implementation of the basic principles in protecting the vulnerable groups is given through the enforcement mechanisms. It is important that state parties have a normative obligation to assure the core objectives of human rights and enforce the remedies at a time of transgressing of the human rights. The shift from human rights to good governance is practically tested and enforced at this stage. The implementation of human rights primarily base on the existing international law and legal machineries. It was a tradition that international law focuses to regulate relations between States. However, the international law enforcement system has been expanding in terms of its scope with the purpose to cover a wider range of actors. This could also contribute a significant role in reporting and monitoring, and enforcement of human rights at national, regional and/or international spectrums. This could also be an opportunity to include international organizations, and other entities such as companies, armed groups, other non-State entities and also individuals.

4.1 Human Rights Enforcement Mechanisms

Enforcement of human rights is the primary objective of all human rights instruments. Enforcement manifests the assurance of the four duties of human rights. The first initial process shall be the socialization of legal norms of human rights as an effective method for guaranteeing the obedience of human rights laws. This is directly linked with the socialization process of human rights. It signifies the cultural assimilation/acculturation of human rights is the general process by which the actors adopt the beliefs and other behavioral patterns of a surrounding culture.

Dear student, why is the socialization of human rights an important means of enforcement?

The internalization of the values of human rights to individuals, organizations and state actors shall be at the center before resorting to any form of enforcement mechanism. There are claims for increasing democratic organizations and socialization process. The globalization process is aimed to promote the human rights values progressively as a form of assimilations through the exiting international organizations.

The enforcement mechanism for the civil and political rights on the one hand and the social, economic, and cultural rights on the other are different. They require different institutional and legal arrangements.

In relation to the civil and political rights, most of the rights are enforced through the national, regional and international agencies by the states that are parties to the convention. The failure of one of the states results in to table the concern at higher level. The higher and relevant organ is the UN and the security council of the UN. The act to the global polices in the violation and enforcement of human rights. The human rights concerns and violations are enforced by holding accountable to individual leaders of a certain state to the international criminal court and imposing political and economic sanctions as a means to curtail the enforcement of human rights.

In relation to the social, economic and cultural rights, the enforcement mechanism may follow the following procedures. The specific and special laws may also state their enforcement mechanisms. First, the committee on economic, social, and cultural rights (CESCR) is mandated specially to monitor the interest of member states for the fulfillment of their duties under the convention. The convention requires the states to make reports in every five years about the situation. These are also reviewed by the committee and the committee examines the extent to which the rights are being enforced. The committee may take its own concluding observation by its own initiation and release recommendations if a given state fails to report. Second, the UN as an international regulatory organ has a High Commissioner on Human Rights (OHCHR) that serves to protect and promote the basic human rights. It is the main office that works to assure the human rights

standards are applied in all activities of human rights. It also collaborates with member states to strengthen the human rights capabilities. It also supports states to develop institutions and policies that are favorable to human rights and it provides guidance and technical support to achieve the main goals. There are optional protocols and thematic mandates including the special rapporteurs on adequate housing, and the right to education. The issues on human rights and extreme poverty are including the right to food and the right to health may be sent to the council of the rapporteurs for clarification of governments and investigations.

