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The Fundamentals of Human Rights

What are human rights? What difference can they make to a person? Both are common questions when first trying to understand the concept of human rights, and both can be understood by examining two different situations about human rights in Southeast Asia.

International Human Rights Laws

1948	UDHR 1948 Universal Declaration of Human Rights	
	ICERD 21 December 1965 International Convention on the Elimination of All Forms of Racial Discrimination Monitored by CERD	1965
1966	ICCPR 16 December 1966 International Covenant on Civil and Political Rights Monitored by CCPR ICESCR 16 December 1966 International Covenant on Economic, Social and Cultural Rights Monitored by CESR	
	CEDAW 18 December 1979 Convention on the Elimination of All Forms of Discrimination against Women Monitored by CEDAW	1979
1984	CAT 10 December 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Monitored by CAT	
	CRC 20 November 1989 Convention on the Rights of the Child Monitored by CRC	1989
1990	ICMW 18 December 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Monitored by CMW	
	CRPD 13 December 2006 Convention on the Rights of Persons with Disabilities Monitored by CRPD CPED 20 December 2006 International Convention for the Protection of All Persons from Enforced Disappearance Monitored by CPED	2006

Situation 1

The day begins normally. There is a commotion outside but at first you disregard it, until you hear gun shots and a man yelling. You and your family race outside to find armed men and women in the streets. They tell you to quickly grab anything important and leave the house. When you do, your family and neighbors are herded through the streets. Word starts to spread that the entire city is being evacuated. You knew of the turmoil ravaging your country, but you never thought the fighting would reach your doorstep. Then, the news breaks; the Khmer Rouge is evacuating all major Cambodian cities claiming they are trying to protect people from American bombs. They tell your family and friends you'll be able return home in a couple of days, after the bombing has ceased. Dressed in black and heavily armed, the soldiers—many of them look like sixteen year old kids—insist they will take care of everything. However, in the coming days, you slowly begin to realize you will never return home.

You later learn evacuation day (17 April 1975) was the start of what the international media has called 'Year Zero.' As the weeks and months pass, your new way of life becomes evident. The Khmer Rouge tells you to stop thinking of yourself as an individual; that your new purpose in life is to serve 'Democratic Kampuchea,' and submit to 'Angkar,' a higher ruling power. You are also advised not to question this new state of affairs, or talk about life before the Khmer Rouge. Furthermore, you are ordered to entirely forget your old life because Angkar knows what's best for you and your society. Your house and possessions no longer belong to you. They now belong to the Democratic Kampuchea. Personal possessions of any kind are prohibited. Any signs of foreign influence are systematically destroyed. Hospitals, factories, and schools are shut down. Religion is now outlawed, and marriage is no longer a matter of personal choice. The educated are separated from your group and simply disappear, never to be seen again. Regardless of your actual occupation, you are forced to work in the rice fields all day, only occasionally receiving your daily ration of two small bowls of rice and some fish paste. Helplessly, you watch as people around you die from starvation and disease. Why, you ask yourself, is this death and destruction happening? Why are Cambodians killing other Cambodians?

Situation 2

On your way to university you pass a young mother and her child begging on the street. A policeman approaches and asks her to move along. The woman tries to protest but is unable to speak the policeman's language. Eventually, he physically pushes her off the pavement forcing the pair to walk away, empty-handed. The woman is begging on the street with her child because she and her family came to the city in search of a better life. But because her husband couldn't find work, his frustration turned to anger, leading him to drink heavily and beat her. Eventually, for her own safety and that of her child, she fled, leaving her little choice but to sleep on the streets and beg for a living.

As the woman and her child walk away, you think if this setback will be the worst of her troubles today. There are stories of local gangs offering 'protection' to beggars—a 'service' which usually includes taking over half their daily earnings—and you wonder if the woman will face some type of retribution for failing to earn enough today. What if her child falls ill and she can't afford to pay his medical bills? After all, she barely earns enough to buy him milk every day and it's likely that the limited and poor quality food she feeds him will eventually make the boy sick. She hopes to return home soon but you question whether her family will accept her back now she's left her husband.

These cases illustrate the two extremes of human rights work. The Khmer Rouge's wholesale destruction of Cambodian society is a rare and very disturbing account of what happens when there is a total absence of human rights in a society, and raises several important questions: How could this happen? What went wrong? What can be done to stop future abuses like this? Can this ever happen again? Unfortunately, the level of inhumanity displayed during the Khmer Rouge period in Cambodia occurred at a time when the world was not prepared to enforce human rights— a mistake that many say will never be repeated again, though it has.

The second scenario of the woman and child facing extreme hardship is an almost daily occurrence in most Southeast Asian cities. However, the question here is not why it happens, but how can human rights be used to help and protect these people? An important question is whether extreme poverty driving the poor to beg on the streets is about human rights—or is it a problem of development, the economy, and welfare? Can human rights help to solve these problems, or will human rights just show the troubles that exist in society and nothing else? This textbook contends that is important to see human rights in both these situations because the protection of human rights is a daily event in most people's lives. Human rights should not cover only the worst cases, but also how a society treats and respects its vulnerable populations, whether they are poor, disabled, or children. As this textbook will detail, human rights protect and support human dignity and allow people to control their own lives without coercion or discrimination, whether from governments, armed gangs, or the otherwise powerful in society.

At the present time, governments and societies have had a mixed record in upholding human rights: Elections are now increasingly 'free and fair.' Poverty has been reduced (although not eliminated). Girls increasingly go to school and on to higher education. Health services are now available to many. At the same time, violations of these basic rights are in the news every day: People being evicted from their land; soldiers or policemen threatening local communities; migrant workers being exploited on construction sites; women being mistreated; people living in slums and dying in fires; children whom are unable to attend school. The ability to fix these situations, and what ensures that the kind of atrocities that happened during the Khmer Rouge period will never be repeated rely significantly on human rights—people knowing their rights; governments ensuring those rights are kept; and an international society that will hold governments to their commitments.

1.1 What are Human Rights?

There is both a simple and a complex answer to the question of what are human rights, but both must be mentioned to understand the concept of human rights. The simple answer supposes that the term is self-explanatory: human rights are rights a person has because they are human. In other words, human beings deserve certain levels of freedoms or standards of living simply because they are human.

The complex answer is that human rights entail an internationally recognized standard of how all humans should be treated, regardless of situation, or where they live. Under this definition, human rights are legal in basis, and they ensure governments and other parties do not limit freedoms or impose unnecessary suffering on people. If these rights are upheld, people should be able to live a life of dignity. The number of internationally recognized human rights is still expanding in on-going debates at the United Nations (UN) and other organizations.

Human rights can be described by what they provide for humans:

- Freedom to do certain activities (for example travel, express themselves, or practice a religion).
- Freedom from certain conditions (for example torture and slavery).
- Rights to services (for example education, health, a fair legal system, and the ability to work).
- Protection for groups of vulnerable people such as the disabled, children, women, and refugees.

To summarize, human rights ensure people have the ability to participate fully in society and live a life of dignity. Human rights also ensure our human worth is recognized and protected. The next section asks how a person acquires their human rights, and who decides what those rights are?

1.1.1 Being Human

The only criteria necessary to acquire human rights is to be human—no other condition, qualification, or knowledge is necessary. In everyday life there is little difficulty distinguishing humans from animals or plants: an obvious biological makeup defines people as human. However, it is less easy to designate when someone becomes human and when they stop being human.

When does someone become human?

