

(STUDY MATERIAL ON HUMAN RIGHTS, FOR BOTH LONG QUESTION AND SHORT NOTES)

Human Rights: An Overview

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WHAT ARE HUMAN RIGHTS?

Human rights are those activities, conditions, and freedoms that all human beings are entitled to enjoy, by virtue of their humanity. They include civil, political, economic, social and cultural rights. Human rights are inherent, inalienable, interdependent, and indivisible, meaning they cannot be granted or taken away, the enjoyment of one right affects the enjoyment of others, and they must all be respected.

However, only governments are in a position to put in place the laws and policies necessary for protection of human rights and to regulate private and public practices that impact individuals' enjoyment of those rights. Therefore, we think of national governments ("States") as the guarantors, or violators, of human rights.

Classically, "human rights" protect individuals from government action that would threaten or harm certain freedoms thought to be fundamental, such as life, physical integrity, and liberty. International human rights law is, essentially, a set of rules governing State behavior vis-a-vis individuals and, at its most basic, requires States to ensure that people can enjoy their fundamental freedoms. Like national constitutions, which are covenants between governments and their citizens, international human rights treaties are covenants between States and the international community, whereby States agree to guarantee certain rights within their own territories.

When States ratify [human rights treaties](#), they agree to both refrain from violating specific rights and to guarantee enjoyment of those rights by individuals and groups within their jurisdictions. Regional and international oversight bodies

contribute to State compliance and provide opportunities for redress and accountability that may be non-existent or ineffective at the national level. However, becoming party to a treaty or agreeing to oversight by a supranational body generally remains voluntary. The level of participation in the international human rights framework varies among States.

- Human Rights:**
- Cannot be given or taken away
 - Include civil, political, economic, social, and cultural rights
 - Are interdependent and indivisible

The driving idea behind international human rights law is that – because it is States who are in a position to violate individuals’ freedoms – respect for those freedoms may be hard to come by without international consensus and oversight. That is, a State which does not guarantee basic freedoms to its citizens is unlikely to punish or correct its own behavior, particularly in the absence of international consensus as to the substance of those freedoms and a binding commitment to the international community to respect them.

States’ human rights duties have come to include **positive and negative obligations**. This means that, in limited circumstances, States may have a duty to take proactive steps to protect individuals’ rights (rather than merely refraining from directly violating those rights), including from non-State action. In addition, demand for protections beyond the traditional civil and political sphere has increased the number and variety of interests which are recognized as rights, particularly in the area of economic, social and cultural concerns. As such, we refer to States’ duties to: **respect, protect, and fulfill** the enjoyment of human rights.

While international human rights courts and monitoring bodies oversee States’ implementation of international human rights treaties, a variety of other sources are also relevant to the determination of individuals’ rights and States’ obligations. These include the judicial and quasi-judicial [decisions](#) of international and domestic courts on international human rights law or its domestic equivalents; the decisions of domestic and international courts on the related (but distinct) subject of [international criminal law](#); and [analysis and commentary](#) by scholars and others. Of course, a necessary component of human rights protection is the factual research identifying the [conditions](#) which may

constitute violations, which is conducted by intergovernmental organizations, as well as by civil society.

[International human rights law](#) is dynamic and its boundaries are daily being pushed in new directions. IJRC's [News Room](#) can help readers keep up with developments in the law, its interpretation, and the individuals and communities who are affected.

THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

In the post-World War II period, international consensus crystallized around the need to identify the individual rights and liberties which all governments should respect, and to **establish mechanisms** for both promoting States' adherence to their human rights obligations and for addressing serious breaches. Thus, in the decade following the war, national governments cooperated in the establishment of the [United Nations](#) (UN),^[1] the [Organization of American States](#) (OAS),^[2] and the [Council of Europe](#) (COE),^[3] each including among its purposes the advancement of human rights.

