

Study Session 2

Unit-II Foundation of Human Rights

Study Session Outline

- i. Fundamental Principles
- ii. Human Rights and the Law
- iii. Treaties
- iv. Custom
- v. Declarations, resolutions etc. adopted by UN organs
- vi. Pillars of Human Rights
- vii. Human Rights and Mechanisms of enforcement

Study Session Duration

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

INTRODUCTION

Dear learner, welcome to the second unit of the module. Under this unit, you will discuss the fundamental features of human rights. Similarly, this unit covers, the basic pillars on which human rights norms are founded. This unit also discusses the sources for international human rights laws and how they are applicable at domestic level. Finally, this unit fairly addresses the enforcement mechanisms of human rights laws.

Enjoy attending this unit!

Learning outcome of study session two

Upon completion of this study unit, students are expected to

- Explain the sources of the international human rights laws and their application at domestic level
- Appreciate the fundamental principles/pillars of human rights
- Discuss the pillars of human rights

- Pinpoint the human rights enforcement mechanisms

Unit-II Foundation of Human Rights

Human rights norms and principles are based on certain pillars which are in principle accorded universal acceptance. Those principles are assumed to be universally accepted and assumed to fundamentally coincide with the basic interests and demands of human nature. Even though the majority of the world community accepts and adheres to the fundamental pillars on which **Human rights** are founded, it doesn't mean that those fundamental pillars are completely accepted by the international community without any criticisms. This unit, thus, will address those issues in a fairly brief manner.

2.1 Fundamental Pillars/Principles

- ❖ **Human rights** are universal

“Human rights are foreign to no culture and native to all nations; they are universal.” Kofi A. Annan, University of Tehran on International **Human rights** Day, 10 December 1997.

The universality of **Human rights** lies on the ground that **Human rights** are universal and they are based on the dignity of every human being, irrespective of ethnic or social origin, race, color, sex, religion, language, , sexual orientation, nationality, age, disability or any other personal characteristic. (Christian Tomuschat, 2008, pp69). This means **Human rights** are applicable equally and without discrimination to everyone and everywhere.

There is however criticism against the universality of **Human rights** on the basis that **Human rights** are western notion and are used as means of imposing neocolonial attitudes on all parts of the world. As mentioned above the criticisms against universalism is widely raised based on the above justifications and man more. However, the above criticism is also countered by other arguments. For example, A study published by the UNESCO in 19681 clearly showed that the philosophical objectives underlying **Human rights** are linked to ideas – the ideas of justice, the integrity and dignity of individuals, freedom from subjugation and harassment, and the participation of individuals in collective actions. (Christian Tomuschat, 2008, pp72).

❖ ***Human Rights are inalienable***

Human rights are inalienable since no person may be deprived of his or her **human rights**, except under plainly defined legal conditions. For instance, the liberty rights of a person may be restricted if a court of law decides that he/she is convicted for committing certain crime based on a fair trial procedure.

❖ ***Human Rights are interdependent and not divisible***

Human rights are indivisible and interdependent. This is for the reason that each **human rights** involves and depends on other human rights. That means if one right is violated it may affect the enjoyment of other rights as well. For example, the right to life may base on the right to adequate food and standard of living. A person's access to justice may be affected as a result of deprivation of the right to basic education. The protection of socio-economic rights may base on the freedom of expression, and freedom of peaceful assembly. This shows how human rights are interdependent. Consequently, all the civil, economic, political and social and cultural rights complement to each other and equally important to the integrity and dignity of all human beings.

Generally, it is a well-accepted notion that respect for all **human rights** is a precondition to sustainable development and peace.

In relation to this, the international community affirmed the interdependence, indivisible nature of **human rights** by reiterating:

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.” (World Conference on Human Rights, held in Vienna in 1993.)

❖ *Equality and the prohibition of discrimination*

Equality and nondiscrimination are among the fundamental pillars of **human rights**. All the founding pillars of **human rights** function based on this principle of equality and non-discrimination based on any status such as sex, origin, color, race, etc. The discriminatory treatment of states against their citizens or among individuals are among the core agenda that people in the world struggles against.

Dear learners, how do you explain the principle of non-discrimination and how are those principles integrated under the domestic laws of your nations?

2.2 Human Rights and the Law

Respect for the rule of law is among the enforcement mechanism for **human rights**, that transforms them from mere principles into a reality. If **human rights** are not protected, we can say there is no

rule of law and vice versa. Consequently, one can conclude that **human rights** cannot be protected in societies where there is no functional rule of law.

The rule of law necessitates that legal processes, institutions and substantive/procedural norms are consistent with **human rights**. The creation of international Organizations such as the United Nations has set the primary opportunity for the adoption of several international laws on **human rights**. Similarly, regional organizations such as the EU (European Union) and AU (African Union) has also facilitated the adoption of regional **human rights** instruments. Significant number of States have also enacted constitutions and other bylaws which formally protect basic **human rights**.

