

I. INTRODUCING HUMAN RIGHTS

[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Preamble, Universal Declaration of Human Rights

1. What are human rights?

- Human rights are held by all persons equally, universally and forever.
- Human rights are **universal**: they are always the same for all human beings everywhere in the world. You do not have human rights because you are a citizen of any country but because you are a member of the human family. This means children have human rights as well as adults.
- Human rights are **inalienable**: you cannot lose these rights any more than you can cease to be a human being.
- Human rights are **indivisible**: no-one can take away a right because it is 'less important' or 'non-essential'.
- Human rights are **interdependent**: together human rights form a complementary framework. For example, your ability to participate in local decision making is directly affected by your right to express yourself, to associate with others, to get an education and even to obtain the necessities of life.
- Human rights reflect basic human needs. They establish basic standards without which people cannot live in dignity. To violate someone's human rights is to treat that person as though he or she were not a human being. To advocate human rights is to demand that the human dignity of all people be respected.
- In claiming these human rights, everyone also accepts responsibilities: to respect the rights of others and to protect and support people whose rights are abused or denied. Meeting these responsibilities means claiming solidarity with all other human beings.

Precursors of twentieth century human rights

Many people regard the development of human rights law as one of the greatest accomplishments of the twentieth century. However, human rights did not begin with law or the United Nations. Throughout human history societies have developed systems of justice and propriety that sought the welfare of society as a whole. References to justice, fairness and humanity are common to all world religions: Buddhism, Christianity, Confucianism and Islam. However, formal principles usually differ from common practise. Until the eighteenth century no society, civilisation or culture, in either the Western or non-Western world, had a widely endorsed practise or vision of inalienable human rights.

Documents asserting individual rights, such as the Magna Carta (1215), the English Bill of Rights (1689) the French Declaration on the Rights of Man and Citizen (1789) and the US Constitution and Bill of Right (1791) are the written precursors to many of today's human rights instruments. Yet most of these influential landmarks excluded women, many minorities and members of certain social, reli-



gious, economic and political groups. None reflects the fundamental concept that everyone is entitled to certain rights solely by virtue of their humanity.

Other important historical antecedents of human rights lie in nineteenth century efforts to prohibit the slave trade and to limit the horrors of war. For example, the **Geneva Conventions** established bases of international **humanitarian law**, which covers the way that wars should be fought and the protection of individuals during armed conflict. They specifically protect people who do not take part in the fighting and those who can no longer fight (e.g. wounded, sick and shipwrecked troops, prisoners of war).

Concern over the protection of certain vulnerable groups was raised by the League of Nations at the end of the First World War. For example, the **International Labour Organisation** (ILO, originally a body of the League of Nations and now a UN agency) established many important conventions setting standards to protect working people, such as the Minimum Age Convention (1919), the Forced Labour Convention (1930) and the Forty-hour Week Convention (1935).

Although the international human rights framework builds on these earlier documents, it is principally based on United Nations documents.

The Universal Declaration of Human Rights

Two major influences in the mid-twentieth century propelled human rights onto the global arena and the awareness of people around the world. The first was struggles of colonial people to assert their independence from foreign powers, claiming their human equality and right to self-determination. The second catalyst was the Second World War. The extermination by Nazi Germany of over six million Jews, Roma people, homosexuals and persons with disabilities horrified the world. Calls came from across the globe for human rights standards to bolster international peace and protect citizens from abuses by governments. These voices played a critical role in the establishment of the United Nations in 1945 and are echoed in its founding document, the UN Charter.

Rights for all members of the human family were first articulated in the United Nations **Universal Declaration of Human Rights** (UDHR), one of the first initiatives of the newly established United Nations. Its thirty articles together form a comprehensive statement covering economic, social, cultural, political, and civil rights. The Declaration is both universal (it applies to all people everywhere) and indivisible (all rights are equally important to the full realization of one's humanity). See APPENDICES, p. 289, for both the complete text and a child-friendly version of the UDHR.

The human rights framework

Although the Universal Declaration has achieved the status of customary international law in its more than sixty years, as a **declaration** it is only a statement of intent, a set of principles to which United Nations member states commit themselves in an effort to provide all people a life of human dignity. For the rights defined in a declaration to have full legal force, they must be written into documents called **conventions** (also referred to as **treaties** or **covenants**), which set international norms and standards.