Around the world there is no universal consensus on when human life begins. Some societies contend that life begins at birth, others regard conception as the crucial moment, and others define it as when a child can survive without its mother. While one person may look at a pregnant woman and see only one life (the woman), someone else may see two lives (the woman and her child). The impact on human rights is twofold. First, the legal definition will determine the legality of the termination of pregnancies. Second, this definition has significant implications on reproductive health and women's rights around the issue of the pregnant woman's rights to decide what to do with the unborn child, as will be detailed in coming chapters. However, once born people automatically acquire human rights, regardless of where they are born or whether they even know what human rights are.

When does someone stop being human?

The question of when someone's human rights cease demonstrates another feature of what it is to be human. Death is an obvious state and few people have trouble distinguishing a dead person from a live one. However, what happens if someone is diagnosed as brain dead, or they have a severe mental illness, or they have brain damage? At what point can the wisdom of keeping a person alive after they suffer severe injuries or are mentally incapacitated be considered reasonable?

Answering these questions illustrates the essential features of being human. It is commonly thought a person must possess conscious and rational thoughts to be fully human. Only when a person is considered brain dead or unable to think are life support systems generally switched off. While different States have different processes to make this decision (often involving negotiations between medical advice, the family's wishes, and the cost of medical treatment), the decision to do so often takes into account whether or not the patient can function as a human.

Further, being human assumes that people should be able to rationally participate

in society. Once someone has lost their rationality—perhaps due to mental illness or brain damage—the government or their guardian usually assumes some of their rights and responsibilities. Governments should, therefore, have a method to determine this, as well as having an appointed authority to make the decisions. So when this situation occurs, those affected in a sense do not lose their rights, but rather these rights pass on to their guardians or care givers. Again, it is expected that governments will have laws in place to both protect the basic rights of these people whilst also acknowledging that they do not have the necessary capacity to function in society. Under the concept of human rights, people are treated as rational beings as detailed under Article 1 of the Universal Declaration of Human Rights (UDHR).



Discussion and Debate

Taking Away Human Rights

Difficult questions arise in cases where a person suffers severe brain damage, or has a severe mental illness resulting in them being unable to function rationally in society: they may hurt themselves or others. Across the world, serious crimes are usually punished by incarceration.

If such a person is sent to prison, or locked away because they are deemed mentally insane, don't these people lose their human rights? Does this therefore mean that human rights are not universal?

However, even in jail, people still retain many of their rights. Importantly, they keep their fundamental rights (such as the right to life, freedom from torture and slavery, and non-discriminatory treatment).

1.1.2 The Rights of Humans

Rights are recognized as such because they are considered to be 'correct' or 'just.' In the English language the two meanings of right relate: you have a 'right' to something because it is considered 'right' or correct. A right is something owed to a person (which they deserve), or it can also apply to a condition they should be free from. Thus, the concept of a right can be both simple and complex. Put simply, a right is something a person is rightly entitled to, free to do, or protected by. There are a wide variety rights: consumer rights, passenger rights, citizen rights, viewer rights, property rights, student rights, academic rights, visiting rights, and so on. Each one implies a person's right to do something.

The complex response involves understanding the components of the legal concept of a right, which includes a number of features. First, a right must relate to an object; that is, the particular thing a right provides, allows, or ensures. This is the content of the right, and for human rights these objects are detailed in laws and treaties. For each type of right there are specific privileges: for instance, a student has a right to ask questions in a classroom, borrow books from a library, and have a fair opportunity to graduate. A driver has a right to use the roads, a passenger to ride a public bus, and so on.

Second, a right must relate to someone or something which has a duty to provide that right. If no such person or body exists, there is no need to have the right. This means a right can only be deemed as such if a second party (whether the State, a company, or

a university) can be called upon to respect and uphold that right. There is no need to give someone the right to breathe air because there is plenty of air to breathe. However, if air becomes polluted and difficult to breathe, then some duty bearer is needed to ensure people's rights to breathe fresh air. This is called the correlative duty to a right, which is further explained in a later section.

Rights do not only apply to humans: corporations also have rights and obligations, as do animals. This does not mean that they get equivalent rights to humans, but it does mean that there are duty bearers who are obligated to provide rights to animals or corporations. It would be nonsensical to give animals the same rights as humans as they hardly need to vote or hold citizenship, but they do need rights to ensure their fair treatment and to protect them from human abuse. In this way animal rights are similar to human rights: as human rights protect humans from abuse by State or society, animal rights protect creatures from abuse by humans.

1.1.3 The Foundations of Human Rights

Human rights are formed at the intersection of legal, moral, and social rights. These three types of rights (legal, moral, and social), need to be examined. First, human rights should be considered a right by law. There are many legal rights (for example, the right of someone to marry or to legally own property) which are protected under the law. Governments should respect human rights not merely because it is 'right' or 'moral,' but because they are legally bound to uphold them. By agreeing to international human rights, or by joining the UN, governments agree their subjects have human rights and that these rights have a legal basis. This legal basis is critical both for the justification of human rights, and also for their enforcement. Being based in law, governments and other parties are bound by the law to respect human rights. Chapters Four and Five will examine how these legal obligations evolved, and how States are bound to uphold them.

Second, human rights are also moral rights: they exist because they are considered moral or proper. However, not all moral rights are based on the law; there are many acts that are seen as immoral but not illegal (for example, cheating on a partner). Some moral rights have become protected in the law; for example, the banning of media classified as pornography in some countries. People usually recognize when a moral right has been violated because within a society people tend to have similar beliefs as to what's right or wrong. Though morals are often culturally specific—for example, the notion of 'appropriate' beach wear is based partially on cultural values, and that is why some Southeast Asian countries find the rather brief swimming costumes of Europeans to be inappropriate—in general, most societies share similar moral values concerning what is 'proper' and 'respectful.' Though the idea of a shared moral basis is a highly contested one, it does form part of the philosophical foundation of human rights. Shared moral views does not imply morals never change, as values on romance, marriage, and sexuality have all changed much in the past decades. It does assume that the respect of people and what they do is basically the same around the world, particularly for important things like their safety and their treatment by the government.

CONCEPT

The Ethic of Reciprocity

The ethic of reciprocity declares we should treat others as we would like to be treated. This ethic has deep historical roots, and links our feelings and emotions to those we interact with. For example:

- “Never impose on others what you would not choose for yourself.” – Confucius
- “Regard your neighbor’s gain as your own gain, and your neighbor’s loss as your own loss.” – Laozi (Taoism)
- “Treat others as you treat yourself.” – Mahabharata Shanti-Parva (Hindu)
- “Hurt not others in ways that you yourself would find hurtful.” – Udanavarga (Buddhism)
- “Do to no one what you yourself dislike.” – Tobit (Christianity)
- “Do unto others as you would have others do unto you.” – Matthew 7:12 (Christianity)
- “No one of you truly believes until he loves for his brother that which he loves for himself.” – Hadith 13 (Islam)
- “Love your neighbor as yourself.” – Leviticus (Judaism)
- “The truly enlightened ones are those who neither incite fear in others nor fear anyone themselves.” – Var Sarang (Sikhism)

Third, human rights are social rights which ensure people live safely and happily together in society. Again, not all social rights are protected by law (nor are they necessarily moral), but they do ensure the smooth running of society. For example, queuing at the bank or giving up a seat on a bus are not actions mandated by law, so they are not human rights, but people are expected to follow these unwritten rules for society to function politely. Social rights comprise what any person can expect from their government (for example, education and health), but they also cover expectations arising from living in a community. Social rights are the patterns of politeness, friendly assistance, tolerance, even cheerfulness, that make life easier and more pleasant for all of us. Social rights designate that people should be safe and secure, and have their needs met by society or State.



