



## **First Section: What are human rights?**

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted, for example if a person breaks the law, or in the interests of national security.

These basic rights are based on shared values like dignity, fairness, equality, respect and independence. Although some dictionaries define the word law as “a privilege”, when used in the context of “human rights”, we are talking about something more basic. Everyone has certain fundamental rights, simply because they are human. They are called "human rights" rather than a privilege (which can be withdrawn on someone's whim). They are "rights" because they are things that you are allowed to be, do or have.

These rights exist to protect you against people who want to harm or hurt you. They also exist to help us get along with each other and live in peace. Many people know something about their rights. They generally know that they have the right to food and a safe place to stay. They know they have the right to be paid for the work they do. But there are many other rights.

When human rights are not well known to people, abuses such as discrimination, intolerance, injustice, oppression and slavery can arise. Arising from the atrocities and enormous loss of life during World War II, the United Nations Universal Declaration of Human Rights was signed in 1948 to provide a common understanding of what the rights of all are. This forms the basis for a world built on freedom, justice and peace.



“Human rights are a set of principles concerned with equality and fairness. They recognize our freedom to make choices about our lives and to develop our potential as human beings”.

They are about living a life free from fear, harassment or discrimination. Human rights can broadly be defined as a number of basic rights that people from around the world have agreed are essential.

These include the right to life, the right to a fair trial, freedom from torture and other cruel and inhuman treatment, freedom of speech, freedom of religion, and the rights to health, education and an adequate standard of living.

These human rights are the same for all people everywhere – men and women, young and old, rich and poor, regardless of our background, where we live, what we think or what we believe. This is what makes human rights ‘universal’.



---

## **Second Section: Overview of International Human Rights Law**

“Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”

Preamble, Universal Declaration of Human Rights

Human rights are the rights to which all people are entitled by virtue of being human. Within the large scope of human rights, some rights are considered to be of particular significance. Although certain international instruments permit derogation of these rights “in time of public emergency threatening the life of the nation” (ICCPR, Art 4(1)), “all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and ..... all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis.”

The concept of human rights and human rights principles can be traced to antiquity, e.g., the Ten Commandments, the Code of Hammurabi, and the Rights of Athenian Citizens. Although this module will not examine the origins of human rights concepts, it is important to understand and recognize that the roots of international human rights law go deep into history.

In early religious and secular writings, there are many examples of what we now know as international law. There are, for example, the detailed peace treaties and alliances concluded between the Jews and the Romans, Syrians and Spartans. The Romans knew of a *jus gentium*, a law of nations, which Gaius in the second century described as law common to all men that could be applied by Roman courts to foreigners when the specific law of their own nation was unknown and when Roman law was inapposite.



---

Later, in the seventeenth century, the Dutch jurist Hugo Grotius (1583-1645) argued that the law of nations also established legal rules that bound the sovereign states of Europe, then just emerging from medieval society, in their relations with one another.<sup>3</sup> Although historically human rights violations have been a significant contributing factor to the flight of refugees and remain an obstacle to their safe return home, you should remember that human rights principles apply to other migration issues as well.

Thus, whether conducting protection or other adjudications, it is important for you to have a thorough understanding of human rights laws and humanitarian principles



---

### **Third Section: International Humanitarian Law (IHL) and International Human Rights Law (IHRL)**

Both international humanitarian law (IHL) and international human rights law (IHRL) strive to protect the lives, health and dignity of individuals, albeit from a different angle. It is therefore not surprising that, while very different in formulation, the essence of some of the rules is similar, if not identical. For example, the two bodies of law aim to protect human life, prohibit torture or cruel treatment, prescribe basic rights for persons subject to a criminal justice process, prohibit discrimination, comprise provisions for the protection of women and children, regulate aspects of the right to food and health.

On the other hand, rules of IHL deal with many issues that are outside the purview of IHRL, such as the conduct of hostilities, combatant and prisoner of war status and the protection of the red cross and red crescent emblems. Similarly, IHRL deals with aspects of life in peacetime that are not regulated by IHL, such as freedom of the press, the right to assembly, to vote and to strike

#### **1. What is international humanitarian law?**

IHL is a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the rights of the parties to a conflict to use methods and means of warfare of their choice.

IHL main treaty sources applicable in international armed conflict are the four Geneva Conventions of 1949 and their Additional Protocol I of 1977. The main treaty sources applicable in noninternational armed conflict are



---

article 3 common to the Geneva Conventions and Additional Protocol II of 1977.

## **2. What is international human rights law?**

IHRL is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behavior or benefits from governments. Human rights are inherent entitlements which belong to every person as a consequence of being human.

Numerous non-treaty-based principles and guidelines ("soft law") also belong to the body of international human rights standards. IHRL main treaty sources are the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), as well as Conventions on Genocide (1948), Racial Discrimination (1965), Discrimination Against Women (1979), Torture (1984) and Rights of the Child (1989).