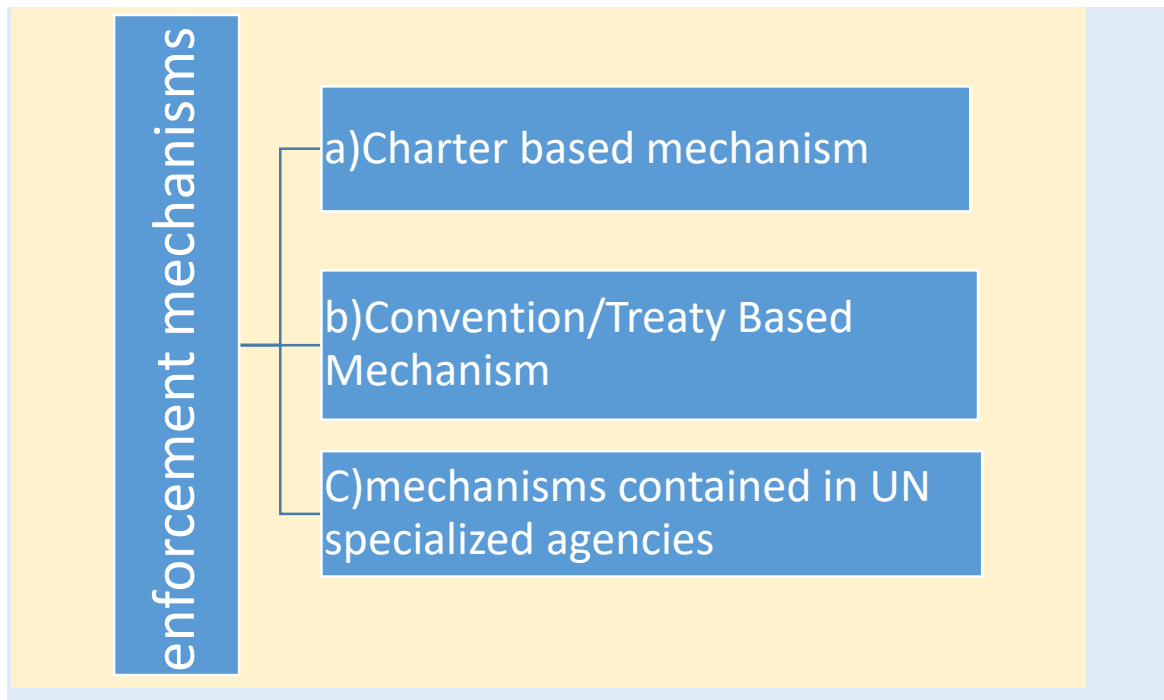
Third, there is a Human Rights Council, requiring special steps and procedures and composing of special working groups. It is a global council that entertains special steps and procedures, expert advice, and compliant procedure of all member states. It holds 47 member states that are elected by the UN general assembly and raises concerns on abuses of human rights. In common, all alleged rights require the exhaustion of local remedies before resorting to regional and international arrangements.

4.2 Categories of Mechanisms of Enforcement

The enforcement mechanisms of Human rights refers to the bodies that are established to oversee the implementation and investigation of alleged violations of obligations of human rights. It is important to notice that the discussion of these mechanisms may relate and touch multiple human rights sources. The enforcement mechanisms are recognized under the conventions and the treaty bodies. The mechanisms that are established outside the conventions among others include the UN special rapporteurs, working groups representatives, and experts.

It is important to make a distinction between hard and soft law. This is an important consideration under the international instruments and legal frameworks and the consequent responsibilities of several actors while initiating and predicting the results enforcement mechanisms. It is significant to take the legal sources into account and the distinction between a hard and soft law. Any enforcement mechanism incorporated under hard laws has a strong legal binding nature and the mechanisms are also inescapable to be observed by all actors. However, the soft laws under the international human rights mechanisms may require the political commitment of states rather than the legal normative duties of state parties to the conventions.

In general, there are three general and wide-ranging categories of recognized enforcement mechanisms (OHCHR, 2012):