Discussion and Debate

Classifying Types of Rights

1. In your country, are people obligated to follow the actions listed below because they violate (a) a legal right, (b) a moral right, (c) a social right, or (d) a mix of the above?
2. How far do you think your answers will apply to other ASEAN countries?
3. Do you think these actions should be protected through human rights?
 - Being faithful to a wife/husband
 - Not secretly taking a photograph of someone getting dressed in a changing room
 - Not littering
 - Returning a lost wallet intact to its owners
 - Telling your friend that his/her expensive new haircut looks ugly
 - Giving directions to a lost person
 - Standing so an old person can take your seat on the bus
 - Repaying a financial debt to a friend

One theory about the foundation of human rights is that they flow from ‘natural law.’ This suggests rights and obligations are as universal and widespread as nature itself, and that the logic and rationale of law may be found within human nature. Natural law focuses on ideas such as human dignity and fundamental rights which supposedly arise from an innate moral order (that is, a moral order a person is born with) that all humans are born into. For example, in this theory people do not kill each other because this goes against our nature. That is people have in their innate morals a belief that killing is bad, or desire for self-preservation, or an in-born sense of what is good and bad. Natural law is therefore seen as a set of rights and obligations that respect and support these essentially human characteristics.

The idea of natural law has been controversial. First, the idea of what is ‘natural’ has changed over time. For example: racial discrimination and slavery were long considered justified by natural law thinkers. By nature, women were considered inferior to men, a viewpoint that is now widely dismissed. If an idea changes over time and differs between societies, perhaps it cannot be considered a natural concept but a social one. Second, natural law has morally often been associated with religious thinking, and particularly with Roman Catholicism. For this reason it has not been viewed as ‘natural’ by all. Homosexual acts were seen as ‘unnatural’ under nineteenth century laws, but that view has now been broadly rejected. In addition, certain religious or philosophical principles are often cited as the background justification for such rights, for example that rights are ‘God given’, which leads to the question of which God, or did each God individually list their rights? Because of these discrepancies, it is more common to find that human rights researchers, organizations like the UN, and human rights activists take a ‘positivist’ view whereby human rights exist in a specific and detailed form: human rights are what are in the human right treaties.

Arguments on what are human rights may have some connections to natural law, for example ideas like dignity, justice, and equality are assumed to be desired in every society, but today the legal positivist view is argued more often. Legal positivism views human rights as a social construct; that human rights were invented by humans to give people special rights and duties. They are open to development, modification, and rethinking. Proponents of legal positivism further realize the need to draft laws to limit the power of the State, on the one hand, and direct State actions in positive ways on the other. Human rights are products of contemporary society and reflect the issues and concerns of societies today.



Discussion and Debate

Natural Law versus Legal Positivism

Natural law assumes some laws reflect human nature. On the other hand, legal positivism assumes laws exist only because humans draft and force populations to obey them; for example, we don't kill each other because we have laws telling us not to.

Which of these views do you think is more realistic?

If we view law as positivist, does this mean we only do good because the law tells us so? Are ideas like equality and justice invented to keep societies in order? Or if law derives from nature, why do we have laws on tax, divorce, and driving, given that none of these activities occur in nature?

The foundations of human rights needed widespread support to become universal and there were a number of important forces which drove this. One must also accept that over the years, religious leaders, moral philosophers, and jurists helped develop moral standards. Indeed, all cultures comprise values as to right and wrong regarding the treatment of others, whether concerning violence, relationships, honesty in one's transactions, or forcing others to do something they do not want to do. There are additional factors which made these standards become universal: (1) human rights are written into international law, (2) the universal participation of States in the UN system which enforces international law, and (3) States following the standards of human rights. Human rights and the values they advocate are the product of international agreements. They are not merely ideas from the UN and governments, but exist today as the product of a centuries-old struggle to determine standards of humane treatment towards fellow human beings.

A significant factor which transformed human rights from a mainly domestic issue to a universal legal standard is a response to the horrors of World War II. Before then, rights did exist in many countries, but they varied according to religion, constitutions, and cultures, and were thus far from universal. Further, in many cases these rights were only for certain people in that country; human rights did not give everyone rights (so that often indigenous groups, non-citizens or women were not given rights), neither could these rights cross a country's border (the Bills of rights in England or United States were only used within those countries). During World War II, governments, in particular Germany under National Socialism, ignored the notion that all people

have rights and treated some groups (the Jews, Gypsies, political opposition groups, and homosexuals) as if they were not human at all. Their rights were taken away and millions lost their lives. Legally, there was little the rest of the world could do; worse, there was even less interest to react. In the long term though, the horror of the Holocaust did provide an incentive to make human rights legally binding on all States as a universal standard, which means that if this kind of atrocity should happen again it is breaking the law and should result in action from the international community.

1.2 Fundamental Features and Concepts in Human Rights

Human rights have a small number of features which distinguishes them from other rights, and also which are necessary to protect and empower people. The features give human rights a special and unique status, setting them apart from other types of rights.

1.2.1 Universality

In general, rights are limited as to where and when they apply. However, human rights do not have this limitation—they are universal. The mere fact of being human on this earth is enough to gain human rights. Human rights are not dependent on citizenship, or living in a territory that recognizes such rights. This distinguishes them from most other rights which are limited in some way by, for example, being old enough to attend school for student rights, or being a citizen for voting rights. **Universality** ensures that each person has human rights which are always available to them everywhere.

The notion of universal human rights does not necessarily mean everyone has the same rights. Rather, everyone has human rights and can claim them, but the precise composition of such claims depends on (1) where the person is, (2) who they are, and (3) what rights they should possess. In other words, while fundamental human rights are the same for everyone, the actual rights a person enjoys depends on a number of factors. Further, a person's ability to access their rights depends on which country they are in (as not all governments have agreed to the same rights), and citizens have slightly different rights to non-citizens. It may also depend on the age and gender of the person (as women, children, minorities, and people with disabilities have access to rights relevant to them). Finally, it may depend on the situation (for example, rights change when there is a conflict).

Universality

Human rights are universal means that everyone is entitled to human rights. Human rights should be available to any human being, anywhere.

Discussion and Debate

Universality

A woman faces violence and abuse regularly from her husband, but this is typical of her society and considered part of the culture. She does not complain. Besides, there is no one to turn to in the community as everyone accepts domestic violence as normal. Culturally, the wife also believes her husband is allowed to hit her and so does not report him to the police.

Does this mean the act of the husband hitting the wife should be allowed? Is it a crime? Is it a human rights violation?

The assumption of universal human rights means that the woman has human rights even if she does not know, or even if she does not agree. The woman's right to protection from violence is universal and inalienable, and cannot be denied. The only reason she is not protected is because people told her to accept such treatment. Even though it may not be a crime because she has not reported it to the police, the abuse is still a violation of her rights. In other words, whether she agrees to it or not, the act of violence against her person is considered a violation.

Isn't this imposing foreign values on her beliefs? Do outsiders have the right to enter communities such as these and tell them their culture is wrong, and that they need to change their beliefs and practices to conform to a new international standard?

Some people argue human rights impose foreign morals and system of ethics over other cultures. Perhaps this is true in the sense that a social custom agreed to by everyone in a society may be considered wrong and a violation of human rights (for example girls are prevented from going to school). However, the universality of human rights may override some culturally specific values. There are reasons for this view. If human rights are contingent upon cultural values then they would not be universal but rather culturally specific rules. The right of a child not to be discriminated against when going to school is universal. Further, one of the tasks of human rights is to inform everyone of their rights. A cultural value cannot be used as an excuse to not inform people of their human rights. On the whole, most cultural values support people's rights, and the main issue here is when culture is used as an excuse for human rights violations. In most cases where people consent to violations (for example, a girl agreeing not to attend school), often they are unaware of their rights and are thus not consenting in a fully informed way. The universality of rights, therefore, allows people, communities and cultures to make decisions about culturally practices in a fully informed way.