The main regional instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Declaration of the Rights and Duties of Man (1948) and Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981). While IHL and IHRL have historically had a separate development, recent treaties include provisions from both bodies of law. Examples are the Convention on the Rights of the Child, its Optional Protocol on the Participation of Children in Armed Conflict, and the Rome Statute of the International Criminal Court.



### **3. When are they applicable?**

IHL is applicable in times of armed conflict, whether international or noninternational. International conflicts are wars involving two or more states, and wars of liberation, regardless of whether a declaration of war has been made or whether the parties involved recognize that there is a state of war. Non-international armed conflicts are those in which government forces are fighting against armed insurgents, or rebel groups are fighting among themselves. Because IHL deals with an exceptional situation – armed conflict – no derogations whatsoever from its provisions are permitted.



---

### **Fourth Section: The International Bill of Rights**

When a State becomes a party to an international human rights treaty, it assumes obligations and duties under international law to respect and protect human rights and to refrain from certain acts. Three of the most important international instruments pertaining to human rights are collectively known as the International Bill of Human Rights:

- ❖ The Universal Declaration of Human Rights (UDHR)
- ❖ International Covenant on Civil and Political Rights (ICCPR)
- ❖ International Covenant on Economic, Social and Cultural Rights (ICESCR)

There are differences among States in how categories of rights are weighed, based on the domestic balance between state, community, and individual rights. Culture and religion also affect States' view of these categories of rights.

However, the international community has agreed that there are certain human rights and freedoms so fundamental to human dignity that States have entered into agreements to ensure non-derogation of those rights. The specific rights enumerated in various human rights instruments can be divided into several categories:

1. Individual security rights: protects individuals against crimes such as murder, massacre, torture, and rape.
2. Due process rights (5th and 14th Amendment to the United States Constitution): protects individuals against abuse of the legal system,



---

such as imprisonment without trial, trial with a jury, and excessive punishment.

3. Liberty rights (1st and 4th Amendment to the United States Constitution): protects freedom of belief, freedom of religion, freedom of movement, freedom to assemble, and freedom of association.
4. Political rights: protects an individual's liberty to participate in politics, including activities such as communicating, protesting, voting, and serving in political office
5. Equality rights: protects equal citizenship, equality before the law, and nondiscrimination.
6. Social rights: protects the right to access education for all citizens and prevents severe poverty or starvation Subsequent international human rights treaties have expanded upon the Universal Declaration of Human Rights.

Some States have adopted instruments at the regional level reflecting human rights concerns specific to that region. Many States have also adopted constitutions and other laws which formally protect basic human rights and incorporate some of the categories listed above. In the International Human Rights Matrix, below, further examples are provided that correlate to the International Bill of Rights.



---

### **Fifth Section: Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations.

It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages.

The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels.

A foundational text in the history of human and civil rights, the Declaration consists of 30 articles detailing an individual's "basic rights and fundamental freedoms" and affirming their universal character as inherent, inalienable, and applicable to all human beings.

The UDHR commits nations to recognize all humans as being "born free and equal in dignity and rights" regardless of "nationality, place of residence, gender, national or ethnic origin, color, religion, language, or any other status". The Declaration is considered a "milestone document" for its "universalist language", which makes no reference to a particular culture, political system, or religion.



---

It directly inspired the development of international human rights law, and was the first step in the formulation of the International Bill of Human Rights, which was completed in 1966 and came into force in 1976.

Although not legally binding, the contents of the UDHR have been elaborated and incorporated into subsequent international treaties, regional human rights instruments, and national constitutions and legal codes.

All 193 member states of the United Nations have ratified at least one of the nine binding treaties influenced by the Declaration, with the vast majority ratifying four or more. While there is a wide consensus that the declaration itself is non-binding and not part of customary international law, there is also a consensus that many of its provisions are binding and have passed into customary international law, although courts in some nations have been more restrictive on its legal effect.

Nevertheless, the UDHR has influenced legal, political, and social developments on both the global and national levels, with its significance partly evidenced by its 524 translations, the most of any document in history.



### Article I: Free and equal

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### Article 2: Freedom from discrimination

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### Article 5: Freedom from torture

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### Article 9: Freedom from arbitrary detention

No one shall be subjected to arbitrary arrest, detention or exile



---

### Article 10: Right to a fair trial

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

### Article 18: Freedom of religion or belief

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

### Article 23: Right to work

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.



---

## **Sixth Section: The Generations of Human Rights**

The division of human rights into three generations was initially proposed in 1979 by the Czech jurist (Karel Vasak) at the International Institute of Human Rights in Strasbourg. He used the term at least as early as November 1977.

Vasak's theories have primarily taken root in European law. His divisions follow the three watchwords of the French Revolution: Liberty, Equality, and Fraternity. The three generations are reflected in some of the rubrics of the Charter of Fundamental Rights of the European Union.

