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**OHCHR REGIONAL OFFICE FOR SOUTH-EAST ASIA**

**HUMAN RIGHTS TRAINING COURSE  
FOR  
INDONESIAN DIPLOMATS**

**CENTRE FOR EDUCATION & TRAINING  
DEPARTMENT OF FOREIGN AFFAIRS**

**22 - 23 SEPTEMBER 2008  
JAKARTA, INDONESIA**



**JAKARTA, INDONESIA, SEPTEMBER 2008**

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# HUMAN RIGHTS SYSTEM

## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

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# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

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# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### FOREWORD

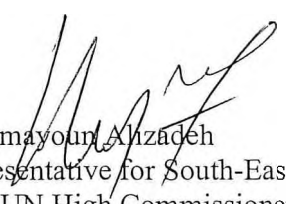
Dear participants,

You have received this document, which will be used during the two-day course. The document contains the main developments of international human rights law since the San Francisco Conference in 1945. It tries to give you an overview of the purpose and the mandate of relevant UN commissions and bodies as well as the main international human rights instruments relevant to your professional work. The information has been compiled in a way to enable you to become familiar with these international human rights instruments that are necessary for the promotion and protection of human rights in the Republic of Indonesia.

It is hoped that the two-day workshop will help you to become familiar with international human rights standards that are crucial for the ongoing efforts of the Government of the Republic of Indonesia on good governance and the rule of law.

On behalf of the United Nations High Commissioner for Human Rights, I wish you all the best for the workshop and hope very much that the co-operation between you and our Regional Office will be continued to further develop structures and norms which promote and protect human rights at the national, regional and international levels.

Jakarta, September 2008

  
Homayoun Ahzadeh  
Regional Representative for South-East Asia  
Office of the UN High Commissioner for  
Human Rights (OHCHR)

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### I

## GENERAL OVERVIEW

SAN FRANCISCO CONFERENCE  
THE CHARTER OF THE UNITED NATIONS  
(26 JUNE 1945)



ESTABLISHING THE COMMISSION ON HUMAN RIGHTS  
&  
THE COMMISSION ON THE STATUS OF WOMEN  
(21 JUNE 1946)



ESTABLISHING THE SUBCOMMISSION ON  
PREVENTION OF DISCRIMINATION  
AND PROTECTION OF MINORITIES  
(FEBRUARY 1947)



UNIVERSAL DECLARATION OF HUMAN RIGHTS  
(10 DECEMBER 1948)



INTERNATIONAL CONVENTION ON THE  
ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION  
(21 DECEMBER 1965)



INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS,  
INTERNATIONAL COVENANT ON CIVIL & POLITICAL RIGHTS  
&  
OPTIONAL PROTOCOL TO THE COVENANT ON  
CIVIL AND POLITICAL RIGHTS  
(16 DECEMBER 1966)

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### GENERAL OVERVIEW

THE TEHERAN INTERNATIONAL CONFERENCE  
ON HUMAN RIGHTS  
(22 APRIL - 13 MAY 1968)



AMERICAN CONVENTION ON HUMAN RIGHTS  
(22 NOVEMBER 1969)



CONVENTION ON THE ELIMINATION  
OF ALL FORMS OF DISCRIMINATION  
AGAINST WOMEN  
(18 DECEMBER 1979)



AFRICAN CHARTER  
ON HUMAN AND PEOPLES' RIGHTS  
(27 JUNE 1981)



CONVENTION AGAINST TORTURE  
AND OTHER CRUEL, INHUMAN OR  
DEGRADING TREATMENT OR PUNISHMENT  
(10 DECEMBER 1984)



ESTABLISHING THE COMMITTEE ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS  
(28 MAY 1985)



CONVENTION ON THE RIGHTS OF THE CHILD  
(20 NOVEMBER 1989)



# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### GENERAL OVERVIEW

**SECOND OPTIONAL PROTOCOL TO THE  
INTERNATIONAL COVENANT ON  
CIVIL AND POLITICAL RIGHTS,  
AIMING AT THE ABOLITION  
OF THE DEATH PENALTY  
(15 DECEMBER 1989)**



**INTERNATIONAL CONVENTION ON THE  
PROTECTION OF THE RIGHTS OF ALL  
MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES  
(18 DECEMBER 1990)**



**THE VIENNA  
WORLD CONFERENCE  
ON HUMAN RIGHTS  
(14 - 25 JUNE 1993)**



**ESTABLISHING THE POST OF  
UNITED NATIONS HIGH COMMISSIONER  
FOR HUMAN RIGHTS  
(20 DECEMBER 1993)**



**PROCLAIMING THE UNITED NATIONS  
DECADE FOR HUMAN RIGHTS EDUCATION  
(23 DECEMBER 1994)**



**ESTABLISHING THE  
INTERNATIONAL CRIMINAL COURT  
(17 JULY 1998)**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### GENERAL OVERVIEW

**OPTIONAL PROTOCOL ON THE  
SALE OF CHILDREN, CHILD PROSTITUTION,  
AND CHILD PORNOGRAPHY  
(25 MAY 2000)**



**OPTIONAL PROTOCOL ON THE  
INVOLVEMENT OF  
CHILDREN IN ARMED CONFLICT  
(25 MAY 2000)**



**UNITED NATIONS CONVENTION  
AGAINST CORRUPTION  
(31 OCTOBER 2003)**



**CONVENTION ON THE  
RIGHTS OF  
PERSONS WITH DISABILITIES  
(13 DECEMBER 2006)**



**INTERNATIONAL CONVENTION  
FOR THE PROTECTION  
OF ALL PERSONS FROM  
ENFORCED DISAPPEARANCE  
(20 DECEMBER 2006)**

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# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### II

#### WHAT ARE HUMAN RIGHTS?

- A right is an entitlement that each human being owns.
  - A human right is a claim ———→ It is a part of law
  - International law of human rights
    - is universal
    - is inalienable
    - belongs to everybody equally
- 
- All human beings are born free and equal in dignity and rights. ... (Art. 1 of UDHR)
  - Every one is entitled to all the rights and freedoms....., without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Art. 2 of UDHR)

**III**

**SAN FRANCISCO CONFERENCE**

**THE CHARTER  
OF THE  
UNITED NATIONS**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### SAN FRANCISCO CONFERENCE



### THE CHARTER OF THE UNITED NATIONS SIGNED ON 26 JUNE 1945

- CHAPTER I, Purposes and Principles, Article 1, paragraph. 3: "...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion..."
- CHAPTER IX, International Economic and Social Cooperation,

#### Art. 55:

- Self determination of peoples
- Standard of living
- Employment
- Economic, social progress and development
- Health
- International cultural and educational cooperation
- Universal respect for and observance of human rights and fundamental freedoms for all.

#### Art. 56 (Duties of Member States):

- Promotion of human rights and fundamental freedoms.

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **San Francisco Conference**



### **SIGNING THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE (26 JUNE 1945)**

- **The International Court of Justice is the principal judicial organ of the United Nations**
- **The Court has a dual role:**
  - **To settle in accordance with international law the legal disputes submitted to it by States;**
  - **To give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.**
- **The Court is composed of 15 judges elected to nine-year terms of office by the United Nations General Assembly and Security Council sitting independently of each other.**
- **Elections are held every three years for one-third of the seats, and retiring judges may be re-elected. The Members of the Court do not represent their governments but are independent magistrates**

**IV**

**CREATION OF COMMISSIONS  
RELATED TO  
HUMAN RIGHTS**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### ESTABLISHING THE COMMISSION ON HUMAN RIGHTS (21 JUNE 1946)

**CHAPTER X, The Economic and Social Council, Art. 68:**  
"The 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".

**Mandate: Recommendations and proposals on**

- An international bill of rights;
- International declarations or conventions on civil liberties, the status of women, freedom of information and similar matters;
- The protection of minorities;
- The prevention of discrimination on grounds of race, sex, language or religion;
- Any other matter concerning human rights not covered by the other items.

**Number of members:**

- Originally 18, now 53 designated by the ECOSOC according to the rules of geographical distribution.