1.2.2 Inherent

Human rights are special because they come into effect when a person is born. Individuals do not need to earn human rights. Unlike a university student or driver, who both need to pass exams to earn their entitlements, human rights are gained merely by being born human. In other words, human rights are **inherent** to people with no other qualification necessary. It isn't even necessary for people to know they have human rights to possess them—these rights exist even if a person is unaware their rights have been violated. If knowledge was a criteria for the possession of

Inherent

Inherent refers to something being a permanent or inseparable part of something else. Human rights are inherent to humans. They are permanent and inseparable; they are always with a human, no matter the situation.



rights, States could easily avoid compliance by simply not informing them of their rights (and some States are still guilty of this). Making human rights inherent bypasses this potential problem.

1.2.4 Inalienable

It is impossible for anyone to lose their human rights (unless they die, of course). Many rights, such as the right to property or student rights, terminate at some point; that is, once you sell your bicycle, you lose rights to it, or once you graduate, you are no longer a student. People cannot lose their rights as a result of doing something, regardless of how terrible their act was—even Pol Pot or Adolf Hitler would still be entitled to their human rights. It is not possible for a State to decide that human rights do not exist anymore, or to decide that their rights once recognized are no longer relevant. Even when a new State is formed, for example, when East Timor gained independence from Indonesia, it is expected that citizens would still retain whatever human rights they were entitled to when they were part of the previous State (in this case Indonesia). However, it is important to note, **inalienable** does not mean a person can never lose any rights, as often the number of rights a person is entitled to can change; for example, when a person turns 18, they lose their children’s rights and their status will change. In these cases, subjects would still retain their human rights, but not their rights as a child

Inalienable

Anything deemed inalienable cannot be removed, surrendered, or transferred. Furthermore, they cannot be bought, sold, or negotiated with. Thus, even if considered a burden, inalienable rights are always in existence.

1.2.5 Dignity

One of the main objectives of human rights is to ensure people can live with **dignity**: in other words, that they are respected, treated well, and have a sense of worth. If a person has their human rights, then they can lead a life of dignity. If a person’s rights are taken away, then they are not treated with dignity.

Dignity

Human rights are designed to support and sustain the dignity of individuals, including their self-confidence, sense of worth, and their ability to use their skills. Dignity means that human feel respected and worthy.

Dignity is not only about making sure laws are not broken, but it is about treating people in such a way that they are respected as humans, like any other human. For example, the right to food is not merely a matter of quantity, of having the necessary 2,200 calories a day. The number of calories means little if a person is forced to eat scraps off the floor, or if a Muslim is given pork at each meal. The nutritional value alone does not ensure dignity. Dignity means the person can eat food like a dignified human, and this is by respecting the social and cultural values around food, such as eating food with friends and family in what is considered a normal way.

1.2.6 Equality

Human rights exist to ensure **equality**. Indeed, this concept is featured in all human rights documents, emphasizing the equal enjoyment of rights without discrimination. The first article of the UDHR states “All human beings are born free and equal in dignity and rights.” Compare this to the opening of the United States Declaration of Independence where it is stated (1776): “We hold these truths to be self-evident, that all men are created equal,” or the first article of the French Declaration of the Rights of Man and of the Citizen (1789): “Men are born and remain free and equal in rights.”

Equality

In a society all people should be treated the same way, especially regarding their rights. Equality means that people are not treated differently because their sex, wealth, language, political views, and so on. While there may be some special cases for different treatment (such as special scholarships so poor children can go to school), these should be used only to increase the level of equality in a society.

Clearly each of these documents supports the notion that human rights are inherent (that is, people are born with them) that people are born free, and they are born equal. But true equality is difficult to achieve. It is important to note that the gendered language of early human rights texts show that true equality between the sexes had not yet been reached; men were equal to other men but it would take some time before women were similarly regarded. In much the same way colonized people would fight for their equality during the twentieth century.

Equality ensures people receive the same treatment, whether before the law, at work, or in a marriage. However, no society is entirely equal in every respect. In some cases, the expectation is not equality but fairness. For example, not everyone has equal access to a university education. Though higher education is a human right, certain requirements—for example, the passing of tests, high school diplomas, knowledge of a language—are often required before admittance. Rather than equal access, it is fair that university admittance be based on non-discrimination. Discrimination refers to someone being treated differently, penalized, or punished because of a particular feature about them. The most common and obvious form of discrimination is against women. In many societies, it is believed that women are not as strong or capable as their male counterparts and thus do not deserve to be paid equally. Other common forms of discrimination include race, religion, minority groups, or non-citizens.

1.3 Human Rights Law: Rights and Duties

The power of human rights stems from the fact they are backed up by law. The idea that human rights are universal and morally good are not enough to enforce them. Many rights merely rely on social values to enforce them: not jumping the queue at a bank is enforced by the possible anger of other customers. This is not the most effective way to enforce a right. Human rights, on the other hand, are understood as laws which are protected by legal bodies, and it is this status that deters people and organizations from breaking them. The section below details the important features of human rights as law.

1.3.1 The Rule of Law

Human rights are legal rights in that they are bound by the law, but also they ensure that there is a fair, working legal system. The existence of a fair legal system can only occur if the society is based on the idea of the rule of law. In order to enforce human rights, systems need to be in place allowing subjects to seek justice. The main constructs behind the rule of law are summarized in the following example: Imagine you are playing a game like chess with someone but you don't know the rules and the other person does. You move a piece and they take one of your pieces, but when you try to do the same move, they claim it's against the rules. There is no sense to the moves they are making, and all of your moves are penalized in some way. When you ask to have the rules explained they refuse to tell you what are in the rules. Obviously, it is impossible to win in this kind of situation because there is no rule of law. When your opponent is allowed to change the rules so any move can be done, you will never win.

Unfortunately, some societies function like this: for example, in some countries, the police may arrest random pedestrians for no stated reason; convicted criminals may receive vastly different punishments for similar crimes; a rich person may avoid punishment altogether for a crime; some organizations may hold public meetings,

whilst others cannot.

Living in a society which is based on the rule of law means that:

- Everyone will be judged and protected by the same law.
- Everyone will be equal before the law.
- Everyone will have the same protection before the law.
- Legal rules will be public knowledge without 'secret' understandings known only to a selected few.
- Individuals will have the right to find assistance to understand the law.

The rule of law ensures a just and fair system which protects people and their property, keeping them safe. The main elements of the rule of law are that everyone is equal before the law and nobody should be able to escape the effects of the law. However, in some cases certain people do appear to escape legal punishment; for example, the wealthy, politicians, and senior government officials may avoid punishment for crimes or corruption. The law should not exist to protect or benefit a select group of people.

Equality before the law also means equal protection under the law for everyone. Unfortunately, there are many who not only aren't protected by the police, but in some cases actually suffer abuse and victimization from them, such as migrant workers, or women who have reported domestic violence. In some countries if a teacher hits a young student this may not be against the law and the student is not protected from this violence. However, in all Southeast Asian countries if a student hits a teacher this would be considered a crime and the police would protect the teacher. It seems unfair that if a teacher hits a student the police may do nothing, but if a student hits a teacher they may be punished by the law. The law here is not equally protecting the student, as it only protects the teacher. This different treatment is unfair, as the law should protect both teacher and pupil equally.