Immediately after the Universal Declaration was adopted, work began to codify the rights it contained into a legally binding convention. For political and procedural reasons, these rights were divided between two separate covenants, each addressing different categories of rights. The **International Covenant on Civil and Political Rights (ICCPR)** articulates the specific, liberty-oriented rights that a state may not take from its citizens, such as freedom of expression and freedom of movement. The **International Covenant on Economic, Social, and Cultural Rights (ICESCR)** addresses those articles in the UDHR that define an individual's rights to self-determinations as well as basic necessities, such as food, housing and health care, which a state should provide for its citizens, in so far as it is able. The UN General



Assembly adopted both covenants in 1966. See APPENDICES, P. 289, for a list of countries that have ratified the Covenants.

Since its adoption in 1948, the Universal Declaration has served as the foundation for the twenty major human rights conventions. Together these constitute the human rights framework, the evolving body of these international documents that define human rights and establish mechanisms to promote and protect them.

Principal United Nations Human Rights Conventions

- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- Convention Relating to the Status of Refugees, 1951
- Slavery Convention of 1926, Amended by Protocol, 1953
- International Covenant on Civil and Political Rights, 1966
- International Convention on the Elimination of all forms of Racial Discrimination, 1966
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968
- Convention on the Elimination of all Forms of Discrimination against Women, 1979
- Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984
- Convention on the Rights of the Child, 1989
- Convention on the Rights of Migrant Workers and the Members of their Families, 1990
- Convention on the Rights of Persons with Disabilities, 2006.

Note: Date refers to the year the UN General Assembly adopted the convention.

The commitment of ratification

Ratification of a convention is a serious, legally binding undertaken by a government on behalf of a state. Every convention contains articles that establish procedures for monitoring and reporting how ratifying governments are complying with the convention. When a government ratifies a convention, it accepts the procedures it defines, which may include these commitments:

- to uphold the convention, respecting, promoting, and providing for the rights it establishes, and not to take any action the treaty prohibits;
- to change any law in the country that contradicts or does not meet the standards set by the convention;
- to be monitored by a designated authority to see that it is, in fact, keeping its commitments;
- to report at regular intervals on its progress in making these human rights real in the lives of its citizens.

Once a country ratifies a convention, its citizens have a powerful advocacy tool. They can hold their government accountable if it fails to respect the human rights to which it has committed itself. For this reason citizens need to know which human rights conventions their country has promised to uphold. For example, the **Convention on the Rights of the Child** (CRC) establishes very specific standards for the humane treatment of children who are detained by police. If cases of mistreatment arise, such as children being imprisoned with adults, child advocates can demand that the government meet the standards to which it is legally committed.

The human rights framework is dynamic. As the needs of certain groups of people are recognized and defined and as world events point to the need for awareness and action on specific human rights issues, international human rights law continuously evolves in response. For example, when the Universal Declaration was written in 1948, few people recognized the dangers of environmental degradation; therefore this document does not mention the environment. At the beginning of the twenty-first century,



however, activists and governments are working to draft a new convention linking human rights to a safe and healthy environment.

Today many human rights conventions have **entered into force** as international law; some are still in the process of ratification. Others, such as a convention on the rights of indigenous peoples and a convention on environmental rights, are currently being drafted through the collaborative efforts of governments and non-governmental organisations.

Although such evolution in human rights emerges at the UN level, they are increasingly initiated at the grassroots level by people struggling for justice and equality in their own communities. Since the founding of the United Nations, the role of **non-governmental organisations** (NGOs) has grown steadily. It is NGOs, both large and small, local and international, that carry the voices and concerns of ordinary people to the United Nations. Although the General Assembly, which is composed of representatives of governments, adopts a treaty and governments ratify it, NGOs influence governments and UN bodies at every level. Not only do they contribute to the drafting of human rights conventions, they play an important role in advocating for their ratification and monitoring to see that governments live up to their obligations.

QUESTION: *Are there non-governmental organisations in your country that monitor and advocate for human rights? Do any especially work on children's rights? What do they do? Are they effective?*

Like all human endeavors, the United Nations and the human rights framework that has evolved under its auspices is imperfect. Many critics say the world does not need more human rights conventions but instead the full implementation of those already established. Others believe that the UN system is so flawed that the high ideals and standards it seeks to establish lack credibility. However, in the scope of human history, both the UN and human rights framework are in their infancy. The challenge to citizens of all countries is to work towards evolving more effective UN institutions without compromising the high ideals on which the UN was founded.

The evolution of a human rights convention

The creation of a human rights convention involves the collaborative efforts of many individuals and institutions. The starting point is always a perceived need, a human rights problem that needs to be addressed by the international community. It may be a general need to codify basic rights, such as those in the Covenants, or a specific global concern, such as the proliferation of land mines or the trafficking of persons.