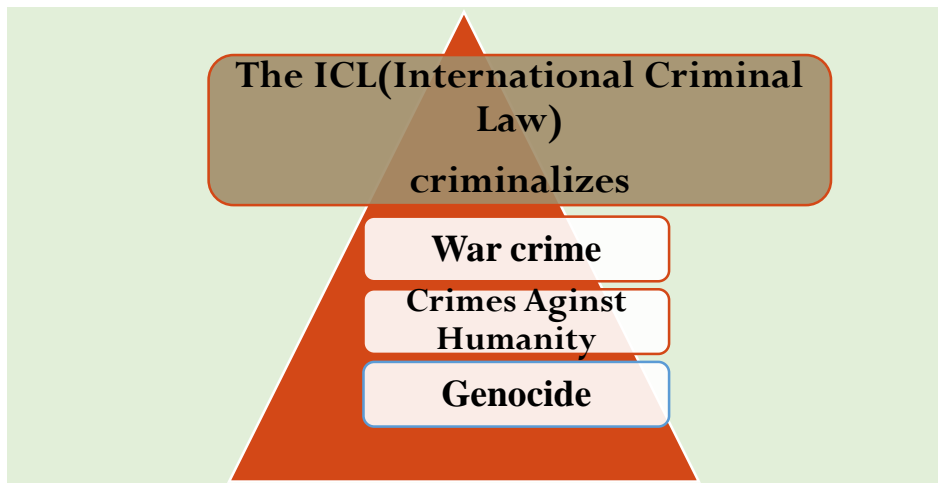


The enforcement mechanism encapsulated under the United Nations specialized agencies focuses on international human rights standards. It is important to recognize that the international human rights system consists not only of standards, outlined in treaties and other instruments, but also of mechanisms to promote their implementation. These are the declarations, conclusions and recommendations made on a certain human rights concern. The nature of the laws may be soft laws.

Dear student, can you illustrate the role of the international criminal law in the enforcement of human rights?

The international criminal law also stipulates the mechanisms to enforce criminal violations stipulated under the internationally enacted stipulations on war crimes, crimes against humanity and genocide (Rome Statute of the ICC, 1998). In one or the other, the international criminal law with all its institutions and structures is also help full to enforce human rights violations.

Developments in the jurisprudence of international criminal law are increasing and they have influence on the protection of all vulnerable groups such as women, children and persons with disabilities. For instance, Judgments of the International Criminal Tribunal for the former Yugoslavia and Rwanda have clearly recognized rape and other forms of sexual and gender-based violence as Genocide, war crimes and crimes against humanity (*Prosecutor vs. Akayesu, Case Number ICTR-95-4*) Prosecution is considered as one means of enforcement.



1.3 Human Rights Reporting (Communication), Complaint Procedures and Monitoring

The existing international human rights instruments may indicate a universal standard format for reporting and monitoring on the enforcement of human rights. The reporting style of a specific human rights plan, action, implementation, enforcement, rapporteurship may require specific formats and checklists to be observed. Some of the requirements are also formal instruments and

codes. In relevance to the vulnerable groups, there are specific requirements to be observed. (Christian Tomuschat, 2008, pp315)

Assignment-Dear student, can you visit an organization in order to observe/learn how human rights reported, communicated and monitored and report it to your teachers and mentors?

The reporting and communication procedures of human rights may be carried out at different levels by different persons. The communication of the human rights literally implies that the reporting party is doing it for portraying a relationship of good understanding with the purpose to bridge the exchange of information for constructive communication. The actual messaging and exchange of information by the UN agencies may be carried out for communication purposes. However, the reporting of complaints is not carried out only to fulfill communications but to inform a grievance and direct it for fact finding procedures.

The complaint procedures are two in kind as they are indicated under the international treaties that are designed to protect human rights. First, there are procedures that are open to states parties according to which one state charges another state for its failure to fulfill its duties according to the treaties. These are referred as inter-state complaints. Second, there are procedures permitting individuals thinking that they are victims of violations of human rights to bring a complaint to the attention of the relevant body. These procedures may include for public interest litigation and individual may be given a standing to lodge and litigate a case. This is also referred as an individual complaint.

The protection of vulnerable groups from violation of human rights may be communicated to lodge a complaint and seek remedies. (Christian T.2008, pp 315-16)

It is also important to practice the skill of compliant/legal writing skills and the legal and formal requirement of procedures and presenting of evidences. In analyzing and writing a specific report on human rights status and assessment, it can be written in **I.R.A.C.** (Issue, Rule, Application, Conclusion) or **C.R.A.C.** (**Conclusion, Rule, Application, Conclusion**) form. There may be

disputed issues and it is important to identify the disputed issue and ‘I’ stands for the disputed issue indicating certain issue of human rights and the claim of the party or vulnerable group. ‘R’ also stands for rule and the specific governing human rights provision from the relevant human rights instruments is also described and analyzed. It is critical to support lawyers and attorneys while analyzing a specific disputed issue. A **CRAC** form of writing requires to state first the conclusion on the disputed human rights concern, then the citing the most relevant rule or the governing provision for the disputed issue from the relevant human rights instrument. Then, it is to state the application of the rule and then finally repeat the conclusion of the disputed at hand. In any legal service, it is important to understand and equip with the skills in legal writing.