Another feature of the rule of law is that all people should have access to the legal system and be provided with an understanding of how that system works and what it can and cannot do. This may be achieved through legal assistance or legal aid, or ensuring the information is freely available. However, some countries have deliberately vague laws which the government then uses to its advantage. Laws defining treason, insulting leaders, and pornography, are often not clearly defined leading to uncertainty which can in some cases result in selective enforcement. For example, the idea of 'anti-government' activity varies greatly across Southeast Asia. In some places this may be as little as possessing 'illegal' documents (for example, the works of Karl Marx or human rights treaties); in others, it may be holding a protest rally. Both are examples of situations where the rule of law is not fairly upheld by governments.



Discussion and Debate

Do you live in a State where rule of law is respected?

What are some signs that the rule of law is not being upheld? Who suffers when the rule of law is not respected?

Many Southeast Asian countries suffer from a lack of the rule of law. The rich or politicians often escape legal punishment whilst the poor face harsher penalties under the law. For example, a policeman charged with kidnapping a lawyer activist in Thailand was only sentenced to 18 months in jail, whereas a civilian charged with a similar crime would have been sentenced to 20 years. Similarly, sons of politicians involved in drunken fights may escape punishment, just as senior government officials who have stolen money, harassed women, or hit their co-workers regularly avoid prosecution.

Many blame the lack of the rule of law on the police or politicians, but others must share the blame too. For example, a driver paying a bribe to a policeman to avoid paying a larger fine, a parent paying a school money to enroll their child, a person paying a fee to the government to get permission to open a food stall on the pavement even though such permission would be illegal.

Who is at fault when people avoid the rule of law for their own self-interest by paying a bribe? Do societies behave like this because governments are not serious about upholding the rule of law, or is it individuals who do not wish to obey the law?

1.3.2 Human Rights Duties

For every human right there is a second party (the duty bearer) who has a duty to ensure that right is respected; duty bearers have duties and obligations towards the rights holder. Duty bearers can include the government, people, corporations, universities, hospitals, and so on. The duty bearer and the rights holder are in a relationship, for the action of claiming a right calls on the duty bearer to act in some way.

It is vital that individuals themselves realize their role as duty bearers; parents have obligations to their children, teachers to their students, and friends to each other. Many of these duties are merely social or moral in nature, as discussed above. However, important duties, especially human rights duties of individuals, are detailed in criminal law. If a person violates another's right to property, right to practice religion, right to privacy, or freedom of movement, the duty bearer is committing a crime. In reality, these human rights obligations are already strongly enforced. The role of the duty bearer can be less clearly defined for other groups (for example, companies, armed groups, or religions). If a company does not allow its workers to travel freely, or if an armed group recruits children to become soldiers, in some cases these violations may not face sanction. The problem of protecting people from violations by these duty bears is addressed under the concept of vertical protection, as discussed below.

The most important duty bearer is the State; the organization legally bound to uphold rights in treaties. States' duties are outlined in various human rights treaties. That said, States also commonly emphasize the individual's duty to society as clearly stated in the new ASEAN Human Rights Declaration. This asserts that human rights

“must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community, and the society where one lives.” The Declaration emphasizes that human rights should not only be considered as freedoms, but also as obligations. Though there is a basis to this argument, and it is expected that people treat each other in a way that does not violate their rights, human rights are primarily about ensuring that governments fulfill their obligations. An individual’s duties are clearly detailed in a country’s national laws and the emphasis on duties may be obscuring that it is States and other large-scale power holders who pose the more significant problem when it comes to defying human rights obligations.

The legally binding nature of human rights generally positions the State as the correlative duty bearer. The duty can be defined in two ways. Firstly, many rights require someone or something to provide a good, service, or other activity. Examples of this include building schools and hospitals so that children receive their right to education or healthcare. This is called a positive duty: a duty to do something. Secondly, the duty may be to simply not interfere, or to ensure individuals are free from something—for example, there is a right not to be tortured or to speak freely without government interference—which requires the State to refrain from a particular action. This is called a **negative duty**. Negative duties limit the power and activity of the State and call on it to be passive when, for example, someone is trying to express their opinions or religious beliefs.

Negative Duties

A negative duty requires a party to refrain from an action, or to not interfere with someone. Negative duties stop the party from doing something.

However, it is important not to simplify all rights into either positive or negative rights, for they can contain a mixture of positive and negative duties. For example, freedom of movement requires both negative duties to ensure the State does not prevent individuals moving about the country, but also **positive duties** requiring it to make the movement possible in the first place—by providing public transport, maintaining roads, or building ramps so wheelchair users get access to buildings.

Positive Duties

Positive duties refer to an obligation to take a certain course of action or provide a service. Positive duties cannot be fulfilled by inaction or neutral behavior.

Once a treaty has been signed, human rights obligations will be legally binding on States and their governments. This should not be considered a burden, for if a government that has the ability to be elected to run a country, it must also have the required competence to fulfill its human rights duties. Individuals have a duty to uphold human rights—for example, to refrain from discrimination—which the States have a duty to enforce through national laws.

1.3.3 Vertical and Horizontal Protection

States have legal obligations not to violate a person’s right as is clear from human rights standards. However, what if a non State party violates a right? For example if a company takes someone’s land from them, a factory pollutes a river, or a husband hits his wife. The above cases do not concern the State but involve an individual seeking protection from, or requiring a service from, other people, corporations, or groups. This is called **horizontal protection**. There is a difference between being protected from, or requiring a service from, the State – which is called vertical protection – and being protected from, or requiring a service from, other people or corporations, or other groups – which is called horizontal protection. Human rights primarily are about **vertical protection**, that is protecting the person from the power of the State, but recently there is an awareness that horizontal protection is increasing in its importance. The concerns about protecting women and children from violence, or stopping abuses in the workplace, are responded to by addressing weaknesses in horizontal protection.

Horizontal Protection

Protection, given by human rights, from the power of non State actors such as other people, companies, hospitals, media, and so on. This protection is horizontal, because these actors are on the same legal level. Horizontal protection should be ensured through the State writing laws against the actors violating other’s human rights, and having bodies who protect people’s rights, such as the police, welfare organizations, and the media.

Vertical Protection

This refers to protection from the power of the State given by human rights. The State is limited in its powers, and it must ensure that it respects the rights of the people under its power.

A weakness in horizontal protection is ensuring the duties of non State actors. Human rights obligations are not simply about managing a States relationship to a person, but also about ensuring individual's rights are protected from violation by anyone or anything. As human rights protection developed it became clear that other actors such as corporations, non-State armed groups, or institutions like hospitals and the media, also have obligations towards people. While these bodies are not legally bound to human rights treaties, they must still conform to these standards because the State has obligations to ensure people are protected from third parties. When non-State actors violate human rights the State has the duty to provide remedies, such as compensation or punishment of perpetrators. The duties and obligations of transnational corporations will be addressed in coming chapters

1.3.4 State Duties: 'Respect, Protect, Fulfill,' and 'Promote, Protect, and Prevent'

There have been attempts to more clearly define what States should do to ensure people get their human rights. This has been detailed in two related, but different, statements from the UN. Both are intended to help explain what States should be doing to support human rights. First, it was declared that States should 'respect, protect, and fulfill' rights:

- Respect: States should ensure human rights are taken seriously, and recognize those rights.
- Protect: States should ensure there is a working legal structure and protection mechanism to safeguard individuals from violations by non-State actors (horizontal protection).
- Fulfill: States should ensure that individuals who have so far not attained all their rights—for example, children not yet attending school—will in future have these rights fulfilled.

This set of duties was written firstly for economic, social, and cultural rights as these rights can be fulfilled rather than met immediately such as civil and political rights; this distinction is discussed in more detail later. It was later realized these activities could be better designed to ensure States are doing all they can to ensure their citizens are getting human rights. So, during the 1990s, a new list was introduced with 'promote, protect, and prevent.'