The Convention on the Rights of the Child provides an example of the process by which a human rights convention evolves and the role of NGOs in its creation.

1. Identification of a problem:

Efforts to protect children from abuse and exploitation date back to the nineteenth century, when children were generally regarded as the property of their parents until they reached the age of maturity, generally twenty-one. Reformers focused on child labour and abuse of homeless or orphaned children. In 1923 Eglantine Jebb drafted The Declaration on the Rights of the Child, which was adopted by the League of Nations in 1924.

However, neither the UDHR nor the conventions that evolved as the UN human rights framework made any specific notice of the rights of children. These documents tacitly generalised that like every human being, children had human rights, but they failed to recognize children as rights-bearing individuals.

2. A statement of general principles:

The first step toward the Children's Convention was the UN **Declaration on the Rights of the**



Child. In 1959 a working group drafted ten principles setting forth the basic rights to which all children should be entitled. However, as a declaration, these principles were not legally binding on governments.

3. The drafting process:

These principles then needed to be codified in a convention. The formal drafting process for the Children's Convention lasted nine years, during which representatives of governments, intergovernmental agencies, such as UNICEF and UNESCO, and nongovernmental organisations large (e.g. Save the Children, the International Red Cross, Oxfam) and small (e.g. national organisations working on specific issues such as child labour, health, education or sports) worked together to create consensus on the language of the convention.

4. Adoption:

The Children's Convention was adopted by the UN General Assembly in 1989.

5. Ratification:

The Children's Convention was immediately signed and ratified by more nations in a shorter period of time than any other UN convention.

6. Entry into force:

As a result of its rapid ratification, the Children's Convention entered into force as international law in 1990, only a few months after its adoption. Furthermore, the total number of member states that have ratified the Children's Convention has surpassed that of all other conventions. So far only two member states have not ratified it: Somalia and the United States.

7. Implementation, Monitoring and Advocacy:

As with all human rights conventions, the Children's Convention provides individuals, NGOs and international organisations with a legal basis for their advocacy on behalf of children. They can motivate a government to ratify a treaty and monitor how they keep their treaty obligations. When a government fails to meet these commitments and violates the rights of children, NGOs can call them to account. In cases of systematic abuse, individuals and NGOs can bring a case before the Committee on the Rights of the Child.

Regional human rights conventions

While the rights covered in the UN human rights framework are universal, complementary human rights systems have been developed that apply to the people living in specific parts of the world. These regional human rights conventions are meant to reinforce UN Conventions, which remain the framework and minimum standard in all parts of the world.

Examples are:

- **European Convention for the Protection of Human Rights and Fundamental Freedoms** (ECHR, also known as the **European Convention on Human Rights**), adopted in 1950 by the Council of Europe and now ratified by its 47 member states;
- **The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, adopted in 1987 by the Council of Europe in 1987;
- **The European Social Charter**, adopted by the Council of Europe in 1961 and revised in 1996;
- **The American Convention on Human Rights**, adopted in 1969 by the Organisation of American States (OAS), applies to ratifying governments in North, Central and South America;
- **The African Charter on Human and People's Rights**, adopted in 1981 by the Organisation of African Unity (OAU).



Human Rights mechanisms of the Council of Europe

The European Convention on Human Rights is the oldest and strongest of these regional human rights systems with standards for Europe that sometimes surpass those of international human rights conventions. The twenty-seven states belonging to the European Union are also members of the Council of Europe and thus legally obliged to recognize and respect human rights through their national legislation, resorting to international mechanisms as a kind of ‘last resort’ when domestic remedies prove ineffective. Within the Council of Europe the European Convention is implemented by the Committee of Ministers and the European Court of Human Rights, located in Strasbourg, France.

The European Court of Human Rights is a permanent judicial body that hears and decides on individual complaints concerning violations of the European Convention by anyone residing in the territory of the member states. It complements the human rights guaranties that exist at national level.

While the European Convention and the European Court on Human Rights remain key in the Council of Europe’s work on human rights, the organisation has developed several non-judicial means to monitor and develop the realisation of human rights in its members states. For example the European Commission against Racism and Intolerance (ECRI) is an independent body of experts. The Commission monitors racism, xenophobia, antisemitism and intolerance at the level of greater Europe and makes recommendations to governments on how to combat them. The ECRI works in close cooperation with NGOs.

The **European Social Charter** (ESC, adopted 1961, revised 1996) guarantees **social and economic human rights** such as adequate housing, accessible health care, free primary and secondary education and vocational training, non-discriminative employment and safe work conditions, legal and social protection, fair treatment of migrant persons and non-discrimination in every sphere of society. It establishes a supervisory mechanism to ensure that states that have ratified the Charter implement these rights. They must also report annually to the European Committee of Social Rights on their progress.