The other most relevant issue is appreciating the necessity of evidence laws while indicating the application of the rule. It is critical to know the relevance and admissibility tests in evidence law. This is vital in protecting the human rights concerns of groups that are vulnerable. A given fact or evidence can be relevant but we have to appreciate also the admissibility tests or the legal requirements. Admissibility tests are legal requirements in supporting the evidentiary values. The required and lawful procedures must be fulfilled in fulfilling the legal and technical sufficiency.

There communication and compliant procedures are specifically stated. There are specifically stated persons who are entitled to file communications. The violations in the form of discrimination, torture, basic principles of persons with disabilities and others are entitled to lodge a complaint individually since they are human beings who may suffer the violations in person. The rights must be asserted at the time they are lodged by an individual. Then, the private complaint must indicate the right of standing and the legal requirement which is put under the conventions. Then it is the requirement on the exhaustion of local remedies which is discussed under the following subsection.

1.4 Human Rights Remedies

Remedies for human rights violations are seen in terms of the persons or individuals holding a standing capacity, nature of claims, the jurisdiction of courts, the prerequisites on the lawful procedures and the preliminary standards of ‘*exhaustion to the available local remedies*’, the nature and types of remedies and enforcement of remedies. It is also imperative to take into account

the nature of justice which is sought and enforced by the state and non-state enforcing machineries. The smoothness and clarity of the enforcement mechanisms are the prima facie indications for rendering remedies.

Dear student, what are the legal sources for asserted human rights remedies?

The remedies are in most indicated under the treaty and customary international law and tradition. It may be taken as natural that a state becomes a member to an international instrument be it treaty or convention after signature, ratification and accession. The adoption of human rights instruments by a given states enshrines a guarantee to each respective individual in its territory or under its jurisdiction the rights that are set out in that instrument without discrimination. The state is also obliged to provide effective remedy in case of violations of those rights.

The other source to initiate a remedy may also arise from customary international law since States may be bound to respect and enforce such specific rights. The normative customs are not written but they may exist and considered as they are binding to all States except for persistent objectors. In relation to refugees' right, it is a widely accepted norm that the prohibition of refoulement (sending the refugee back to the place where he claims there is fear of being persecuted) is part of customary international law. This means this principle has to be observed, even by States which are not parties to the 1951 Refugee Convention.

The capacity of International and/or regional human rights bodies is limited to provide adequate remedies. For this reason, the universal system of human rights relies principally on domestic laws in order to provide rights and personal remedies that are asserted. However, the victims of human rights abuses will find it difficult to seek remedy in a domestic forum where the abuses occurred.

Consequently, the domestic courts of a given country also have a role to play in providing law and enforcement for the redress of human rights violations. More generally, human rights litigation in domestic courts may face some of the challenges on the form of state structure. Against the background of a growing nationalism in politics, it is almost a shared concern of an individual's

State role and interests in international law and the role it has to advance international human rights. Beyond the hurdles arising from the precedent case laws and, legal and political commitment of state parties to the conventions, the challenges on seeking remedies may also arise from the form of state structure and the structural arrangement of courts under state and Federal jurisdictions.

The existence of foreign element and the allocation of court's mandates to entertain human rights related to higher, supreme and/or Federal courts may complicate the case. The enshrinement of all courts competence to entertain claims or remedies on human rights violations helps to ensure accessibility and enforceability of remedies for concerned individuals.

Dear student, what is the requirement of the notion of 'exhaustion of local remedy'?

One of the necessary legal and procedural requirements under the universal human rights instruments is the requirement of exhaustion of local remedies. Any human rights plaintiff has a duty to claim and present his/her case to the relevant court in jurisdiction. The plaintiff has a right to lodge his appeals to the concerned bodies across the national, regional, and global contexts. The rationale is to give state parties a second chance of observing and revising their decisions. However, there are exceptional grounds that are allowing for individual complaints to be lodged at an international setting. They might not be observed where there is a diplomatic protection, and there is unreasonable delay. This is a procedural requirement that may elongate the life span of a case but individuals are allowed to lodge their complaints at international settings.