- Promote: Realizing the duty to 'respect' does not ask the States to do much. Respect is more of an attitude than an action. The new action to 'promote' human rights requires States to actively reach out and plan human rights education, including building awareness, introducing rights to improve the legislature, mainstreaming initiatives, and teaching human rights in universities.
- Protect: (same as above)
- Prevention: States should ensure they do more than merely respond to violations after they occur. Rather, they should have policies and plans in place to avoid such violations occurring in the first place; for example, human rights education, better trained police, or publicizing laws.

Both 'respect, protect, fulfill,' and 'promote, protect, prevent,' provide useful summaries of what is expected of States, and also what human rights actors should be working on.

1.4 Categories of Rights

Predominantly, human rights arise from international treaties which have defined a number of categories of rights. It is important to describe these categories because the rights and duties differ slightly for each category. A useful method to detail these rights is to examine how they appeared in the first universal human rights document, the UDHR. This declaration, which was adopted by the UN in 1948 is comprised of 30 articles, each one describing a right or a duty. The list of rights in the UDHR has a specific order, which helps to illustrate the categories of rights. The declaration is described in more detail in a later chapter, but here it will be briefly examined as to how it categorizes different types of rights.

Rights are placed into categories because some categories have different features. However, they should not be ranked against each other as each category is an important part of an individual's human rights. Nevertheless, as history shows (detailed more in the next section) some States prefer certain categories over others, leading towards a division in the protection of human rights.

Fundamental rights

The first rights in the UDHR deal with what are considered the most important rights, freedom from slavery and torture, the right to life, non-discrimination, and the idea that everyone is born equal. Regardless of the situation, no State can ignore or violate these rights. As detailed in a later chapter, in certain circumstances, a State can temporarily halt other rights, or interpret them in a particular way, but States can never give any reason for the violation of fundamental rights.

Rights in the legal system

Legal rights are in place to ensure individuals enjoy an equal legal identity. In addition, the legal system must be based on the idea of true justice, an idea which covers access to a court and the court being fair, competent, and impartial. Justice also includes equality of treatment, and if arrested, that individuals be treated well. Other rights include freedom from arbitrary arrest and detention, and the presumption of innocence. In Southeast Asia, these rights pose many challenges because in many countries the court systems are underfunded and overworked causing justice to move slowly. Also, policing can be of a lower standard leading to false arrests or criminals not being convicted. Finally, some courts are not impartial and corruption is rife resulting in cases where judges are open to bribery.

Rights in society

Civil rights focus on an individual's ability to participate in society and live with dignity on a daily basis. Most of these civil freedoms can be found in early human rights documents such as the United States Bill of Rights (1788) and the French Declaration of the Rights of Man and of the Citizen (1789). They focus on limiting the power of States to interfere with individual freedoms in a society. These freedoms ensure privacy, freedom of movement within a country, the right to marry and have children, to practice religion, and freedom of expression. Other civil rights include the right to a nationality, the right to seek asylum, and the right to property.

Political rights

Political rights are rights allowing people to participate in politics, and they also ensure a fair political system. Political rights related to participation include the right to vote and the right to be a politician or government officer. There are also rights to associate, to form a political party, or simply to be a member of a group. Groups may

Political Rights

Political rights allow individuals to participate in politics, and ensure a fair political system which includes the right to vote, the right to be a politician, and the right to join a political party.

Civil Rights
Civil rights protect an individual's personal liberty and ensure liberties such as freedom of expression, conscience, speech, religion, expression, and movement.

be political parties, trade unions, or even fan clubs. The right to assemble—that is, to meet together—publicly or privately is also a human right and can cover meetings to protest a government or work conditions, to raise awareness for an issue, or to take part in a cultural activity.

Economic Rights

Economic Rights
Economic rights ensure an individual's economic welfare. The main economic rights include the right to work, the right to get welfare, and leisure rights.

Economic rights are rights which ensure individuals have enough money or resources to live with dignity in their community. For most people this also includes the right to work, that their employer pays them fairly, and provides them with a safe and healthy work environment. Protection is also offered to those unable to work in the form of government welfare. Article 22 of the UDHR outlines the right to social security, that is, the right to be given the necessary resources for survival such as welfare payments or access to cheap food. Most countries in Southeast Asia have weak or non-existent social security systems, and is therefore an area requiring much more development. The other main economic right is the right to rest and leisure. Like the right to social security, it is often downplayed because many see it merely as a child's right. However, the right to leisure is linked to the right to work. Maximum hours and required days off are a part of the right to work.

Social rights

Social rights are rights a person should expect from living in a society, such as the right to healthcare and education, food, water, and housing. Sometimes called livelihood rights, it can be argued that these rights stem from the idea of a social contract: a contract between individuals and their government which assumes that if a person lives peacefully and lawfully, governments will provide certain services, and protect other services people provide for themselves.

The services expected from governments include an education and healthcare system. How it gets its citizens to pay for such services will vary between countries; but the government must provide them. For example, governments must provide compulsory free primary education for every child regardless of ethnicity, nationality, citizenship, or language. The rights to education, health, food, water, and housing are particularly important in Southeast Asian countries. While some countries such as Singapore have done very well here with food, water, housing, health and education all of a high standard, others such as Myanmar, still struggle to provide these basic rights.

Cultural rights

The final category is cultural rights; that is, the rights for a person to participate in their culture. These can be broken down into three elements: rights to language, religion, and cultural activities. The human right to use a language prevents States from barring people speaking their language. It does not necessarily mean a State must provide services for those people in that language (although it is expected that essential government services such as law and health would be available in their language). Rights to religion allow individuals to choose their religion and to practice this as a group; for example, to pray together.

Cultural rights encompass many activities such as the right to eat, wear clothes, marry, hold a funeral, and celebrate events, according to the culture. Across Southeast Asia, there are many tensions surrounding this right, such as the right to wear certain clothes (for example, the hijab or veil worn by Islamic women), or the rights of indigenous groups to live and hunt in their customary land which may be made into a national park by the State.

Social Rights

Social Rights are the rights to government services such as health and education. They are also rights to basic necessities such as food, water, housing, and clothing. They are social because they ensure people can live in a society with dignity. They are often thought of as part of the social contract between people and the State: by obeying the laws people are rewarded with by the government giving these services.

1.4.1 The Separation and Unification of the Categories of Rights

Dividing rights into these categories is useful because each category varies slightly in the nature of the rights and the duties. For example fundamental rights have the power of international law to enforce them, which civil freedoms mostly do not; social rights detail government services and are not immediate like civil rights, and cultural rights will mainly target minority groups. However, there is also a danger in separating these rights into categories because some governments may favor some categories and ignore others, or they may selectively choose which to support.

For much of the period between 1950 and 1990, the major division has been between those countries which support civil and political rights against those supporting economic and social rights. As a result, these categories have been seen as separate and distinct. The split coincides with the Cold War, when the world was divided ideologically between western countries supporting liberal capitalism, and communist countries (such as China, the Soviet Union, and Vietnam), who supported communist political systems. There was a tendency, although this was not true in all cases, for western countries to support civil and political rights, and for communist countries to support economic and social rights. In general, western countries tend to favor civil and political rights because these already exist in their bills of rights. Further, as rich and developed countries, they saw little need to address economic rights as they had very few starving or homeless people, or they saw social rights as services their citizens should pay for. This division was supported by the major western non-governmental organizations (NGOs), such as Amnesty International and Human Rights Watch, both of which worked exclusively on civil and political rights until the late 1990s, before they also began to take note of economic and social rights.