**Sessions: Six weeks (March-April)**

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **ESTABLISHING THE COMMISSION ON THE STATUS OF WOMEN (21 JUNE 1946)**

#### **Mandate:**

- 1. Promotion of women's rights in political, economic, social and educational fields;**
- 2. Promotion of women's civil rights;**
- 3. Achievement of equality between men and women.**

#### **Number of members:**

- Originally 15, now 45 are chosen according to criteria of geographical representation.**

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **ESTABLISHING THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (FEBRUARY 1947)<sup>1</sup>**

#### **Mandate:**

- 1. Undertake studies, particularly in the light of the Universal Declaration of Human Rights;**
- 2. Recommendations to the Commission on Human Rights concerning**
  - Prevention of discrimination of any kind relating to human rights and fundamental freedoms;**
  - Protection of racial, national, religious and linguistic minorities.**

#### **Number of members:**

- Initially 12, ended with 26 were elected by the Commission on Human Rights in their personal capacity as experts and not as representatives of States.**

**Sessions: It met once yearly and submitted a report to the HR Commission.**

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<sup>1</sup> In 1999, ECOSOC renamed it the Sub-Commission on the Promotion and Protection of Human Rights.



# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (9 DECEMBER 1948)<sup>2</sup>

**Art. II: Genocide is any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:**

- 1. Killing members of the group;**
- 2. Causing serious bodily or mental harm to members of the group;**
- 3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;**
- 4. Imposing measures intended to prevent births within the group;**
- 5. Forcibly transferring children of the group to another group.**

*Punishment of the crime of genocide is not subject to the limitation of time and place*

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<sup>2</sup> Entered into force on 12 January 1951.

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### EXAMPLES OF GENOCIDE IN MODERN HISTORY

- Between 1915-1918, 400,000 - 600,000 Armenians were massacred in Turkey.
- Holocaust in the Second World War: 6 Million Jewish people were killed between 1938-1945.
- Between 1975 and 1979, under Pol Pot's regime in Cambodia (killing fields), 1.2 Million people were killed<sup>3</sup>.
- Between April and July 1994, 600,000 - 800,000 Tutsis and moderate Hutus were killed in Rwanda.

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<sup>3</sup> Officially not yet qualified as genocide.

V

**UNIVERSAL DECLARATION OF  
HUMAN RIGHTS  
(UDHR)**

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **UNIVERSAL DECLARATION OF HUMAN RIGHTS (10 DECEMBER 1948)**

#### **I. CHRONOLOGY OF THE PREPARATION (February 1946 - December 1948)**

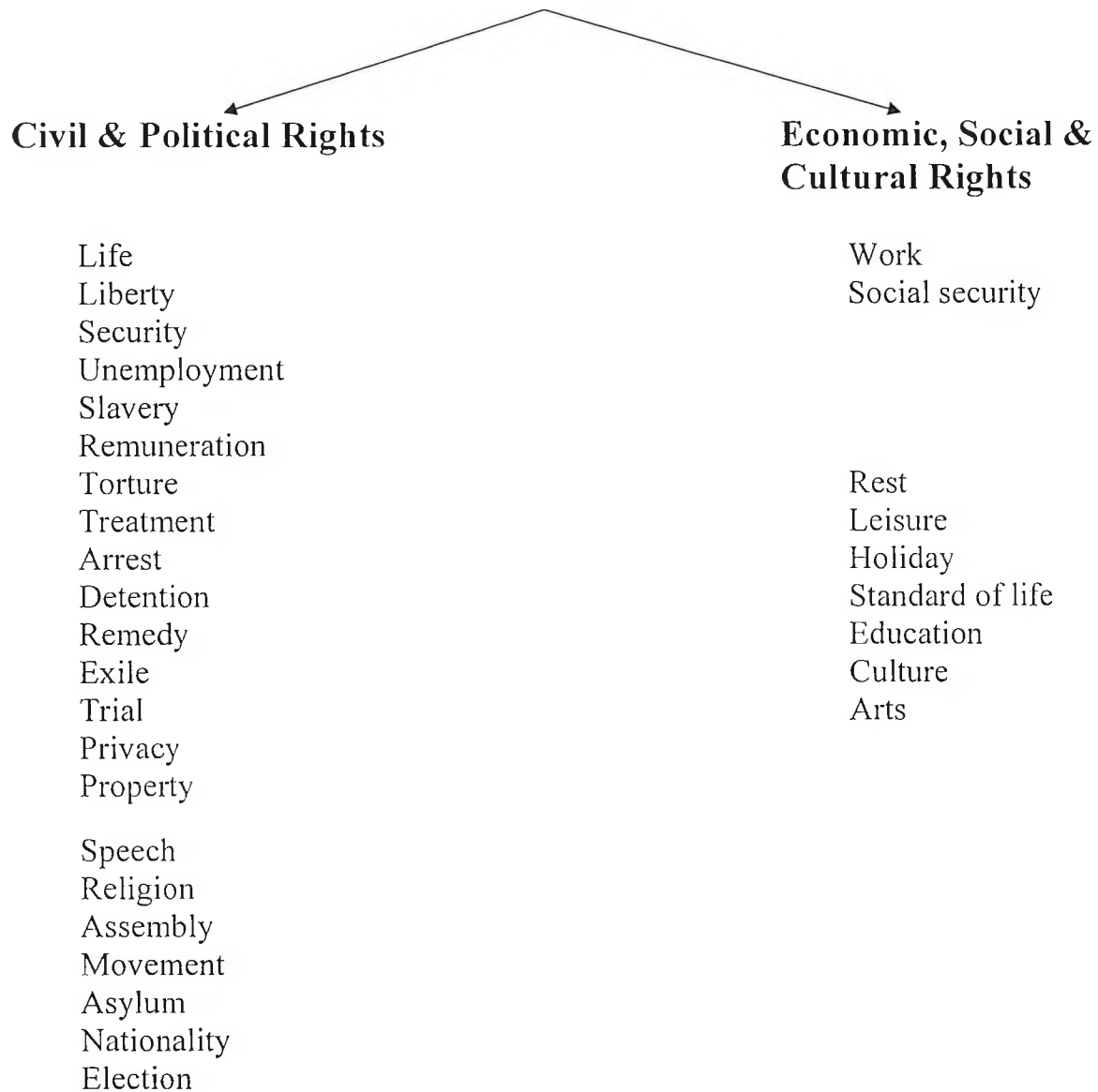
- **Creation of a drafting committee composed of 8 members elected on the basis of geographical distribution.**
- **Revision of the draft by a working group in 1947.**
- **First Draft Declaration submitted to Member States in December 1947.**
- **Second revision in May 1948 in the light of replies from Governments.**
- **Third revision of the draft declaration at the third session of the Commission on Human Rights from 24 May to 16 June 1948.**
- **Submission of the revised draft to the ECOSOC in June 1948, which submitted it once more to the General Assembly in August 1948.**
- **From September to December 1948, the General Assembly in Paris subjected the text to very thorough scrutiny, voting a total of 1,400 times, on practically every word and every clause.**
- **On 10 December 1948, the Assembly proclaimed the Universal Declaration of Human Rights by 48 votes to none, with 8 abstentions.**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### UNIVERSAL DECLARATION OF HUMAN RIGHTS



*Not included in the Declaration: Right to petition, self-determination, development, and rights of minority groups and indigenous people.*

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### UNIVERSAL DECLARATION OF HUMAN RIGHTS A SYNOPSIS

This abbreviated version of the 30 Articles of the Universal Declaration of Human Rights provides an overview of the principal rights and freedoms that are every person's birthright. The first two articles are fundamental principles underlying all human rights. Articles 3 to 21 comprise civil and political rights. Articles 22 to 27 refer to economic, social and cultural rights. The last three articles provide a framework of solidarity safeguarding the universal enjoyment of all human rights.

Article 1	Right to freedom and equality in dignity and rights
Article 2	Freedom from discrimination
Article 3	Right to life, liberty and security of person
Article 4	Freedom from slavery and servitude
Article 5	Freedom from torture or degrading treatment
Article 6	Right to recognition as a person before the law
Article 7	Right to equal consideration before the law
Article 8	Right to remedy through a competent tribunal
Article 9	Freedom from arbitrary arrest or exile
Article 10	Right to a fair trial or public hearing
Article 11	Right to be considered innocent until proven guilty
Article 12	Freedom from interference with privacy, including home, family and correspondence
Article 13	Right to freedom of movement and residence in one's own country and to leave and return at will
Article 14	Right to asylum
Article 15	Right to a nationality and freedom to change it
Article 16	Right to marriage and protection of family
Article 17	Right to own property
Article 18	Freedom of belief and religion
Article 19	Freedom of opinion and information
Article 20	Right to peaceful assembly and association
Article 21	Right to participate in government and in free elections and to equal access to public service
Article 22	Right to social security
Article 23	Right to work and fair pay for work
Article 24	Right to rest and leisure
Article 25	Right to adequate standard of living for health and well-being
Article 26	Right to education
Article 27	Right to participate in the cultural life of the community
Article 28	Right to social order assuring human rights
Article 29	Responsibility to community essential to free and full development of the individual
Article 30	Freedom from State or other interference in any of the above rights.

