

Teaching Manual on Human Rights



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Teaching Manual on Human Rights

By

ASEAN University Network – Human Rights Education (AUN-HRE)

Strengthening Human Rights and Peace Research and Education
in ASEAN/Southeast Asia (SHAPE-SEA)



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ASEAN University Network – Human Rights Education (AUN-HRE)

Strengthening Human Rights and Peace Research and Education
in ASEAN/Southeast Asia (SHAPE-SEA)

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Introduction

Human rights education builds knowledge, skills and attitudes prompting behaviour that upholds human rights. It is a process of empowerment which helps identify human rights problems and seek solutions in line with human rights principles. It is based on the understanding of our own responsibility to make human rights a reality in our community and society at large.¹

Therefore, the ultimate goal of human rights education is to build a “culture of human rights” – that is, a society in which each of us is encouraged and empowered to take the initiative to respect, protect, and promote the full spectrum of human rights for all.²

Some questions surrounding human rights education (HRE) include what its content should be – should it only focus on human rights laws? Or should it include something more? How should HRE be imparted?

This introductory note addresses these fundamental questions before giving a general overview of the *Teaching Manual on Human Rights*.

Reflection on the Meaning of Human Rights Education

There is more than one accepted definition of HRE. The Guidelines for National Plans of Action for Human Rights Education formulated during the United Nations Decade for Human Rights Education (1995-2004) defines it as:

Training, dissemination, and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes, which is directed towards:

- (a) The strengthening of respect for human rights and fundamental freedoms,*
- (b) The full development of the human personality and the sense of its dignity,*
- (c) The promotion of understanding, tolerance, gender equality, and friendship among all nations, indigenous peoples and racial, national, ethnic, religious, and linguistic groups,*
- (d) The enabling of all persons to participate effectively in a society, and*
- (e) The furtherance of the activities of the United Nations for the maintenance of peace.*

1 Pillay, N, *Path to Dignity: The Power of Human Rights Education*, documentary produced by Human Rights Education Associates (HREA), Soka Gakkai International, and the Office of the UN High Commissioner of Human Rights (OHCHR), 2012, available at <http://www.pathtodignity.org>, accessed on 5 December 2019 (available in Arabic, Chinese, English, French, Japanese, Russian, and Spanish).

2 Pillay (see note 1 above).

This understanding of HRE has three dimensions:

- Imparting of knowledge;
- Development of values, beliefs, and attitudes which can uphold human rights; and
- The ability to inspire learners to take action to promote and protect such rights.

In many ways, HRE is about the “provision and development of awareness about fundamental rights, freedoms, and responsibilities.”³ It is closely linked to the right to education which is guaranteed not only by international human rights treaties but also the domestic legislation of most countries in Southeast Asia.

Human rights knowledge

Nowhere in the above definition does it insist HRE must focus on particular subjects. To understand it only or mainly includes teaching/learning about international human rights standards and how such instruments are implemented at the national level is rather narrow.

Laws and standards are only one component of the vast body of knowledge on human rights. Indeed, the very notion of human rights is dynamic and all-encompassing, and includes a wide range of values and knowledge ranging from peace and democracy to justice and tolerance, etc.

These values are reflected in the teaching which is interdisciplinary in nature and includes but is not limited to philosophy, the political sciences, humanities, social sciences, peace and conflict, economics and business, international relations, and even life sciences and applied sciences, to name but a few. For example, medical personnel are required to learn about medical ethics including how to treat patients with respect whilst also protecting their rights and dignity.

Because of its broad body of knowledge, multiple actors including civil society, economists, academics, the media, social movements, and others play a very important role in the process of HRE. Thus, the study of human rights should examine the mutual relationship between the law and different disciplines, actors, institutions, and processes in society. Accordingly, as already mentioned, it should be multidisciplinary in approach, embracing the fields of law, anthropology, sociology, gender, political science, economics, international relations, business, and all other related fields.