Communist countries saw the role of government as providing services such as education, health, and free economic welfare, but they did not support political rights such as the right to vote. Similarly, some Southeast Asian countries decided development should come before civil freedoms. Many countries, including Singapore and Malaysia, promoted economic and social rights over civil and political rights. They argued that only after health, education, and wealth had been dealt with could civil and political rights (such as the freedom of expression and the right to assemble) be recognized. They claimed granting individuals civil and political rights before their country was fully developed would lead to conflict and confusion, as people would protest and fight rather than concentrate on working towards development. So people's civil rights were traded off for economic and social ones. While in Chapter Three, it will be shown that the separation of rights was not solely a political decision, it still influences how States relate to human rights.

The division between categories was also enforced by concepts such as the "three generations" theory, which assumes different categories of rights emerged at different times. The theory assumes that human rights have three separate and chronological groups.

Concept

The “Three Generations” Theory

The “three generations” theory was proposed by a Czech lawyer, Karel Vasak in the 1970s, and states that rights emerged at different times in different contexts. The theory defines the three generations as follows:

- **First Generation:** The first human rights were civil and political in nature and occurred during the enlightenment, from around the late 1700s to the mid-1800s. Examples can be seen in the United States Bill of Rights, and the French Declaration of the Rights of Man and of the Citizen.
- **Second Generation:** The second generation of rights came as a response to the harsh conditions of the industrial revolution. These rights protected the worker and forced States to provide services like education and healthcare. This period began in the late 1800s and continued until World War II. During this period, the ILO emerged to protect workers, the first welfare States appeared, and the first universal education systems were introduced.
- **Third Generation:** The third generation of rights were most vital to developing countries, and included the rights to self-determination, minority, and cultural rights. They were important in the 1960s and 1970s, when they began to arise in various international human rights treaties.

Whilst the three generations theory does help to distinguish the different types of rights, it creates more problems than it solves. The problems are that detailing three generations implies civil and political rights were the first and original rights, with all other rights following later. This reinforces the assumption that civil and political rights are primary and fundamental, whereas economic, social, and cultural rights come second. It also implies civil and political rights are the most developed because they have been around the longest, which is not the case as many cultures have long histories of respecting cultural differences, and supporting the poor. Finally, it implies that each generation is distinct and can work independently which assumes that the categories can be separated. However, contemporary thinking around rights argues that this is not the case.

1.4.2 VDPA: Vienna Declaration and Programme of Action

The problems of western disinterest in economic rights, or reduced importance given to civil and political rights in Asia, were seen as a major hurdle to the human rights movement. At the end of the Cold War and following the dissolution of political divisions, an opportunity arose to fix these divisions at the Second World Conference on Human Rights (1993) in Vienna. The conference and its outcome document, the Vienna Declaration and Programme of Action (VDPA), mark an important evolution in human rights. It was agreed to by all existing 171 States, demonstrating its universal acceptance.

The VDPA revolutionized the understanding of human rights in many ways: it was an attempt to codify the concept of “*all human rights for all.*” The VDPA put an end to the idea that human rights change according to cultural particularities; it declared that

the protection of human rights should be a legitimate concern of the international community, and that protection of these rights was not exclusively a national matter. It also linked human rights to democracy and development, stating that each was interdependent and mutually reinforced the other. In other words, *there cannot be rights without democracy, democracy without development, and development without human rights.*

The VDPA moved human rights from the divisive structure of the Cold War separation of rights into a far more integrated and encompassing view. A major concept proposed by the VDPA was that human rights are indivisible, interdependent, and inter-related.

These three terms together argue that human rights do not exist as separate categories, but form one single group of inter-related categories of human rights.

- **Indivisible** means that a government cannot divide up rights and only choose specific categories. A government must take human rights as a whole, and not just address separate categories.
- **Inter-dependent** means each category of rights does not work independently: civil rights often depend on social rights, which may depend on political rights, which may depend on economic rights. For example, the right to education (a social right) depends on freedom of movement to reach school (a civil right), but movement depends on having enough money, say, for a bus ticket (an economic right), but to ride the bus, one needs to be healthy (a social right), but being healthy may depend on demanding a government that ensures people's right to healthcare (a political right).
- **Inter-related** means many rights are related to each other across categories. For example, the right to assemble (a political right) also includes the right to join a trade union (an economic right), and a right to be part of a minority group (a cultural and civil right). Similarly, the right to have children is both a civil and a social right (as is the right to healthcare). This inter-relationship clearly shows that rights are not mutually exclusive, but a network which relate and re-enforce each other.

This chapter has so far introduced a range of concepts, theories, and arguments to show how human rights work. These concepts form a necessary foundation to understand just why human rights are important, and how they should be promoted and protected. Many of the concepts covered here will be returned to in the following chapters of this textbook.

1.5 Why Study Human Rights?

The study of human rights is important today for a number of reasons. This first chapter introduced the theoretical, political, and philosophical basis for rights and explained some of the central concepts. Still, the question needs to be asked, why study this, and, is this a useful or even legitimate topic for university research? The answer to all these questions is a resounding yes. To understand why some people do not receive the same protection and freedoms as others, there needs to be a greater understanding of how human rights work. This knowledge relies on a better understanding of how society works, the values and beliefs in a society, and the political and economic context to demanding and receiving rights. Universities are tasked with contributing

to national development, and skilled people are required to resolve the problems in development. The study of human rights can contribute to the effectiveness of many professions, whether they be lawyers, teachers, anthropologists, political scientists, or social workers.

There are many reasons for the study of human rights at university level, and they are summarized below:

1.5.1 Human Rights Education is a Human Right

Education on human rights is a human right in itself. Governments are expected to educate their citizens on these rights; in fact, a number of treaties ratified by Southeast Asian governments (including the ICESCR and CRC) define it as a duty. Such rights work most effectively only when individuals know their rights, thus enabling them to claim them. As will be detailed throughout this textbook, a significant weakness in the protection of human rights is the lack of awareness people have about their rights. As an example, very few university students graduate with any sense of what human rights are. Even fewer high school students are exposed to them. Here, the university student can play an important role for when he or she graduates and starts working, they may need to make decisions based on human rights. When students engage with governments and government officers (from voting to meeting with local representatives), they should note whether human rights are being respected. The education of students in this field forms an important contribution to the civil functioning of society.

1.5.2 Protecting the Vulnerable

Most people in society live relatively safe lives. Their homes are protected from people breaking and entering. They rarely face threats or violence. They have enough to eat, drink, and a place to live. This is especially true of most university students. But not everybody lives like this. There are groups of people within Southeast Asian societies who do not have this kind of protection such as refugees or migrant workers, or other minority groups facing discrimination. Each person has human rights which they are born with, and no one can take them away. Nonetheless, people who live fairly safe well-off lives may not see the need to study human rights because their rights are not violated. People often do not recognize the protection they receive because it is invisible, and they assume everyone gets it or is entitled to it. A common perception is that this protection is normal, but the reality is that protection is only normal for some, in certain situations. It may only be when a crisis arises—for example, a natural disaster or a political conflict—that people may become interested in human rights because their safety (and their rights) may suddenly be at stake.

Important questions to ask are why do some people get protection and others do not? How can those who are threatened be protected? In most wealthy societies, it can be a challenge to get people to consider why others go hungry, don't have a roof over their heads, or have access to clean water.

People may not receive protection for a variety of reasons. Perhaps they are discriminated against or it is considered too difficult to help them because they live a long distance from government, or they are not considered citizens. However, in many cases it is unclear why some people do not get the same protection and the same freedoms as others, nor why some people are more vulnerable to losing them.