These intergovernmental organizations then prepared non-binding **declarations** or binding **treaties** which spelled out the specific liberties understood to be human rights, including the **Universal Declaration of Human Rights**,^[4] [American Declaration of the Rights and Duties of Man](#),^[5] and the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#).^[6] By the end of the 1950s, these three systems ([United Nations](#), [Inter-American](#) and [European](#)) had each established mechanisms for the promotion and protection of human rights, which included the (former) UN [Commission on Human Rights](#), the [Inter-American Commission on Human Rights](#), the (former) European Commission of Human Rights, and the [European Court of Human Rights](#).

In subsequent decades, each oversaw the drafting of **human rights agreements on specific topics**^[7] and created **additional oversight mechanisms**, which now include the [United Nations treaty bodies](#) and [Universal Periodic Review](#), the [Inter-American Court of Human Rights](#), and the [European Committee of Social Rights](#).

More recently, other intergovernmental organizations have also established, or begun to establish, regional human rights treaties and monitoring mechanisms. In [Africa](#), the **African Commission on Human and Peoples' Rights** and the [African Court on Human and Peoples' Rights](#) monitor State compliance with the [African Charter on Human and Peoples' Rights](#).^[8] The decline of the Soviet

Union spurred the formation of the Organization for Security and Co-operation in Europe ([OSCE](#)) which recognized dialogue on human rights, political and military relations, and economic development as being equally important to sustained peace and stability across Europe and the (former) Soviet States.[9] In Southeast Asia, the Association of Southeast Asian Nations ([ASEAN](#)) has recently created the [ASEAN Intergovernmental Commission on Human Rights](#),[10] and the [League of Arab States](#) in 2009 created the [Arab Human Rights Committee](#). [11]

In addition, the UN, Inter-American, and African systems appoint **individual experts** to monitor human rights conditions in a range of priority areas, such as arbitrary detention and discrimination. These experts are often called rapporteurs, and they carry out their work by receiving information from civil society, visiting countries, and reporting on human rights conditions and the ways in which they violate or comply with international norms. The [Council of Europe's Commissioner for Human Rights](#) fulfills a similar role, although his mandate is not issue-specific.[12] The **UN High Commissioner for Human Rights** supports and coordinates the UN's human rights activities, in addition to independently addressing issues of concern through country visits, dialogue with stakeholders, and public statements, much as rapporteurs do.[13]

International Human Rights Framework

Regional components – those established by regional intergovernmental organizations like the Organization of American States

International or universal components – those established by the United Nations, with actual or potential authority to review all 193 UN Member States' human rights practices.

There is no hierarchical relationship between regional and international bodies. Their work can be somewhat duplicative, but given the variations in state ratification and the different mandates, working methods and possible outcomes of the various mechanisms, advocates will rarely have to choose between two bodies that are equally able to provide the desired result.