The nature of the remedy individuals may lodge or claim can be different and the appropriate courts in jurisdiction and the courts are also required to closely handle cases and forward different forms of justice. There is a difference on the conceptualization or models of justice. A claim on the specific human right concern may result in finally to provide retributive, deterrent and/or restorative justice. The first aims to ensure remedies by imposing measures that are retributive and individuals or state parties are also held accountable for their wrongdoing accordingly. The deterrent form of justice endeavors to stop violations by imposing measures that are learnable and

exemplary to similar situations so that potential and actual violations are curtailed before occurrence or without causing substantial adverse effect on human rights. The third form of justice or remedy is also restorative justice. This is the most common form of remedy since it mainly aims to restore the previous position of the claimants. It is mostly raised during transitional periods. The methods of assuring protections of human rights are formal and they tend to reinforce the formal methods other than the negotiated ones in human rights enforcements. The formal method comes into implementation at its decisions and justice is achieved through the strict application of formal legal statutes and procedures. By contrast, the negotiated method comes to implementation and arrives at its decisions through a process of negotiation. These forms of methods are uncommon in relation to concerns of human rights but they can be used as supportive and complementary ones. They can be useful while enforcing the decisions, resolutions and verdicts of courts and the UN agencies. Enforcement of remedies sought and forwarded by the critical court actors is important since the final and materializing result of the principles are seen at this stage.

Summary

The Unit at hand elaborates the enforcement and remedies of human rights. Enforcement of human rights starts on the socialization of the legal human rights norms. This is an effective method since it assures the optimum guarantee and obedience to human rights. The socialization process fosters the internalization of the human rights values to individuals, organizations and state actors. This is the most efficient and effective enforcement mechanism. The enforcement mechanism for the civil and/or political rights on the one hand and the socio-economic rights on the other hand are different. The legal sources indicating the enforcement mechanisms are founded with in the conventions (the treaty bodies), and mechanisms may also be established outside the conventions including of the UN special rapporteurs, experts, working groups and representatives.

The legal sources may include the distinction between hard and soft law. This is an important consideration under the global/international legal frameworks and the responsibilities of the numerous actors while initiating and predicting the results of enforcement mechanisms. The enforcement mechanisms include (a) charter-based enforcement mechanisms, (b) convention or treaty-based enforcement mechanisms, and (c) UN specialized agencies-based enforcement mechanisms. The international criminal law is also part parcel of the human rights enforcement mechanism. It is an institutional arrangement that helps to enforce criminal violations stipulated

under the internationally enacted stipulations on war crimes, crimes against humanity, genocide, and crime of aggression. The existing international human rights instruments may indicate a universal standard format for reporting and monitoring on the enforcement of human rights. The reporting and communication procedures of human rights may be carried out at different levels by different persons. The communication of the human rights helps to portray a relationship of good understanding and constructive exchange of information. The complaint procedures are two in kind and they are the inter-state complaint procedure and the private complaint procedures. In providing a legal service, it is important to exercise the legal writing skills and the legal and formal requirement of procedures and the presentation of evidences. It is critical to know the relevance and admissibility tests in evidence law. Human rights remedies manifest the nature of asserted right and the expected form of justice as it is lodged by the individuals or states. The remedies are in most indicated under the treaty and customary international law. However, the actual enforcement of the remedies depends on the functioning of domestic courts. There is a difference on the conceptualization or models of justice. A claim on the specific human right concern may result in finally to provide retributive, deterrent and/or restorative justice.

Quiz

1. What is enforcement of human rights?
2. Discuss the enforcement of the civil and political rights
3. What are the enforcement mechanisms of the social and economic rights?
4. What is the difference between hard and soft law? What are the implications to human rights?
5. What are the broad categories of human rights enforcement mechanisms?
6. How complaints are reported and communicated/
7. What are two forms of legal writing and why it is important to sensitize about evidence law?
8. What are the legal sources for remedies in human rights?
9. What is the role of domestic courts in the adjudication of human rights?
10. What are the forms of justice sought by the parties?