If students are to understand this, and also have a better knowledge of how society should protect these individuals, they need to understand how human rights work. We can all take action to promote human rights for everyone, including ourselves. No one can be sure when our human rights will be threatened. Granted, a greater knowledge of human rights does not guarantee protection, but it does significantly help. Knowledge about such rights results in a student being less likely to violate those rights. It could also mean they will be less tolerant of those who do violate rights, and will be more likely to support governments which respect their commitment to human rights.

1.5.3 Human Rights Provides a Regional Understanding

Countries in Southeast Asia, under the regional organization ASEAN, have begun to develop a regional level response to human rights concerns. Many human rights issues happen across borders in Southeast Asia, for example, migrant workers and human trafficking. The strongest response to such concerns tends to come from within the region, with civil society being supported by other groups in the region. This textbook will look at human rights on a regional level, and show connections and comparisons of rights issues across the ten countries of ASEAN. This textbook will provide the student with a foundation on the idea of human rights, and how to respond to critical human rights issues in the region today.

In Southeast Asia today, people face many challenges. Hill tribes face relocation because of dam projects, young children are forced to work, women face discrimination and violence, disabled children do not get access to education, political opponents are jailed, and migrant workers face exploitation in their workplaces. This list shows that every country in Southeast Asia has significant, though varied, human rights concerns. Typically, universities have not dealt with these problems as human rights issues because there is a lack of knowledge about other countries in Southeast Asia, or they are considered too 'political' or sensitive.

Changes are occurring in South East Asia, and human rights are becoming more mainstream. ASEAN has reaffirmed its commitment to human rights in various documents. Recently, ASEAN set up a regional body which agreed to a regional level declaration on human rights. The Declaration and the AICHR body enforce the idea that human rights must also be examined at a regional level.

1.5.4 Human Rights Education Adds Value to Other Knowledge

The study of human rights is multidisciplinary and provides students with a basic knowledge in a number of university disciplines.

- **Law:** Human rights concern the legal protection of people. Human rights come from international law and relate to the national laws of Southeast Asian countries.
- **Political Science:** Human rights describe how States should work, and what kind of duties they have, and the activities they should be doing in order to be effective governments.
- **Sociology:** Human rights help to understand the dynamics of a society which is necessary to both protect communities and work against discrimination by changing values and beliefs (such as the inferiority of women).

- **Philosophy:** Human rights arise from ideas about what is moral and good. There is no scientific proof that the current human rights are the correct ones, but the various philosophical ideas about justice, ethics, and morals give reasons why they are correct and why people should treat each other with respect.
- Human rights also involve international relations, peace studies, psychology, and anthropology.

By studying human rights the student will gain a greater understanding of how people relate to governments and communities. The student will also gain a greater understanding of the members in their society and the challenges some of these people face. Lastly, the student will gain the understanding necessary to analyze and contribute to the evolution of human rights in the region.

A. Chapter Summary and Key Points

What are Human Rights?

Human rights are the rights a person has just by being human. These rights start from birth and cannot be taken away. Other rights, like student rights or citizen's rights, need to be earned or can be lost, so they differ from human rights.

Human rights are enforced by law, so they are legal rights. They are also seen as moral, and help a society work better, so they are both moral and social rights. Human rights place duties on States to protect people inside their country. However, people, businesses, universities, and armies also have obligations to not violate other people's rights.

Religions, cultures, and societies all have rights-based values about the treatment of human beings.

For some cultures it was seen to be part of a 'natural law,' but mostly human rights are now seen as a rights written into law.

Fundamental Concepts

Human rights are in a special category because these rights are universal (everyone has them), inalienable (they can't be lost), and inherent (someone gets them from being born human).

Human rights are about ensuring people lead a life of dignity, so they are respected and treated well, especially by the State. Also, they assure people are treated equally, so that people are not treated differently.

Human Rights Law

The aim of human rights is to ensure people can live in a society that obeys the rule of law. In order to achieve this, individuals must know the law, and the State must ensure these laws are respected and protected by the police and judges, and that the law regards everyone as equal. These are some of the duties a State must do to ensure people get their rights. Most involve protecting people from the power of the State (vertical protection), but people must also be protected from having

their rights violated by other individuals, or organizations (horizontal protection). To do this States must 'respect, protect, fulfill,' and 'promote, protect and prevent' human rights.

Categories of Rights

Rights fall into a number of different categories. The most important are often called fundamental rights, and these include the right to life or freedom from slavery. There are legal rights in the legal system, and rights in society which are also called civil rights. Humans also have political rights, such as the right to vote, economic rights that mostly cover work issues, social rights that encourage governments to provide important services like healthcare and education, and cultural rights.

For much of the modern history of rights, countries have tended to favor one category over another, and there have been many arguments as to which category is more important. This was caused in part by the Cold War, but also human rights theorists themselves considered rights were different in nature. However, since the Vienna Declaration and Programme of Action in 1993, it has been accepted by both States and human rights actors that all the categories are indivisible (a category cannot be forgotten or ignored), inter-related (categories are connected), and interdependent (categories rely on all other categories).

Why Study Human Rights?

Human rights are important to study because it is a person's right to know what rights they have. Studying rights will help protect the most vulnerable groups in society such as children or the disabled, plus the study of human rights is a great way to get to know the ASEAN region. Human rights education adds value to other knowledge, and can help a student better understand the law, politics, sociology, or even history.

B. Questions

Typical Exam or Essay Questions

- If countries do not obey human rights, is there any point in having them?
- What are the differences between human rights and other types of rights such as citizen rights or student rights?
- Should different communities and cultures have different rights, or are all people's rights the same?
- If human rights are universal, is it a contradiction that only women get women's rights?
- How do positive duties differ from negative duties?
- What is horizontal and vertical protection, and why is horizontal protection needed?
- What are examples of human rights being indivisible, interdependent, and inter-related?

C. Further Reading

Texts in English

There are a number of similar text books available, some for free. A simple internet search using key words will find the texts listed below.

General textbooks

Available Free on the internet:

Benedek, W (ed.) 2008, *Understanding Human Rights: Manual on Human Rights Education*, European Training and Research Centre for Human Rights and Democracy, Graz.

Sepulveda, M & Gudmundsdóttir, GD 2004, *Human Rights Reference Book*, University for Peace, Costa Rica.

OHCHR. (2001). *Human Rights: A Basic Handbook for UN Staff*. Geneva: OHCHR.

Available through purchase

Alston, P & Ryan Goodman 2013, *International Human Rights*. Oxford: Oxford University Press..

Clapham, A. 2007, *Human Rights: A Very Short Introduction*. Oxford University Press, Oxford.

Ishay, MR (ed.) 1997, *The Human Rights Reader: Major Political Essays, Speeches, and Documents from the Bible to the Present*. Routledge, New York.

Ishay, MR 2004, *The History of Human Rights*, University of California Press, Berkeley.

Novak, M 2004, *Introduction to the International Human Rights Regime*, Martinus, Boston.

Rahman, J 2003, *International Human Rights Law: A Practical Approach*, Longman, London.

Smith, Rhona 2007. *International Human Rights*, Oxford University Press, Oxford.

Websites

www.ohchr.org.

Useful websites include the Office of the High Commissioner for Human Rights (OHCHR) which has a number useful texts and documents, although it does tend to use many official UN documents which are not always easy to read.

www.hrea.org.

Another useful source is Human Rights Education Association (HREA) which has a huge online library of texts on human rights issues.

<http://www1.umn.edu/humanrts>

All the major treaties mentioned in this chapter are available online. A Google search will find them, though the major databases are at the OHCHR and at the University of Minnesota Human Rights Library.