HUMAN RIGHTS BODIES' FUNCTIONS

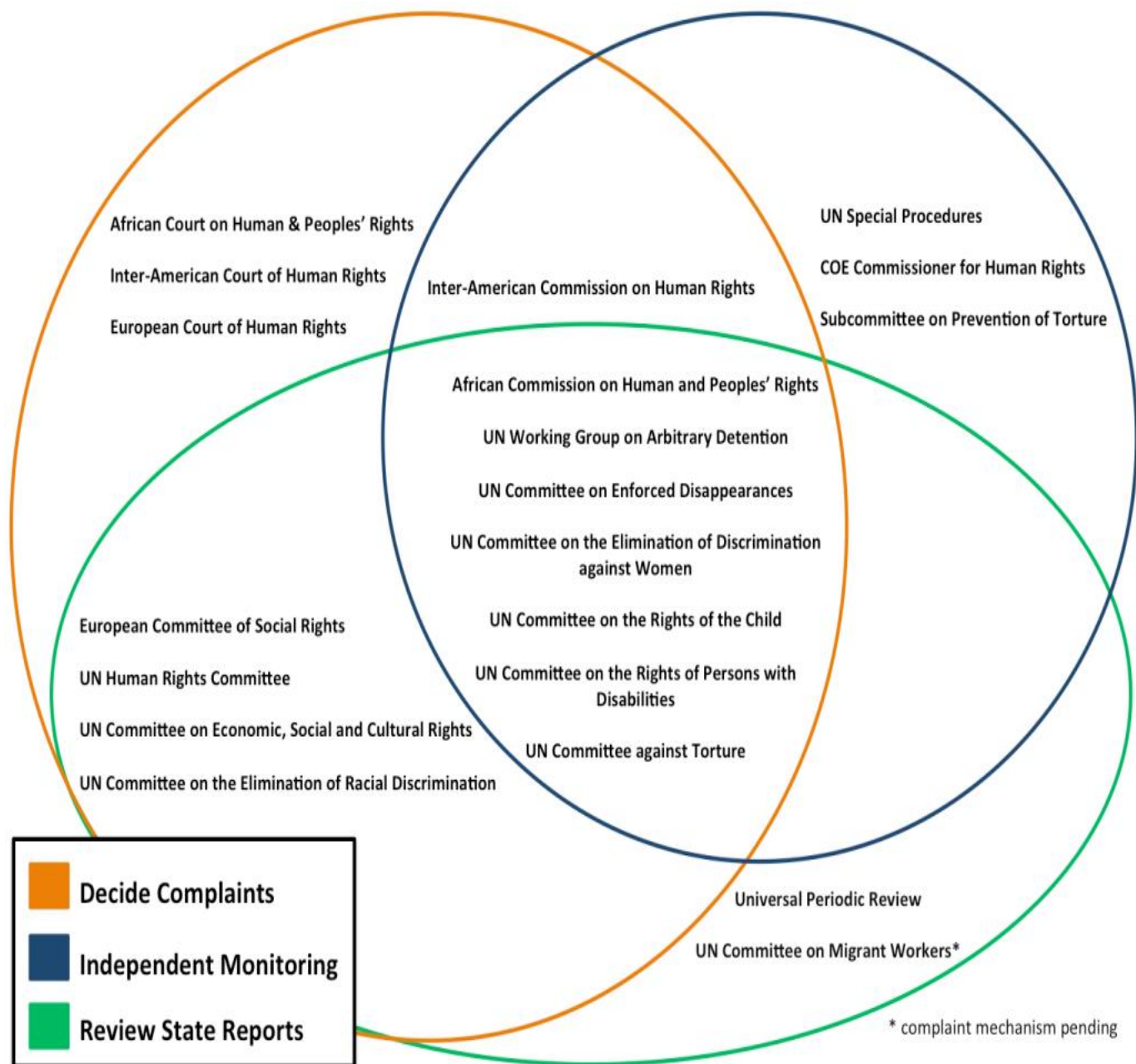
One can think of the different mechanisms for the protection of human rights as **overlapping umbrellas of distinct sizes**, positioned around the globe. The different umbrellas are made up of the [courts and monitoring bodies](#) of the following universal and regional human rights systems:

- United Nations
 - [UN Human Rights Council](#)
 - [human rights treaty bodies](#)

- independent experts known as “[special procedures](#)“
- [Universal Periodic Review](#)
- Africa
 - [African Court on Human and Peoples’ Rights](#)
 - [African Commission on Human and Peoples’ Rights](#)
- the Americas
 - [Inter-American Court of Human Rights](#)
 - [Inter-American Commission on Human Rights](#)
- Europe
 - [European Court of Human Rights](#)
 - [European Committee of Social Rights](#)
 - [Council of Europe Commissioner for Human Rights](#)
- the Middle East & North Africa
 - [Arab Human Rights Committee](#)
- Southeast Asia
 - [ASEAN Intergovernmental Commission on Human Rights](#)

These human rights bodies each have **different functions** and jurisdiction, as shown in the below [diagram](#) and explanatory [chart of human rights mechanisms’ competencies](#). In general, these mechanisms’ responsibilities may include: deciding complaints against States, engaging in independent monitoring through country visits and reporting, and reviewing States’ reports on their own compliance with human rights standards.