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### UNIVERSAL DECLARATION OF HUMAN RIGHTS

#### Legal nature of the UDHR:

- A statement of principles with moral force;
- Fundamental source in international treaties and in the growing legislative and judicial practice in many states;
- Powerful factor in the establishment of customary international human rights law;
- International human rights instruments affirm the obligation to implement the UDHR:
  - United Nations International Covenants (1966)
  - European Convention on Human Rights (1950)
  - American Convention on Human Rights (1969)
  - African Charter on Human and Peoples' Rights (1981)

**VI**

**INTERNATIONAL CONVENTION  
ON THE ELIMINATION OF  
ALL FORMS OF  
RACIAL DISCRIMINATION**



# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION\* (21 DECEMBER 1965)<sup>4</sup>

#### I. Definition:

"Racial Discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

#### II. Philosophy:

- Any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous;
- There is no justification for racial discrimination, in theory or in practice, anywhere;
- Existence of racial barriers is repugnant to the ideals of any human society.

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\* Sudan: 21 Mar 1977

<sup>4</sup> Entered into force on 4 January 1969.

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (21 DECEMBER 1965)**

#### **I. State Obligations:**

- To pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.
- To declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.
- To declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law.
- Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (21 DECEMBER 1965)

#### II. Monitoring Procedures

- Committee on the Elimination of Racial Discrimination<sup>5</sup>
  - Independent Experts (18) elected by the State parties.
  - Receives and studies the periodic reports of States.
  - Clause about individual complaints<sup>6</sup>.

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<sup>5</sup> The Committee was established on 10 July 1969.

<sup>6</sup> A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention.

**VII**

**INTERNATIONAL COVENANTS ON  
ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS**

**AND  
CIVIL AND POLITICAL RIGHTS**

**OPTIONAL PROTOCOLS TO THE  
COVENANT ON  
CIVIL AND POLITICAL RIGHTS**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS\* (16 DECEMBER 1966)<sup>7</sup>

### INTERNATIONAL COVENANTS ON CIVIL AND POLITICAL RIGHTS\* (16 DECEMBER 1966)<sup>8</sup>

### OPTIONAL PROTOCOLS TO THE COVENANT ON CIVIL AND POLITICAL RIGHTS (16 DECEMBER 1966)<sup>9</sup>

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\* 18 March 1986.

<sup>7</sup> Entered into force on 3 January 1976.

\* 18 March 1986.

<sup>8</sup> Entered into force on 23 March 1976.

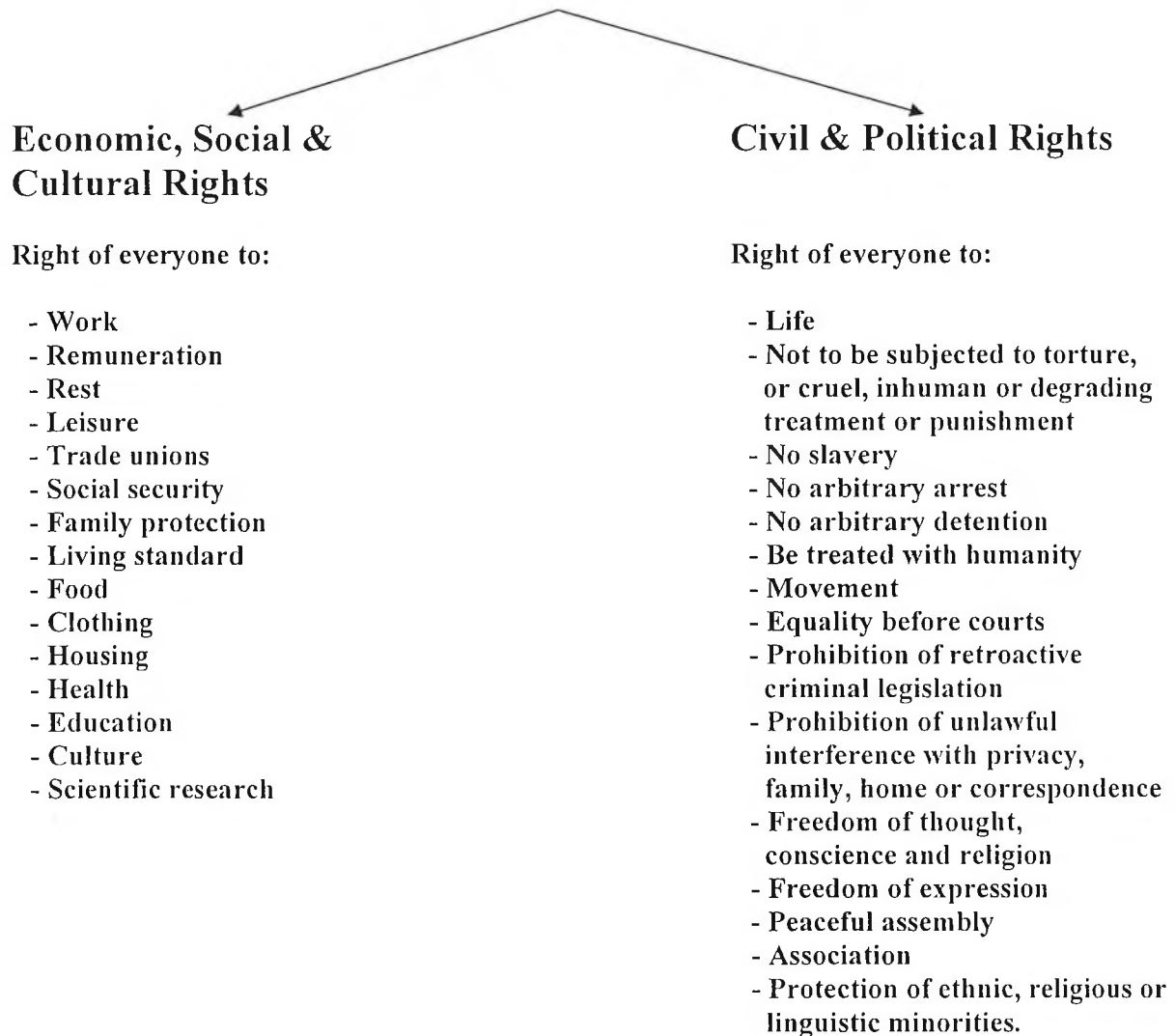
<sup>9</sup> Entered into force on 23 March 1976.

# HUMAN RIGHTS SYSTEM

## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### INTERNATIONAL COVENANTS ON HUMAN RIGHTS

#### **BINDING MULTILATERAL TREATIES ON HUMAN RIGHTS**



# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### ICCPR

- Are Treaties —————→ Legal Obligations
- Derogation Clause —————→ In Time of Public Emergency (Art. 4)
  - ↓
  - 1. Officially proclaimed
  - 2. Reasons for derogation
  - 3. Date of termination of derogation
  - 4. Consistent with int. law
  - 5. Non-discrimination
  - 6. Suspension of law but not imprescriptible rights:
    - ↓
    - 1. Right to life (Art. 6)
    - 2. Prohibition of torture and ill-treatment (Art. 7)
    - 3. Prohibition of slavery (Art. 8)
    - 4. Prohibition of imprisonment for failure to fulfil a contract (Art. 11)
    - 5. Non-retroactivity of criminal law (Art. 15)
    - 6. Recognition as a person before the law (Art. 16)
    - 7. Freedom of thoughts, conscience and religion (Art. 18).

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### OPTIONAL PROTOCOL<sup>10</sup> TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

#### I. HUMAN RIGHTS COMMITTEE

- LEGAL ASPECT

Recognition by the State party of the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the ICCPR.

- FUNCTIONS

- Study reports from States (Advisory & Monitoring Body);
- Formulate general comments (Advisory & Monitoring Body);
- Consider complaints from a State party regarding another State party (Conciliatory Body);
- Consider complaints from individuals against a State party (Inquiring & Investigative Body).

- COMPOSITION

18 members serving in their personal capacity for a term of 4 years.

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<sup>10</sup> The Second Optional Protocol aims at the abolition of the death penalty, which was adopted by the GA on 15 December 1989 and entered into force on 11 July 1991.