The Universal Declaration of Human Rights includes rights that are thought of as second generation as well as first generation ones, but it does not make the distinction in itself.

### **1. First-generation human rights**

First-generation human rights, sometimes called "blue" rights, deal essentially with liberty and participation in political life. They are fundamentally civil and political in nature: They serve negatively to protect the individual from excesses of the state. First-generation rights include, among other things, the right to life, equality before the law, freedom of speech, freedom of religion, property rights, the right to a fair trial, and voting rights.

Some of these rights and the right to due process date back to the Magna Carta of 1215 and the Rights of Englishmen, which were expressed in the English Bill of Rights in 1689.



A fuller set of first-generation human rights was pioneered in France by the Declaration of the Rights of Man and of the Citizen in 1789, and by the United States Bill of Rights in 1791.

They were enshrined at the global level and given status in international law first by Articles 3 to 21 of the 1948 Universal Declaration of Human Rights and later in the 1966 International Covenant on Civil and Political Rights. In Europe, they were enshrined in the European Convention on Human Rights in 1953.

## **2. Second-generation human rights**

Second-generation human rights are related to equality and began to be recognized by governments after World War II. They are fundamentally economic, social, and cultural in nature. They guarantee different members of the citizenry equal conditions and treatment.

Secondary rights would include a right to be employed in just and favorable condition, rights to food, housing and health care, as well as social security and unemployment benefits. Like first-generation rights, they were also covered by the Universal Declaration of Human Rights, and further embodied in Articles 22 to 28 of the Universal Declaration, and the International Covenant on Economic, Social, and Cultural Rights.

In the United States of America, President Franklin D. Roosevelt proposed a Second Bill of Rights, covering much the same grounds, during his State of the Union Address on January 11, 1944. Today, many nations, states, or groups of nations have developed legally binding



---

declarations guaranteeing comprehensive sets of human rights, e.g. the European Social Charter.

Some states have enacted some of these economic rights, e.g., the state of New York has enshrined the right to a free education, as well as the right to organize and to bargain collectively and workers' compensation, in its constitutional law.

These rights are sometimes referred to as "red" rights. They impose upon the government the duty to respect and promote and fulfill them, but this depends on the availability of resources. The duty is imposed on the state because it controls its own resources. No one has the direct right to housing and right to education. (In South Africa, for instance, the right is not, per se, to housing, but rather "to have access to adequate housing", realized on a progressive basis).

### **3. Third-generation human rights**

Third-generation human rights are those rights that go beyond the mere civil and social, as expressed in many progressive documents of international law, including the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, the 1992 Rio Declaration on Environment and Development, and other pieces of generally aspirational "soft law".

Also known as Solidarity human rights, they are rights that try to go beyond the framework of individual rights to focus on collective concepts, such as community or people. However, the term remains largely unofficial, just as



---

the also-used moniker of "green" rights, and thus houses an extremely broad spectrum of rights, including:

- Group and collective rights.
- Right to self-determination.
- Right to economic and social development
- Right to a healthy environment.
- Right to natural resources.
- Right to communicate and communication rights.
- Right to participation in cultural heritage.
- Rights to intergenerational equity and sustainability.

The African Charter on Human and Peoples' Rights ensures many of those: the right to self-determination, right to development, right to natural resources and right to satisfactory environment

Some countries also have constitutional mechanisms for safeguarding third-generation rights. For example, the Hungarian Parliamentary Commissioner for Future Generations, the Parliament of Finland's Committee for the Future.

Some international organizations have offices for safeguarding such rights. An example is the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe. The Directorate-General for the Environment of the European Commission has as its mission



---

"protecting, preserving and improving the environment for present and future generations, and promoting sustainable development".

A few jurisdictions have enacted provisions for environmental protection, e.g., New York's "forever wild" constitutional article, which is enforceable by action of the New York State Attorney General or by any citizen ex rel. with the consent of the Appellate Division.

#### **4. Fourth-generation human rights**

Several analysts claim that a fourth generation of human rights is emerging, which would include rights that cannot be included in the third generation, future claims of first and second generation rights and new rights, especially in relation to technological development and information and communication technologies and cyberspace.

However, the content of it is not clear, and these analysts do not present a unique proposal. They normally take some rights from the third generation and include them in the fourth, such as the right to a healthy environment or aspects related to bioethics.

Some of those analysts believe that the fourth generation is given by human rights in relation to new technologies, while others prefer to talk about digital rights, where a new range of rights would be found, such a:

- The right to equally access computing and digital spaces
- The right to digital self-determination
- The right to digital security



- The right to access one's own digital data

Others point out that the differentiating element would be that, while the first three generations refer to the human being as a member of society, the rights of the fourth would refer to the human being as a species.