The Commissioner for Human Rights, an independent institution within the Council of Europe, is mandated to promote the awareness of and respect for human rights in the member states. The Commissioner identifies possible shortcomings in human rights law and practise, raises awareness and encourages reform measures to achieve tangible improvement in the area of human rights promotion and protection.

There is an important distinction between the Court and the Commissioner. The Court is reactive: it can respond only to complaints laid before it by individuals or by the member states themselves. The Commissioner, on the other hand, may be proactive, conducting investigations on how human rights are safeguarded in different European countries. However, only the Court has the power to take decisions – in the form of judgments – which are binding on the member states.



2. What are children's rights?

The UN Convention on the Rights of the Child marked a turning point, recognising worldwide that children are not only subjects of protection but also holders of civil and political rights.

Maud de Beur-Buquicchio,
Deputy Secretary General, Council of Europe¹

The UN Convention on the Rights of the Child (CRC) provides an ideal approach for children to learn about their human rights. Because it specifies human rights especially relevant to children, everyone, but especially children, parents and adults who work with children, should be familiar with this important component of the international human rights framework. COMPASITO frames children's rights within the broader context of human rights as a whole and seeks to help children understand that along with all other members of the human family, they too are rights-holders.

The UN General Assembly adopted the Convention on the Rights of the Child in 1989 after nearly a decade of compromise and negotiation among member states and wide consultations with NGOs. Since then more countries have ratified the so called Children's Convention than any other human rights treaty and with fewer **reservations**, which are formal exceptions taken to parts with which a state may not agree.

The Convention on the Rights of the Child (also called the **Children's Convention**) defines a child as anyone below the age of eighteen and affirms the child as fully possessed of human rights. It contains 54 articles of children's rights that can be divided into three general categories, sometimes known as the 'three Ps':

- **Protection**, guaranteeing the safety of children and covering specific issues such as abuse, neglect, and exploitation;
- **Provision**, covering the special needs of children such as education and health care;
- **Participation**, recognising the child's **evolving capacity** to make decisions and participate in society as he or she approaches maturity.

The Convention contains several groundbreaking approaches to human rights. Children's right to participation constitutes an area not previously addressed in the UDHR (1948) or the Declaration on the Rights of the Child (1959). Another innovation of the Convention is the use of the pronouns *he* and *she* rather than the generic *he* to include both males and females.

The Convention strongly emphasizes the primacy and importance of the role, authority and responsibility of the child's family. It affirms the child's right not only to the language and culture of the family, but also to have that language and culture respected. The Convention also exhorts the state to support families are not able to provide an adequate standard of living for their children.

While acknowledging the importance of family to a child's well-being, the Children's Convention also recognizes children as right-bearing individuals, guaranteeing them, as appropriate to their evolving capacity, the right to identity, to privacy, to information, to thought, conscience, and religion, to expression, and to association.

The Convention has had enormous worldwide impact. It has intensified the child-rights efforts of UN agencies such as UNICEF and the International Labour Organisation (ILO); it has affected subsequent child-rights treaties (e.g. *Hague Convention on Inter country Adoption*, which speaks of a child's right to a family rather than a family's right to a child, and the *Convention on the Rights of Persons with Disabilities*); it has focused international movements to stamp out pervasive forms of child abuse such as child prostitution and child soldiers, both of which are now the subjects of **optional protocols** (amendments to the CRC).



General principles of the Children's Convention

Children's rights in the CRC reflect four general principles:

- 1. Non-discrimination** (Article 2): All rights apply to all children without exception. The state has an obligation to protect children from any form of discrimination.
- 2. The child's best interest** (Article 3): The determining factor in all actions dealing with any child should be his or her best interest. In all cases, the best interests of the child take precedence over the interests of the adults concerned (e.g. parents, teachers, guardians). However, the question of how to decide on the best interests of the child remains difficult to determine and open to discussion.
- 3. The rights to life, survival and development** (Article 6): the right of the child to life is inherent, and it is the state's obligation to ensure the child's survival and development. This means that children cannot be subject to the death sentence or to termination of life.
- 4. Respect for the views of the child** (Article 12): The child has the right to express an opinion and to have that opinion taken into account in any matter affecting him or her.