As part of international law, International **human rights** law also has different sources. Those sources include treaties, customs, declarations, principles and guidelines. (ICJ statute article 38)

2.2.1 Treaties

Treaties are agreement concluded between or among sovereign states. Treaties concluded between two states are called bilateral agreements where as those agreements concluded among several states is commonly known as multilateral treaties. There are different ways by which a state can be member to a treaty. Those are ratification, or by accession or else inheritance/succession. A State's formal way of expression of agreement to be bound by a treaty is articulated through the process of **ratification**. States need to sign first before ratification. Treaties are signed when they are open for signature. Ratification at domestic level needs approval of the appropriate constitutional organ (often the parliament or head of the state). Ratification at international level the instrument to be ratified shall be formally transmitted to the depositary which could be a state or sometimes IOs (international organization) such as the UN. (VCLT, 1980)

Accession is another possibility by which states become party to a treaty. Accession requires the consent of a state that hasn't signed the treaty previously. States may ratify treaties before or after the entry into force of that treaty; the same method applies to accession.

It is also possible for a state to become party to a treaty by way of *succession*, in order to be party to a treaty by succession, a state is required to merely declare or simply provide a provision to that effect. There is a possibility to make reservation. By reservation it means, a state can accept certain provisions of a treaty and decline to be bound by some stipulations of the treaty. However, a reservation made by a state may not contradict with the object and purpose of the treaty.

Dear learner, discuss what is the rationale that binds states to the terms of a treaty?

2.2.2 Custom

As provided under article 38 of the ICJ statute, customary international law is among the sources of law for international **human rights** law. Customary international law (or simply "custom") means general and consistent practice followed by States with the intent to be bound by that practice. Some human rights practices have reached the level/status of customary international law. Which means states, are bound by these rules of customary law. For example, the prohibition of torture, and slavery is recognized as customary inter'l law and all states are expected to be bound by those norms. Moreover, many of the rules pronounced under the UDHR have crystallized as customary law.

2.2.3 UN organs-based declarations, resolutions etc.

Declarations, standard rules, recommendations guidelines, and principles symbolize general norms of international law principles and practices. Even though those sets of rules have no binding effect on states, they signify a wide consensus on the part of the international community and

consequently have a strong moral and diplomatic force on the relationship of states and their subsequent conduct.

1.4. Pillars of Human Rights

Human rights are founded on certain pillars on which all the human rights provisions and principles are based. For example, the establishment document on **human rights**, i.e the UDHR was founded on four pillars. Those are *liberty, dignity, equality and brotherhood*.

- **Dignity** – It is a natural right that all human beings are born with dignity. **human rights** are thus meant to respect and promote the dignity of human beings. The Concept of dignity is related to the notion that every human being is entitled to exercise the same rights without any discrimination based on any status.
- **Liberty** – To be free from any interference also goes in line with the natural demands of human beings. For example, liberty rights are reflected in the privacy rights, the rights to assemble in groups.
- **Equality** – Equality or non-discrimination is among the pillars of **human rights** on which many **human rights** provisions are based. For example, equal enjoyment of socio-economic rights, (eg. the right to work or right to education)
- **Brotherhood** – This notion is a communal concept that relates to solidarity.

1.5. Mechanisms of enforcement of Human Rights

Major **human rights** treaties, such as the (ICCPR) and the (ICESCR) and the conventions on torture, rights of women, rights of children, and convention against racial discrimination, provide for monitoring bodies. Those monitoring bodies inspect periodic reports submitted by state parties,

and many of these treaties also provide mechanisms by which individual complaints are submitted and entertained.

In addition to the compliant mechanisms, the human rights are also enforced through the establishment of criminal justice system. Creating systems of criminal responsibility is another mechanism by which human rights are enforced. For example, the criminal code of Somalia, or Ethiopia may criminalize homicide, in terms of **human rights** which can be categorized as the deprivation of right to life. Rights to property and security of life may also be threatened when individuals breach the rights. The criminal laws thus provide sanctions for those who violate the human rights.

Different forums of international **human rights** are also helpful in the enforcement of **human rights**. You will discuss more about the enforcement mechanisms of human rights under the last unit of this module.

Dear learner, can you discuss about the mechanisms of enforcement of Human rights at domestic level?

Unit Summary

Dear learners, under this unit we have discussed that **human rights** are founded on the fundamental features of universality, indivisibility, equality and interdependence. Similarly, we have also seen the fundamental pillars of **human rights** such as dignity, liberty, equality and brotherhood.

Under this unit, we have seen the sources of international human rights law. Under this topic, we have seen that treaties, custom, and declarations, and resolutions adopted by UN organs serve as fundamental sources of international **human rights** law.

Treaty based **human rights** instruments can be applicable at domestic level through the modalities of ratification, accession or succession. Customary international law based **human rights** are also enforced by the mere reason that it is a well-accepted notion that states intend to be bound by the human rights principles that acquired customary international law. Mechanisms of **human rights** enforcement also include the establishment of criminal justice machineries both at domestic and global level.

Self-Review Questions

1. Discuss the fundamental pillars of **human rights**?
2. Discuss the basic features of **human rights** by giving example?
3. Explain the sources of international **human rights** law? How can international **human rights** law be applicable at domestic level?
4. Mention the human rights enforcement mechanisms?