In addition, other intergovernmental or political bodies engage in standard-setting, inter-State dialogue, monitoring, or promotion of human rights; such bodies include the [UN Human Rights Council](#), [ASEAN Intergovernmental Commission on Human Rights](#), and the Commission on the Status of Women.



Other International Courts & Monitoring Bodies

In addition, a variety of other international bodies outside of what is traditionally referred to as the “international human rights framework” also play a role in addressing human rights violations.

For example, States may bring complaints against other States before the [International Court of Justice](#), which from time to time decides cases involving individuals’ human rights from the standpoint of one State’s allegation

that another violated the terms of an international agreement (such as by not affording its nationals access to consular representatives when they were detained in the second State). The [International Labour Organization](#) (ILO) also oversees States' compliance with international labor standards, including by receiving inter-State complaints concerning alleged violations of ILO conventions.

Further, individuals (as opposed to States) may be criminally prosecuted for violations of [international humanitarian law](#) or [international criminal law](#) or of *jus cogens* norms of international law, or may be sued civilly under domestic law. The [International Criminal Court](#), [International Criminal Tribunal for Rwanda](#), [International Criminal Tribunal for the former Yugoslavia](#), and a number of [internationalized criminal tribunals](#) undertake such prosecutions.

A number of regional courts created through economic integration or development agreements have jurisdiction to adjudicate disputes related to human rights. These [courts and tribunals of regional economic communities](#) operate in subregions of Africa, the Americas, and Europe.

Finally, [national](#), or “domestic,” bodies also play an important role in implementing and enforcing international human rights standards, including through [national human rights institutions](#) (NHRIs), [domestic civil and criminal legal proceedings](#), the exercise of [universal jurisdiction](#), and [truth and reconciliation commissions](#).

CROSS-FERTILIZATION & COMPETING JURISDICTION

These overlapping umbrellas sometimes mean that a particular State will participate in, and report to, several supranational human rights bodies. For example, in the Western Hemisphere, all 35 independent countries are members of the Organization of American States and, as such, have signed the American Declaration of the Rights and Duties of Man, under which complaints can be brought against them before the Inter-American Commission on Human Rights. In addition, each of these countries may or may not have ratified one or more of the core UN human rights treaties overseen by a treaty body – such as the Committee Against Torture – that accepts individual complaints. Additionally, each State may have agreed to bring inter-State disputes arising under a specific treaty, such as the Vienna Convention on Consular Relations, to the International Court of Justice. Further, any of these States may also be a party to the Rome Statute, meaning it is obligated to cooperate with the International Criminal Court in the prosecution of individuals

suspected of committing genocide, crimes against humanity, war crimes or (in the future) aggression.

Although each of the various human rights bodies operates independently from the others, under a specific mandate and within the scope of its particular treaties, the provisions of the regional and universal human rights treaties are often highly similar. As such, each tribunal often looks to the [jurisprudence](#) of the others when deciding novel or delicate questions. Tribunals also look to other bodies' interpretations when another treaty exists (typically a universal treaty) that is more specific or germane to the topic at hand, such as when tribunals look to the [International Labour Organization](#) conventions in interpreting the scope of labor rights.

However, this does not mean that the various tribunals have reached consistent conclusions on similar matters. Neither does it mean that the jurisprudence of each body is as developed as the rest. Some tribunals have decades' more experience than others; some, such as the European Court of Human Rights, are so well-known in their regions that they are inundated with claims, while others receive only a handful per year.

Further, the fact that various systems exist does not mean that an individual complainant will be able to obtain redress before any or all of them. Indeed, most judicial and quasi-judicial human rights bodies will only examine an individual complaint if it has not been previously determined by another international body. Finally, each body's jurisdiction is subject to distinct geographical, temporal and substantive limitations.

Accordingly, the layers of protection vary from State to State, depending on the existence of a regional human rights system and each State's ratification of regional and universal instruments. Use of one system over another will depend not only on State membership, but also on which body has produced more favorable case law, the reparations and other outcomes available at each, and practical considerations such as case processing time and backlogs.