### VIII

## UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)<sup>11</sup>

### DEFINITION & STATUS:

- Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as:
  - obtaining information or a confession,
  - punishing, intimidating or coercing.
- The prohibition against torture is absolute.
- No exceptional circumstances whatsoever, including state of emergency or war or an order from a public authority may be invoked as a justification of torture.
- Obligation to prevent and punish not only acts of torture, but also other acts of cruel, inhuman or degrading treatment or punishment.
- Obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture from occurring.

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<sup>11</sup> The text of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and, following ratification by the 20th state party, it came into force on 26 June 1987.

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)**

- **MEASURES TO BE TAKEN:**
  - Prohibition and punishability by appropriate penalties of all acts of torture in domestic criminal law;
  - Education and information regarding the prohibition against torture to be fully integrated into the training of law enforcement personnel, civil or military personnel, medical personnel, public officials and others;
  - Systematic review of interrogation rules, instructions, methods and practices as well as of arrangements for the custody and treatment of suspects, detainees and prisoners;
  - Guarantees for the prompt and impartial investigation by competent authorities into allegations of torture; the protection of witnesses; and the possibility for victims to obtain redress and fair and adequate compensation and rehabilitation.
- States parties have an obligation not to expel, return or extradite a person to another State where he or she would be in danger of being subjected to torture.

## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)

- In order to monitor and review actions taken by States parties to fulfil their obligations, the Committee against Torture has four procedures at its disposal.
  - Obligation for all States parties to submit periodic reports to the Committee for examination, which results in the adoption of recommendations by the Committee to the State party in question.
  - If the Committee receives reliable information indicating that torture is being systematically practised in the territory of a State party, the Committee may decide to initiate a confidential inquiry of the situation. Such inquiry would be carried out in cooperation with the State party concerned.
  - The Committee can also consider complaints from individuals who claim to be victims of a violation by a State party to the Convention.<sup>12</sup>
  - A procedure of State-to-State complaints is provided for by the Convention, but has so far never been resorted to.

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<sup>12</sup> This may be done only if the State party concerned has declared that it recognizes the competence of the Committee to receive and examine such complaints.

**OPTIONAL PROTOCOL TO  
UNITED NATIONS CONVENTION  
AGAINST  
TORTURE AND OTHER CRUEL, INHUMAN OR  
DEGRADING TREATMENT OR PUNISHMENT  
(CAT)<sup>13</sup>**

- Establishment of "a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment".<sup>14</sup>

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<sup>13</sup> The Optional Protocol was adopted by the General Assembly on 18 December 2002 and came into force on 22 June 2006.

<sup>14</sup> To be overseen by a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Subcommittee on Prevention").

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### IX

## RIGHTS OF WOMEN

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### RIGHTS OF WOMEN (GENERAL OVERVIEW)

- **Convention on the Political Rights of Women.**
- **Maternity Protection Convention.**
- **Convention on the Nationality of Married Women.**
- **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.**
- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>15</sup>.**

#### I. PRINCIPLES:

- **Women's rights are fundamental rights.**
- **Full participation of women on an equal footing in all aspects of political, civil, economic, social and cultural life.**
- **Elimination of all forms of gender-related discrimination.**

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<sup>15</sup> Adopted by the UN General Assembly in 1979. The Convention came into force on 3 September 1981. So far, 185 Member States have ratified the Convention.

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### RIGHTS OF WOMEN

- The Convention defines discrimination against women as

*"...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."*
- Measures to end discrimination against women in all forms include:
  - Incorporation of the principle of equality of men and women in national legal systems;
  - Abolishment of all discriminatory laws;
  - Adoption of appropriate laws prohibiting discrimination against women;
  - Establishment of tribunals and other public institutions to ensure the effective protection of women against discrimination;
  - Elimination of all acts of discrimination against women by persons, organizations or enterprises.
- Equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life, including the right to vote and to stand for election, as well as education, health and employment.

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **X**

## **RIGHTS OF THE CHILD**



### CONVENTION ON RIGHTS OF THE CHILD (CRC)<sup>16</sup>

- **DEFINITION:** A child as any person under the age of 18
- **Basic human rights that children everywhere should have:**
  - Right to survival;
  - To develop to the fullest;
  - Protection from harmful influences, abuse and exploitation; and
  - To participate fully in family, cultural and social life.
- **The four core principles of the Convention are:**
  - non-discrimination;
  - devotion to the best interests of the child;
  - the right to life, survival and development; and
  - respect for the views of the child.

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<sup>16</sup> The United Nations General Assembly agreed to adopt the Convention into international law on November 20, 1989; it came into force on September 2, 1990, after it was ratified by the required number of nations.

### 1) Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography<sup>17</sup>

- Definition of the offences of ‘sale of children’, ‘child prostitution’ and ‘child pornography’.
- Obligations on governments to criminalize and punish the activities related to these offences.
- Punishment not only for those offering or delivering children for the purposes of sexual exploitation, transfer of organs or children for profit or forced labour, but also for anyone accepting the child for these activities.
- The obligation to consider the best interests of the child in any interactions with the criminal justice system.
- Support child victims with necessary medical, psychological, logistical and financial support to aid their rehabilitation and reintegration.
- International cooperation as a means of combating violations of children rights.

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<sup>17</sup> It was adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 and entered into force on 18 January 2002.

### 2) Optional Protocol on the Involvement of Children in Armed Conflict<sup>18</sup>

- Children under 15 should not be directly involved in hostilities;
  - 18 as the minimum age for compulsory recruitment into armed forces;
  - Prohibition and criminalisation of recruitment of persons under the age of 18 by armed groups<sup>19</sup>;
  - Setting out minimum voluntary recruitment of the age of 16 but outlining certain safeguards for such recruitment;
  - Persons recruited or used contrary to protocol jurisdiction should be demobilised.
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<sup>18</sup> It was adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000. It entered into force on 12 February 2002.

<sup>19</sup> Distinction from the armed forces of a State.

**XI**

**THE VIENNA  
WORLD CONFERENCE  
ON HUMAN RIGHTS**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### THE VIENNA WORLD CONFERENCE ON HUMAN RIGHTS<sup>20</sup>

#### I. Purpose:

- To mark the 45<sup>th</sup> anniversary of the adoption of UDHR and 25 years after the Teheran International Conference on Human Rights.
- To review and assess the progress that had been made in the field of human rights.
- To identify obstacles to further progress and ways in which they could be overcome.

#### II. Vienna Declaration and Plan of Action

- Reaffirming the principles of universality, objectivity, non-selectivity, interdependence and equality of rights.
- International community has the collective responsibility to ensure the conditions necessary for the enjoyment of human rights and fundamental freedoms.
- Encouraging member States to sign the major United Nations instruments based on human rights:
  - Equal rights;
  - Self-determination;
  - Democracy;
  - The rule of law;
  - Economic and social progress

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<sup>20</sup> The World Conference took place from 14 to 25 June 1993.

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### THE VIENNA WORLD CONFERENCE ON HUMAN RIGHTS

- Emphasising the principles of universality, indivisibility, interdependence, interrelatedness of human rights.
- The right to development as a universal and inalienable right.
- Better protection of the rights of women and children.
- Appointment of a special rapporteur on violence against women<sup>21</sup>.
- Encouraging all member States to ratify the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000.
- Reaffirming the rights of:
  - 1. Indigenous populations;
  - 2. Disabled persons;
  - 3. Vulnerable groups;
  - 4. Migrant workers.
- Urging States to act immediately to put an end to flagrant and systematic violations of human rights, including:
  - 1. Torture;
  - 2. Summary and arbitrary execution and disappearances;
  - 3. Genocide;
  - 4. Collective rape and other heinous crimes.
- Urging governments to combat against intolerance, xenophobia, racism and racial discrimination.
- Recommendations to strengthen the technical assistance and monitoring activities of the United Nations.

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<sup>21</sup> This recommendation was accepted by the ECOSOC in November 1994.

### XII

#### **INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (CMW)<sup>22</sup>**

- International standards for the protection of the rights of both documented and undocumented migrants;
- Obligations and responsibilities on the part of the sending and receiving States.
- Definition of rights of certain categories of migrant workers and their families<sup>23</sup>;
- Provision of information to employers, workers and their organizations on policies, laws and regulations;
- Rules for the recruitment and the return of migrant workers to their States of origin.
- Measures to be taken to combat illegal or clandestine migration.

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<sup>22</sup> In December 1990, the UN General Assembly adopted the International Convention. It came into force on 1 July 2003. So far, 21 Member States have ratified the Convention.

<sup>23</sup> Frontier workers, seasonal workers, seafarers employed on vessels registered in a State other than their own; workers on offshore installations; itinerant workers; migrants employed for a specific project; and self-employed workers.