Development of values, beliefs, and attitudes

In a speech before the United Nations (1958), Eleanor Roosevelt observed:

Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

³ Gearon, L, quoted in Struthers, AEC, ‘Human rights education: Educating about, through and for human rights’ *International Journal of Human Rights*, 2015, Vol 19, No 1, p 55.

Learning about human rights should not be a clinical exercise of examining and understanding international standards and laws. Rather, it should urge the learner to appreciate that respect for human dignity should be at the heart of *all* relationships, within the family, as well as with others in society. Human rights education is not just about

*gaining knowledge and understanding of human rights
but it's also about learning to respect the human rights of
others as well as empowering individuals to exercise their
rights which also includes respecting other people's rights.⁴*

Thus, HRE should nudge learners to examine their attitudes and beliefs, overcome their prejudices and biases unconsciously learned through socialisation, recognise the privileges they may be born with, and recognise the discrimination many others in society have to face. And last, but perhaps most importantly, it should be able to develop in the student, skills of critical enquiry so they too can make effective contributions to society. So, finally, HRE is not just a process of learning about human rights but should also lead to the exercise of such rights.

Encouragement to take action to promote and protect rights

Today, human rights work has emerged as a profession. However, it is not just the responsibility of professionals engaged in the field to take action to strengthen the promotion and protection of human rights. Rather, such rights should be a part of the consciousness of every person in society. Every individual has agency to bring about change; be it in their personal lives, immediate society, or in matters of public affairs. Human rights education should therefore gently prod learners to discover this agency whilst encouraging them to bring about positive change both in their lives and the surrounding world.

Pedagogy of Human Rights Education

In order to facilitate achievement of its goals, what methods and practices of teaching human rights should be undertaken?

Over the years, Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA) and the Institute of Human Rights and Peace Studies as part of the ASEAN University Network on Human Rights Education (AUN-HRE) have regularly organised dialogues amongst human rights educators to discuss how to teach the subject. Some learnings that have emerged from these discussions are:

- (1) The banking system of education as critiqued by Paulo Freire in his seminal work, *Pedagogy of the Oppressed (1970)*, is not best suited for facilitating HRE. As Freire explains, in the banking system, it is the teacher who decides what is to be taught and narrates it to the students. Students receive such content passively and store it away in their memories. Freire cautions that in such systems of education, knowledge becomes lifeless and in the absence of any space for questioning, students become conditioned to accept the world around them as it is, however oppressive that world may be.

⁴ Petcharamesree, S, and Elbers, F, 'Human rights education in Asia and Europe: Background paper' prepared for the Human Rights Education and Training 19th Informal ASEM Seminar on Human Rights organized by the Asia-Europe Foundation – Asia-Europe Meeting, 4-6 November 2019, Tromso, Norway.

- (2) Rather, the problem-posing approach to education as proposed by Freire is more suited for HRE. Some characteristics of this approach are:
- The active involvement of students in the learning process which builds on what they already know.
 - Learning takes place through processes of enquiry such as the examination of ideas and experiences, the posing of queries, reflecting upon new knowledge received, assessing one's understanding, and conveying it.
 - Teaching tools are mostly enquiry-based and problem-solving in nature. Such tools include case study analysis, reflection upon contemporary events, field visits, creative projects that urge students to apply their learning, and so on.
- (3) In order to facilitate human rights learning, classrooms need to become democratic and safe places. Such classrooms are characterised by:
- Respect for the human dignity of every person irrespective of gender, ethnicity, nationality, religion, language proficiency, political opinion, and so on;
 - Respect for every person's views and opinions;
 - Engagement with opinions that contradict the majoritarian view, as opposed to summarily dismissing such opinions and passing judgement on the opinion giver; and
 - Respect for academic freedom meaning students and teachers should be free to engage in criticism of the State and other powerful institutions in society and their actions.