QUESTION: *The child's best interest is a fundamental principle of the Children's Convention. However, who decides what is best for a child? What happens when parents, teachers, authorities or the child have conflicting opinions about what is 'best' for the child?*

The Children's Convention is a powerful instrument, which by its very nature engages young people in an examination of their own rights. It is also an effective tool to assist people of all ages in identifying the complex responsibilities that go with ensuring these rights for children. Using the convention in this way will teach children how to advocate on their own behalf.

Monitoring the Convention on the Rights of the Child

Like all human rights treaties, the Convention on the Rights of the Child contains articles that establish how governments' compliance with the treaty will be monitored. Part II, Articles 42-45, of the Convention sets up these procedures and requirements:

- It requires that governments make the rights in the Convention widely known to both adults and children (Article 42);
- It establishes the Committee on the Rights of the Child, an body of independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties (Article 43);
- It requires states to report every five years on their efforts to implement the Convention (Article 44).
- It encourages international cooperation in the implementation of the Convention, especially with specialized UN agencies such as UNICEF (Article 45).

These mandatory reports, usually prepared by a government agency specializing in children's issues, indicate who is not enjoying which rights, identify the constraints and obstacles to realising the rights and what the government intends to do to overcome these challenges. The report is presented to the Committee on the Rights of the Child in Geneva, where the Office of the United Nations' High Commissioner for Human Rights is based, which reviews it and makes recommendations for future action.

QUESTION: *What government agency prepares the report on implementation of the Children's Convention in your country? How do they acquire their information?*



QUESTION: *Has your country reported regularly on its implementation of the Convention on the Rights of the Child?*

The monitoring and reporting process also provides an opportunity for civil society institutions, NGOs, specialist agencies, children and young people, and other people dealing with children, to participate actively. They may produce an alternative or **shadow report** that challenges government claims or raises issues that may have been missed in the official report.²

QUESTION: *Have alternative or shadow reports been submitted from your country? If so, who made them? On what issues did they differ from the government?*

Monitoring children's rights

The UN often appoints an expert to serve as a **Special Rapporteur** to gather information on a critical issue or country. In response to international concern about the growing commercial sexual exploitation and the sale of children, in 1990 the UN General Assembly created the mandate for a rapporteur to gather information and report on the sale of children, child pornography and child prostitution.

A number of non-governmental organisations also monitor how the Children's Convention is being implemented. Some of these are large international children's advocacy organisations such as Save the Children and Child Rights Information Network (CRIN). Others operate at the regional and national levels. In Europe, for example, the European Network of Ombudsmen for Children (ENOC) investigates, criticises and publicises administrative actions that might be violating the CRC. The ombudsman can intervene separately from legal representatives, parents or guardians to represent the child's rights in a variety of civil or criminal cases where children are directly or indirectly involved. The Network includes representatives from Austria, Belgium, Denmark, Finland, France, Hungary, Iceland, Ireland, Lithuania, the former Yugoslav Republic of Macedonia, Norway, Portugal, the Russian Federation, Spain, Sweden and Wales.³

Promoting the Convention on the Rights of the Child

Civil society, children, teachers, parents and other agencies can play a major role in awareness raising and lobbying for action to promote child rights. To ensure that everyone who works with children as well as children themselves are aware of these rights, the Convention on the Rights of the Child should be available in school libraries and read and discussed in classrooms and with parents.

One of the most important ways to promote the Convention is through systematic human rights education, beginning in the early years of childhood. Every child has a right to know his or her rights and those of others!

.....

Useful resources

- Eide, Asbjørn and Alfredsson, Guthmundur, *The Universal Declaration of Human Rights: A common standard of achievement*: Martinus Nijhof, 1999.
- Franklin, Bob, *Handbook of Children's Rights*: Routledge, 2001.
- Hodgkin, Rachel and Newell, Peter, *Implementation Handbook for the Convention on the Rights of the Child*: UNICEF, 2002.



.....
Useful websites

- Amnesty International: www.amnesty.org
- Children's Rights Information Network: www.crin.org
- Council of Europe: www.coe.int
- Democracy and Human Rights Education in Europe:
www.dare-network.org
- European Children's Network (EURONET): www.europeanchildrensnetwork.org
- European Network of Ombudspersons for Children: www.ombudsnet.org/enoc/
- Human Rights Watch: www.hrw.org
- UNESCO: www.unesco.org
- UNICEF: www.unicef.org
- United Nations High Commissioner for Human Rights: www.ohchr.org/english

.....
References

- 1 Speech made at the Conference on International Justice for Children, 17 September 2007.
- 2 Action for the Rights of Children (ARC), CD by UNICEF & Save the Children Alliance, 2003.
- 3 See www.ombudsnet.org