### XIII

#### UNITED NATIONS CONVENTION AGAINST CORRUPTION<sup>24</sup>

- Measures to prevent corruption both for public and private sectors:
  - Establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties;
  - Public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit;
  - Public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures;
  - Transparency and accountability in matters of public finance;
  - Involvement of non-governmental and community-based organizations, as well as other elements of civil society, combating corruption.

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<sup>24</sup> The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003. On 14 December 2005, the Convention entered into force. As January 2007, 140 Member States have ratified the Convention.



### UNITED NATIONS CONVENTION AGAINST CORRUPTION

- **Criminalisation of acts of corruption:**
  - Establishment of criminal and other offences to cover a wide range of acts of corruption;
  - Criminalisation not only for bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption.
- **International Cooperation**
  - To fight against corruption, including prevention, investigation, and the prosecution of offenders;
  - To render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders;
  - To undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

### UNITED NATIONS CONVENTION AGAINST CORRUPTION

- **Asset Recovery**
  - **In the case of embezzlement of public funds, the confiscated property should be returned to the state requesting it;**
  - **In the case of proceeds of any other offences, the property should be returned providing the proof of ownership or recognition of the damage caused to a requesting state;**
  - **In all other cases, priority consideration would be given:**
    1. **to the return of confiscated property to the requesting state;**
    2. **to the return of such property to the prior legitimate owners;**
    3. **to compensation of the victims.**

### XIV

## CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES<sup>25</sup>

- Emphasising full and effective participation and inclusion in society by persons with disabilities.
- Persons with disabilities are "rights holders" and "subjects of law" and should fully participate in formulating and carrying out plans and policies affecting them.
- Covering all aspects of the human rights issues of persons with disabilities.
- Issues in the Optional Protocol cover monitoring and reports of the Convention.
- Governments that ratify the Convention have to treat persons with disabilities as subjects of the law with clearly defined rights<sup>26</sup>.
- It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations.

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<sup>25</sup> The Convention was adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. The Convention and its Optional Protocol opened for signature by all States and by regional integration organizations at United Nations Headquarters in New York on 30 March 2007.

<sup>26</sup> States parties have obligation to remove barriers in society and provide reasonable accommodations to the physical environment to facilitate participation and inclusion.

### XV

## INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE<sup>27</sup>

- Definition:

- *"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."*

- *"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."*

- Widespread or systematic use of enforced disappearance considered as a crime against humanity in Article 6.

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<sup>27</sup> The Convention was adopted by the United Nations General Assembly on 20 December 2006 and opened for signature on 6 February 2007. As of April 2007, 59 states have signed. It will come into force when ratified by 20 states-parties.

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

- **Measures to be undertaken:**
  - To investigate acts of enforced disappearance and bring those responsible to justice;
  - To ensure that enforced disappearance constitutes an offence under its criminal law;
  - To establish jurisdiction over the offence of enforced disappearance when the alleged offender is within its territory, even if they are not a citizen or resident;
  - To cooperate with other states in ensuring that offenders are prosecuted or extradited, and to assist the victims of enforced disappearance or locate and return their remains;
  - To respect minimum legal standards around the deprivation of liberty, including the right for imprisonment to be challenged before the courts;
  - To establish a register of those currently imprisoned, and allow it to be inspected by relatives and counsel;
  - To ensure that victims of enforced disappearance or those directly affected by it have a right to obtain reparation and compensation.

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE**

- **Implementation Mechanism:**
  - **The Convention will be governed by a Committee on Enforced Disappearances elected by its parties.**
  - **Parties are obliged to report to this committee on the steps they have taken to implement it within two years of becoming subject to it.**
  - **The Convention includes an optional complaints system whereby citizens of parties may appeal to the Committee for assistance in locating a disappeared person.**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### XVI

#### MONITORING AND FOLLOW-UP MECHANISMS

##### TREATIES

##### TREATY BODIES

- |  |       |   |
|--|-------|---|
| 1. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)     | ————→ | Committee on the Elimination of All Forms of Racial Discrimination        |
| 2. International Covenant on Civil and Political Rights (ICCPR)                                  | ————→ | Human Rights Committee  |
| 3. International Covenant on Economic, Social and Cultural Rights (ICESCR)                       | ————→ | Committee on Economic, Social and Cultural Rights                         |
| 4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)            | ————→ | Committee on the Elimination of All Forms of Discrimination Against Women |
| 5. Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) | ————→ | Committee Against Torture   |
| 6. Convention on the Rights of the Child (CRC)   | ————→ | Committee on the Rights of the Child                                      |
| 7. Convention on the Protection of the Rights of All Migrant Workers & Members of Their Families | ————→ | Committee on the Rights of Migrant Workers                                |
| 8. Convention on the Rights of Persons with Disabilities   | ————→ | Committee on the Rights of Persons with Disabilities                      |

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **OBJECTIVES OF THE REPORTING SYSTEM**

- 1. Comprehensive review with respect to national legislation, administrative rules, procedures and practices;**
- 2. State party monitors the actual situation with respect to each of the rights on a regular basis (raising awareness);**
- 3. Elaboration of clearly stated and carefully targeted policies;**
- 4. Facilitating public scrutiny of government policies and encouraging the involvement of various sectors of society in their formulation;**
- 5. Providing a basis for the evaluation of the progress in human rights;**
- 6. Developing a better understanding of the problems and shortcomings encountered in efforts to progressively realize human rights;**
- 7. Enabling the Committee and the State parties as a whole to facilitate the exchange of information among States.**



### XVII

#### MECHANISMS OUTSIDE THE PURVIEW OF THE CONVENTIONS

##### 1. ECOSOC resolution 1235 of 6 June 1967:

**Procedures for examining human rights violations by the Human Rights Commission.**



**Study of mechanisms to deal with various Communications sent by individuals and Non-Governmental Organisations (NGOs)**  
*(Republic of South Africa, Territory of West Africa & Southern Rhodesia)*



##### 2. ECOSOC resolution 1503 of 27 May 1970:

**The confidential procedure authorizing the Sub-Commission to appoint a select working group to examine all communications received by the United Nations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.**

*(Chile)*

# HUMAN RIGHTS SYSTEM

## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### XVIII

#### MONITORING SYSTEMS

##### SPECIAL PROCEDURES MANDATE HOLDERS:

- Working Group on Enforced or Involuntary Disappearances (1980)
- Special Rapporteur on extrajudicial, summary or arbitrary executions (1982)
- Special Rapporteur on questions relating to torture and other cruel, inhuman or degrading treatment or punishment (1985)
- Special Rapporteur on freedom of religion or belief (1986)
- Special Rapporteur on the sale of children (1990)
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (1993)
- Special Rapporteur on Racism (1993)
- Special Representative of the Secretary-General on children and armed conflict (1993)
- Special Rapporteur on violence against women, its causes and consequences (1994)
- Special Rapporteur on Judges (1994)
- Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (1995)
- Special Rapporteur on the right to education (1998)
- Independent Expert on the question of human rights and extreme poverty (1998)
- Special Rapporteur on Migrants (1999)
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (2000)
- Special Rapporteur on the right to food (2000)
- Independent Expert on the effects of economic reform policies and foreign debt (2000)
- Special Representative of the Secretary-General on the situation of human rights defenders (2000)
- Special Rapporteur on Indigenous People (2001)
- Independent Expert of SG on violence against children (2001)
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2002)
- Working Group on people of African descent (2002)
- Special Rapporteur on trafficking in persons, especially in women and children (2004)
- Representative of the Secretary-General on the human rights of internally displaced persons (2004)
- Special Adviser of the Secretary-General on the Prevention of Genocide (2004)
- Special Rapporteur on terrorism (2005)
- Independent Expert on minorities (2005)
- Independent Expert on Solidarity (2005)
- Special Representative of the Secretary-General on transnational corporations and other business enterprises (2005)
- Working Group on Mercenaries (2005)
- Special Rapporteur on contemporary forms of slavery, including its causes and consequences (2007).

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### MONITORING SYSTEMS

#### Special Procedures mandate holders:

- Special Representative of the Secretary-General for human rights in Cambodia (1993)
  - Independent Expert on the situation of human rights in the Sudan (1993)<sup>28</sup>
  - Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967
  - Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (2004)
  - Special Rapporteur on the situation of human rights in Myanmar (1992)
  - Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia (1993)
  - Independent Expert on DRC (1994)
  - Independent Expert on the situation of human rights in Burundi (1995)
  - Independent Expert on Haiti (1995)
  - Independent Expert on Uzbekistan (2004)
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<sup>28</sup> The mandate of the Special Rapporteur on Sudan was terminated in 2004. In 2005, the mandate of the Independent Expert was established.

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **XIX**

## **INTERNATIONAL TRIBUNALS**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### **I. International Criminal Tribunal for the Former Yugoslavia (ICTY)**

- Was established by Security Council resolution 827 on 25 May 1993 due to the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991<sup>29</sup>.
- Mandate:
  - To bring to justice persons allegedly responsible for serious violations of international humanitarian law;
  - To render justice to the victims;
  - To deter further crimes;
  - To contribute to the restoration of peace by holding accountable persons responsible for serious violations of international humanitarian law
- The Tribunal's authority is to prosecute and try four clusters of offences:
  - Grave breaches of the 1949 Geneva Conventions.
  - Violations of the laws or customs of war.
  - Genocide.
  - Crimes against humanity.
- Its geographic jurisdiction covers any of the crimes as above listed, committed on the territory of the former Yugoslavia since 1991<sup>30</sup>.

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<sup>29</sup> The ICTY is located in The Hague, The Netherlands.

<sup>30</sup> However, the ICTY can claim primacy over national courts, and may take over national investigations and proceedings at any stage if this proves to be in the interest of international justice.

### II. International Criminal Tribunal for Rwanda (ICTR)

- Recognizing that serious violations of humanitarian law were committed in Rwanda, and acting under Chapter VII of the United Nations Charter, the Security Council created the International Criminal Tribunal for Rwanda (ICTR) by resolution 955 of 8 November 1994.
- The purpose of this measure was to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region.
- The ICTR was established for the prosecution of Rwandans responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994.
- Has jurisdiction over the crimes of genocide, crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.
- ICTR's groundbreaking jurisprudence has established rape as a crime of genocide.
- Persons responsible for “hate media” which encouraged genocide have also been prosecuted.
- The seat of the Tribunal is located in Arusha, United Republic of Tanzania.

### III. International Criminal Court (ICC)

- Was established by the Rome Statute of the International Criminal Court, so called because it was adopted in Rome, Italy on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. The Statute entered into force on 1 July 2002, once 60 States had become Parties<sup>31</sup>.
- Is an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes.
- The Court can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a state party, or a situation is referred to the Court by the United Nations Security Council.
- The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility.
- The Rome Statute, the Regulations of the Court, the Rules of Procedure and Evidence, and the Elements of Crimes comprise the Court's basic legal texts, setting out its structure, jurisdiction and functions.

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<sup>31</sup> The ICC is based on a treaty, the Rome Statute, joined by 108 countries.

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### III. International Criminal Court (ICC)

- The official seat of the Court is in The Hague, Netherlands, but its proceedings may take place anywhere.
  - To date, the Court has opened investigations into four situations: Northern Uganda, the Democratic Republic of the Congo, the Central African Republic and Darfur. The Court has issued public arrest warrants for twelve people<sup>32</sup>.
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<sup>32</sup> The Court's first trial, of Congolese militia leader Thomas Lubanga, was due to begin on 23 June 2008 but it was halted on 13 June when judges ruled that the Prosecutor's refusal to disclose potentially exculpatory material had breached Lubanga's right to a fair trial.



**XX**

**THE  
UNITED NATIONS  
HUMAN RIGHTS COUNCIL  
(HRC)**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### THE UNITED NATIONS HUMAN RIGHTS COUNCIL<sup>33</sup>

- **STATUS**

- The United Nations Human Rights Council is an international body within the United Nations System. Its stated purpose is to address human rights violations.
- The Council is the successor to the United Nations Commission on Human Rights<sup>34</sup>.
- The Council is a subsidiary body of the UN General Assembly.

- **STRUCTURE**

- The 47 seats in the Council are distributed among the UN's regional groups as follows: 13 for Africa, 13 for Asia, 6 for Eastern Europe, 8 for Latin America and the Caribbean, and 7 for the Western European and Others Group.
- "Members elected to the Council shall uphold the highest standards in the promotion and protection of human rights" and will be subject to periodic review.

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<sup>33</sup> The United Nations General Assembly passed GA resolution 60/251 on 15 March 2006, which created the new human rights body.

<sup>34</sup> The UN Commission on Human Rights concluded its work on 16 June 2006, making way for the first meeting of the Council which was held on 19 - 30 June 2006.

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### THE UNITED NATIONS HUMAN RIGHTS COUNCIL

- **STRUCTURE**

- Each member nation of the Council must be approved individually and directly by a majority (96 of 191) of the members of the General Assembly, in a secret ballot<sup>35</sup>.
- Members of the Council are elected to staggered three-year terms.
- Council membership is limited to two consecutive terms, and any Council member may be suspended by a two-thirds vote of the Assembly.

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<sup>35</sup> The first election of members was held on 9 May 2006. Their terms of office began on 19 June 2006.

# **HUMAN RIGHTS SYSTEM**

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## **HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW**

### **THE UNITED NATIONS HUMAN RIGHTS COUNCIL**

- **UNIVERSAL PERIODIC REVIEW (UPR)**

- All 192 UN member States are examined by the UPR mechanism;
- The periodicity of the review for the first cycle is four years;
- Consideration of 48 States per year. So far, 32 countries have been reviewed in 2008;
- The order of the review for the first cycle has already been adopted by the HRC.

#### **Objectives:**

- The improvement of the human rights situation on the ground
- The fulfilment of the State's human rights obligations
- Assessment of positive developments and challenges faced by the State
- The enhancement of the State's capacity
- The sharing of best practice among States and other stakeholders
- The encouragement of full cooperation and engagement with the Council, other human rights bodies and OHCHR.

### XX

- **UNIVERSAL PERIODIC REVIEW (UPR)**

**Principles:**

- **Universal coverage**
- **Review of all human rights**
- **Complement and not duplicate other international human rights mechanisms**
- **Cooperative mechanism based on objective and reliable information**
- **Intergovernmental process**
- **Conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicised manner**
- **Full integration of a gender perspective**
- **Ensure the participation of all relevant stakeholders.**

### XX

- **UNIVERSAL PERIODIC REVIEW (UPR)**

**Process:**

**The UPR is based on 3 types of documents:**

- **Information prepared by the State concerned;**
- **A compilation prepared by OHCHR, including relevant information from reports of treaty bodies, special procedures, and observations and comments by the State concerned;**
- **A summary prepared by OHCHR of information provided by other relevant stakeholders, which includes NGOs & NHRIs.**

**The UPR review will be conducted in a Working Group, the outcome of which will be a report. The WG report will be adopted by the Plenary of the HRC.**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### XX

- **UNIVERSAL PERIODIC REVIEW (UPR)**

#### **Structure of the UPR Report**

- **Government and nature of the political regime;**
- **International human rights obligations;**
- **Incorporation of international treaties in domestic law;**
- **Constitution and major human rights legislation;**
- **National Human Rights Protection Systems, including courts, NHRIs, NGOs and other mechanisms;**
- **Government mechanisms following-up on the COs of TB, Recommendations of SPs and UPR;**
- **Equality and non-discrimination;**
- **Civil and political rights & fundamental freedoms;**
- **Personal liberties and security;**
- **Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment;**
- **Administration of justice;**
- **ESC rights (health, housing, education, work, social security...);**
- **Women's rights and gender equality;**
- **Children's rights;**
- **Promotion and protection of the rights of specific groups, including: migrants, disabled persons, minorities, indigenous peoples.**

# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

- **ADVISORY COMMITTEE OF THE HRC**

- A new subsidiary body of the Human Rights Council to replace the former Sub-Commission on the Promotion and Protection of Human Rights.
- Composed of 18 independent experts elected by the Human Rights Council;
- Acts as a “think tank”:
  - Prepares studies on conceptual human rights issues;
  - Provides input and expertise to the deliberations of the Human Rights Council.
- Convenes up to two sessions for a maximum of 10 working days. Additional sessions may be scheduled on an ad hoc basis upon approval by the Council.

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# HUMAN RIGHTS SYSTEM

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### XXI

#### OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

- OHCHR has field presences around the globe, which take the form of regional offices, country offices, human rights advisors and components in UN peace missions.
- OHCHR currently has 8 regional offices.
- There are 11 existing country offices.
- There are 12 human rights advisors, who are individuals that work as part of UN Country Teams, including Indonesia.
- There are also human rights components of peace or political missions, which currently exist in 16 countries, including Timor Leste.
- Staff:
  - 920 staff as of November 2007,
  - 53% work in 11 country offices and 8 regional offices around the world,

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- **There are also:**
  - 420 international human rights officers serving in UN peace missions,
  - 12 human rights advisers in UN country teams in the field.
- **Budget:**
  - 2006-7 biennium - \$US 86.9 m, 2.26% of U.N.'s global budget of \$US 3.8 billion;
  - Voluntary contributions in 2006 - \$US 85.3 m.
- **Background to the mandate of the High Commissioner:**
  - Vienna World Conference on Human Rights, 1993
  - Vienna Declaration and Programme of Action (reaffirmed all human rights are universal, indivisible, interdependent and interrelated. Included a recommendation to establish the post of a United Nations High Commissioner for Human Rights)
  - GA Resolution 48/141 (Dec 1993).

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- **Mandate of the High Commissioner, GA Resolution 48/141:**
  - **To promote and protect all human rights for all (civil, political, economic, social and cultural rights, including the right to development);**
  - **To carry out tasks assigned to him/her by the competent bodies of the united nations system in the field of human rights and make recommendations to them;**
  - **To provide advisory services and technical cooperation for human rights;**
  - **To coordinate United Nations human rights education and public information programmes;**
  - **To play an active role in removing the current obstacles to the realization of human rights;**
  - **To play an active role in preventing the continuation of human rights violations;**
  - **To engage in dialogue with all governments with the view to securing respect for all human rights;**
  - **To enhance international cooperation for the promotion and protection of human rights;**
  - **To coordinate human rights activities throughout the UN system;**
  - **To rationalize, adapt, strengthen and streamline the UN human rights machinery.**

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### OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

- However, human rights are an integral part the work of all the offices of the U.N.
    - Secretary General Kofi Annan's third report on U.N. reform of 2005 entitled *In Larger Freedom* - highlighted that human rights are, alongside development and (peace and) security, one of the three pillars of the United Nations.
    - "We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights." (A/59/2005, para.17).
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### XXII

## REGIONAL HUMAN RIGHTS MECHANISMS

### A) THE EUROPEAN HUMAN RIGHTS SYSTEM

- The European Convention on Human Rights (1950) is the first human rights instrument of the Council of Europe enabling consideration of complaints by states or individuals that could lead to a binding determination by the European Court of Human Rights.
- Once a case has been communicated to the respondent state, an applicant may become eligible for legal aid from the Court.
- The judgement of the Court includes measures in favour of the applicants to put an end to violations and erase their consequences, to prevent new, similar violations, the amendment or introduction of legislation, and review of the interpretation of domestic legislation.
- The Committee of Ministers is the organ for supervising execution of the Court's judgements.
- The Committee of Minister's ultimate measure available for pressure to secure execution of the Court's judgements is the suspension of voting rights in the Committee of Ministers, or even expulsion from the Council of Europe.

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### A) THE EUROPEAN HUMAN RIGHTS SYSTEM

- With regard to the absolute prohibition of Torture and Inhuman or Degrading Treatment or Punishment in the European Convention on Human Rights, a new instrument as a non-judicial preventive machinery has been introduced to protect all detainees. This mechanism contains the visit of all places of detention by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which is comprised of independent experts.
- The CPT has two guiding principles - cooperation and confidentiality - though it is empowered to make a public statement about failure to cooperate or improve the situation.
- Under the European Social Charter, there is a Framework Convention for the Protection of National Minorities. Only certain organisations whose competence in the field has been recognised by the European Committee of Social Rights are entitled to lodge complaints with the Committee, which in turn takes a decision on the merits of the complaint, and the Committee of Ministers adopts a resolution on the case, and may recommend that the state concerned take specific measures to bring the situation into line with the European Social Charter.
- The European Commission against Racism and Intolerance: There is a system of State reporting, which is not public until states have commented.

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### B) THE INTER-AMERICAN HUMAN RIGHTS SYSTEM:

- The Inter-American System was created in 1890 under the name of the Pan American Union, and is the oldest continuing existing regional organization.
- The Organization of American States (OAS) was created in 1948.
- The Charter of the OAS and the American Declaration on the Rights and Duties of Man were adopted at the founding meeting in Bogotá in April 1948.
- In 1948, the OAS consisted of 21 member states; today it consists of 35.
- Within the OAS, there are 3 political vectors: the US, which is its own force; the mostly Spanish speaking Latin American countries; and the English speaking Caribbean.
- In 1959 the OAS adopted the Declaration of Santiago, in which it attempted to set forth the attributes of democratic rule.

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### B) THE INTER-AMERICAN HUMAN RIGHTS SYSTEM:

- The evolution of the inter-American system for the protection of human rights:
  - 1959 - 1989: Characterised by massive violations of human rights by military governments (disappearances, torture, extrajudicial executions).
  - 1989 – 2001: Following the fall of the Berlin Wall in Europe in 1989, in an act of equivalent significance to the Americas, in 1991 the OAS for the first time was able to declare (in a second Declaration of Santiago) that the region was now comprised of democratic governments.
  - 11 September 2001: Adoption of the Inter-American Democratic Charter in Lima, Peru. This made the preservation of democracy a political concern of the organisation.
- The Inter-American Commission on Human Rights is the principal organ of the OAS mandated to protect and promote human rights in the Americas<sup>36</sup>.
- In 1969, the American Convention on Human Rights was adopted, though it did not enter into force until 1978. Today, 25 States are State Party to the Convention, with 21 recognizing the contentious jurisdiction of the Inter-American Court (under article 62), which began to function in 1979.

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<sup>36</sup> The Commission is composed of 7 commissioners, elected by the General Assembly. Their term of office is four years, and they may be re-elected only once. The Commission was created in 1959 by a resolution of the political bodies and not by a treaty.



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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### B) THE INTER-AMERICAN HUMAN RIGHTS SYSTEM:

- Every state in Latin America has become a State Party to the American Convention on Human Rights and has accepted the legally binding obligations of the Convention, but the English speaking states have not (the US, Canada, nor the vast majority of the English speaking Caribbean states).
- The primary functions the Commission performs in the exercise of its mandate are:
  - To receive, analyze and investigate individual petitions alleging human rights violations<sup>37</sup>; and
  - To prepare and publish reports on individual cases, including recommendations to member States<sup>38</sup> (in this sense, the Commission is a quasi-judicial body);
  - To monitor the general human rights situation in the Member States;
  - To conduct visits to Member States to engage in in-depth analysis of the human rights situation;
  - To prepare and publish country, thematic and follow up reports;
  - To refer cases to the Inter-American Court of Human Rights and appear before it in litigation (serving as Prosecutor of the State).

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<sup>37</sup> The Commission currently receives a little over 1000 petitions per year.

<sup>38</sup> If the State does not comply with the Commission's recommendations, the Commission is now obliged to take the case to the Inter-American Court.

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### B) THE INTER-AMERICAN HUMAN RIGHTS SYSTEM:

- In 1978, the American Convention on Human Rights entered into force with the 11<sup>th</sup> ratification. The major innovation resulting from its entry into force was the creation of the Inter-American Court of Human Rights. The Court is composed of seven judges elected in an individual capacity by State Parties to the American Convention. Their term of office is 6 years, and they may be re-elected only once. The Court has contentious jurisdiction (to decide individual cases presented to it) and advisory jurisdiction.
- Current issues before the Court:
  - Killing of street children (Guatemala)
  - Indigenous land rights questions (Nica)
  - Prison conditions (Peru, Argentina, Brazil, Trinidad and Tabago)
  - Freedom of expression (Chile)
  - Death penalty (Trinidad and Tobago, Guatemala)
  - Military trials of civilians (Peru)
  - Massacres during low level armed conflict (Colombia, Guatemala)
  - Compatibility of amnesty laws with the American Convention (Peru, Chile)
  - Due process violations – illegal detentions and torture (Ecuador)

## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### C) THE AFRICAN HUMAN RIGHTS SYSTEM:

- The African system functions within the framework of a political umbrella body, which was the Organisation of African Unity (OAU), and is now the African Union (AU).
- When African states began to become independent from colonial rule in 1957, the pan-Africanism that arose was one that granted the independence of each of the states. Subsequently, in the 1963 OAU Charter, the core principle was sovereignty and non-interference in the domestic affairs of member states, with the objectives economic and political<sup>39</sup>.
- By the time the AU came into existence in 2001 with the AU Constitutive Act, a clear transformation had taken place. Although the principle of non-interference and sovereignty was retained, article 4(h) of the Charter allows the African Union to intervene (military, humanitarian intervention) in a member state if serious human rights violations (e.g. genocide) occur<sup>40</sup>. This represented a big inroad into the principle of non-interference.

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<sup>39</sup> OAU Charter, Article 3: The member states solemnly affirm and declare their adherence to the following principles:

- i) The sovereign equality of all member states;
- ii) Non-interference in the internal affairs of states;
- iii) Respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence;
- iv) Peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration.

<sup>40</sup> AU Constitutive Act, Article 4: The Union shall function in accordance with the following principles:

- i) Sovereign equality and interdependence among member states of the Union;
- ii) Non-interference by any member state in the internal affairs of another;
- iii) The right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;
- iv) The right of member states to request intervention from the Union in order to restore peace and security;
- v) Promotion of gender equality;
- vi) Respect for democratic principles, human rights, the rule of law and good governance;
- vii) Condemnation and rejection of unconstitutional changes of governments.

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### C) THE AFRICAN HUMAN RIGHTS SYSTEM:

- Other principles in the AU Constitutive Act include human rights, the rule of law, the promotion of gender equality, and the condemnation of unconstitutional changes of government. All these aspects were absent from the establishment of the OAU Charter in 1963.
- The AU's two main organs (established in 2001) are the AU Assembly (Heads of States) and AU Executive Council (Ministers of Foreign Affairs).
- There are 53 countries in Africa, all of which are members of the AU.
- The 1981 African Charter on Human and Peoples' Rights allowed for the inspection of the domestic affairs of African states by an independent treaty body (in the form of the African Commission on Human and Peoples' Rights, which came into existence with the coming into force of the Charter on 21 October 1986). This substantially eroded the principle of non-interference in the affairs of sovereign states<sup>41</sup>.
- Institutions:
  - African Commission on Human and Peoples' Rights (African Charter on Human and Peoples' Rights; African Women's Protocol), Secretariat: Banjul, The Gambia, 11 Commissioners (independent experts), 5 are currently women. It interprets and supervises the African Charter and the Africa Women's Protocol.

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<sup>41</sup> It occurred due to the political developments in 1979, when 3 notorious dictatorships (in Uganda, Equatorial Guinea, and the Central African Empire) came to an end. In the context of having gone through these regimes that had perpetrated gross violations of human rights, African leaders stood back and said that the African continent needed to put in place an instrument that would safeguard against such violations occurring in the future.

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### C) THE AFRICAN HUMAN RIGHTS SYSTEM:

- African Committee of Experts on the Rights of the Child (African Children's Charter), Secretariat: AU, Addis Ababa. Has just started functioning.
- African Court on Human and Peoples' Rights, Seat: Arusha, Tanzania. The Court has entered into force, but has not heard any judgements yet. It is in the process of establishing its rules of procedure.
- The mandate of the African Commission on Human and Peoples' Rights is both promotional and protective<sup>42</sup>. It only meets for a limited period of time (15 days, twice a year).
- Like in the Inter-American system, the African Commission has also established thematic rapporteurs (states need to give consent for visits to take place). This thematic approach is seen to be less confrontational than identifying particular states in rapporteurships<sup>43</sup>.

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<sup>42</sup> The Commission's promotional function is more prominent than the European system. Its sessions are part public and part private. The public session (the first 7 days) creates an important space for dialogue and interventions by NGOs. NGOs acquire observer status with the African Commission (currently about 400) and then attend all of the sessions along with government representatives. NGOs make statements about the human rights situation in their country, to which governments then respond. This is one of the only instances where NGOs and government officials engage in a dialogue on African soil in a relatively independent and open discussion forum. For example, when dialogue was completely stifled in Zimbabwe, the setting of the African Commission provided an opportunity for NGOs to bring their issues into the public sphere and to engage with the government on these issues. The Commission's promotional mandate also consists of the consideration of state reports. In this sense, the African Commission is different from the other regional bodies in that it emulates one of the important UN procedures by requiring states to submit periodic reports (every 2-4 years). The reports outline what the state has done to give effect to the rights that are set out in the African Charter on Human and Peoples' Rights. There is then an engagement between the government representative and the independent experts of the Commission. This event is well publicised, and leads to the adoption of concluding observations by the Commission.

<sup>43</sup> Established so far: Special Rapporteurs on Extrajudicial and Arbitrary Executions and Killings in Africa; Prisons and Conditions of Detention in Africa; the Rights of Women in Africa; Human Rights Defenders in Africa; Refugees and Internally Displaced Persons in Africa; Freedom of Expression in Africa; and the Working Group on Indigenous Peoples.

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### C) THE AFRICAN HUMAN RIGHTS SYSTEM:

- Protective mandate – like in the other systems, the African Commission has an individual complaints mandate and an inter-state complaints mandate<sup>44</sup>.
- Compliance under the African Commission's mandate: The Commission has so far issued 100 findings. States have only complied with the Commission's findings and specific remedies in a small minority of cases<sup>45</sup>.
- The African Commission acted as a quasi-judicial body. It did not have judicial powers, only recommendatory powers<sup>46</sup>.
- A protocol was drafted to the African Charter on Human and Peoples' Rights to establish a Court. In 2007 the protocol came into force and the Court was essentially established. The Court supplements the Commission's protective mandate, dealing with communications against individuals and states.
- In terms of who may approach the Court, it is similar to the inter-American system<sup>47</sup>.

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<sup>44</sup> Individual complaints mechanism – the African Commission has not heard as many cases as the other two systems (just short of 100 cases) due to the fact that it is the youngest of the systems. It took a number of years for this part of its mandate to start functioning well, due largely to the fact that it has a very restricted budget (less than USD 1 million per year) and a small staff (only 5 or 6 full-time lawyers working with part-time commissioners at any one time). However, when a case reaches the Commission it is much more likely that it will be found to be admissible. Although the Commission has the same requirements of exhaustion of local remedies, it has adopted a very progressive position. For example, when massive violations are alleged to be taking place in a state, the Commission has waived the domestic remedies requirement on the basis that the state would have knowledge that these violations were taking place and would have had an opportunity to rectify the situation.

<sup>45</sup> Due to pressure from NGOs and developments in other systems, the Commission is now more concerned with compliance, asserting that States are bound to comply with their decisions. To this effect, States must report within 90 days about steps that they have taken to give effect to the findings of the Commission.

<sup>46</sup> Even though it took upon itself to make decisions and issue remedies, it was still up to the AU to decide as a political body how it would take this matter further, which ultimately politicised the matter.

<sup>47</sup> The individual has to go through the admissibility phase and the merits phase, which still involves submitting the case to the Commission. It is then up to the Commission or the State concerned to submit the matter further to the Court (the individual does not have the competence to decide whether the matter will proceed from the Commission to the Court). However, the African system goes one step further than the inter-American system by allowing for

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### C) THE AFRICAN HUMAN RIGHTS SYSTEM:

- 18 states have ratified the protocol and are part of the Court system<sup>48</sup>.
- Whereas the Commission's findings were clearly recommendatory, the Court's judgements are binding. States undertake to comply with judgements, and compliance has to be monitored by the Executive Council on behalf of the Assembly.
- Another aspect in which the Court will make a big difference will be the publicity given to the protection of human rights (dealing with individual communications)<sup>49</sup>.

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direct access in the sense of bypassing the Commission (the individual may go directly to the Court in the event that the State has made a specific Optional Declaration to that effect).

<sup>48</sup> The AU, when it was founded, established a Court of Justice (for economic and political integration). With the establishment of the African Court of Human and Peoples' Rights, there are now two Courts within the AU structure (similar to the European system, with the Court of Justice for the EU, and the European Court of Human Rights). Due to resource constraints, a few years ago the AU Assembly decided to merge these two courts, which will probably happen over the next five years, at which time there will then be one court in Africa, with a Human Rights Chamber and a General Affairs Chamber.

<sup>49</sup> Previously, the Commission dealt with these in private, which led to a lack of publicity with regard to this aspect of its work. For the Court, the proceedings will be open and the findings of the Court will be given much more exposure.

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## HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

### XXIII

## NATIONAL HUMAN RIGHTS INSTITUTIONS

### “PARIS PRINCIPLES”

- In 1993, the United Nations General Assembly, in its resolution 48/134, unanimously adopted the guiding principles relating to the status of NHRIs, the Paris Principles:

- Independence (legal, operational, and financial) guaranteed by statute or Constitution;
- Autonomy from Government;
- Broad mandate based on universal human rights standards;
- Adequate resources (including adequate funding);
- Accessibility in physical, social, cultural, linguistic and financial ways;
- Pluralism including in membership;
- Maintaining relations with others including government and civil society;
- Co-operation with the UN, regional mechanisms & other NHRIs & NGOs.