Teaching Manual for Human Rights Textbooks

SHAPE-SEA through AUN-HRE has produced two volumes of *An Introduction to Human Rights in Southeast Asia* (hereinafter referred to as the Human Rights Textbook(s)). The Manual complements these textbooks by providing guiding tools to facilitate human rights learning.

As such, the Manual is based on the following understanding: that human rights education should aim to strengthen knowledge about human rights and its dynamics; develop in students the necessary values and attitudes for building a human rights culture; and encourage students to take action to promote and protect rights.

Further, noting the fact that undergraduate classes in some countries may have a hundred or more students, the Manual suggests different communication tools that may be used to encourage reflection and discussion in the classroom. Teachers can use a combination of such tools as they think fit, some of which are:

- **Brainstorming**, such as in section 1.4.1 of Chapter 1 (The Fundamentals of Human Rights);
- Exercises urging learners to analyse historical events, e.g. by **developing timelines** to assist brainstorming on the evolution of human rights (see section 1.4.3, Chapter 1);
- Exercises based on **plausible situations** to help learners apply human rights standards as provided by Handouts 3, 4, and 5 in Chapter 3 (International Human Rights Treaties, ICCPR & ICESCR);
- Exercises urging students to **assess whether or not law and standards at the domestic level** conform with international human rights standards such as those provided in Handout 6 of Chapter 4 (Protecting Human Rights in Southeast Asia);

- Exercises urging students to **study and apply standards to examine** the strength and effectiveness of institutions at the domestic level, such as those provided in Handout 7 of Chapter 4 (Protecting Human Rights in Southeast Asia);
- Use of **short videos** to introduce topics and facilitate further discussion such as in section 5.4.2 of Chapter 5 (Human Rights Protection: The United Nations and the International System);
- Use of **newspaper articles** to facilitate reflection and discussion such as those provided in Handout 10 of Chapter 7 (Women’s Human Rights);
- Use of commonly known **folk tales** to introduce difficult concepts such as those used in section 7.4.3 of Chapter 7 (Women’s Human Rights);
- Use of **word grids** to facilitate brainstorming on concepts, such as in section 10.4.1 of Chapter 10 (The Rights of Non-Citizens: Migrant Workers and Trafficked Persons); and
- Use of **online coursework** as provided by the ASEAN University Network–Human Rights Education (AUN-HRE) to complement other materials.
- **Field trips** and other field work: Whilst no suggestions for field trips are provided in this manual, teachers can think about how they can be integrated into their courses.

Features of the manual

- The Manual is divided into four parts:
 - » The fundamentals of human rights and the international bill of rights;
 - » Human rights protection at the international, regional (ASEAN), and national levels;
 - » The rights of specific groups such as women, children, people with different sexual orientations, refugees, migrants, the stateless, and victims of human trafficking; and
 - » Thematic issues such as the environment, business, development, media, and the nature of democracies in the region.
- Each chapter complements a corresponding chapter in the Human Rights Textbooks (Volumes 1 and 2).
- The chapters provide a template on the way classes on particular topics may be organised although teachers are free to modify them according to the context and needs of their students.
 - » Each chapter includes: learning outcomes, key elements, class designs, handouts, workout exercises with answers, and discussions on difficult questions relating to topics that may arise during classes. Each chapter also includes links to resource materials that may prove useful in the planning of classes.
 - » Each chapter identifies key elements on particular topics that should be discussed in class although such lists are by no means exhaustive and teachers should feel free to add more as they think fit.
- Case studies have been used as a tool to guide reflection and discussion on issues and to enable students to apply human rights principles to particular situations. Teachers may modify these case studies to ground them in the context or reality of their students.

Finally, it is important to mention that human rights theory and practice is a dynamic field. Thus, teachers need to be attuned to new developments and contemporary debates. It is also necessary for teachers to constantly update their knowledge by further reading and research. At the very heart of human rights learning, however, are the sufferings and struggles of real people. The learning process in the classroom should therefore help to build empathy for the marginalised and vulnerable in society.

Use of the Manual

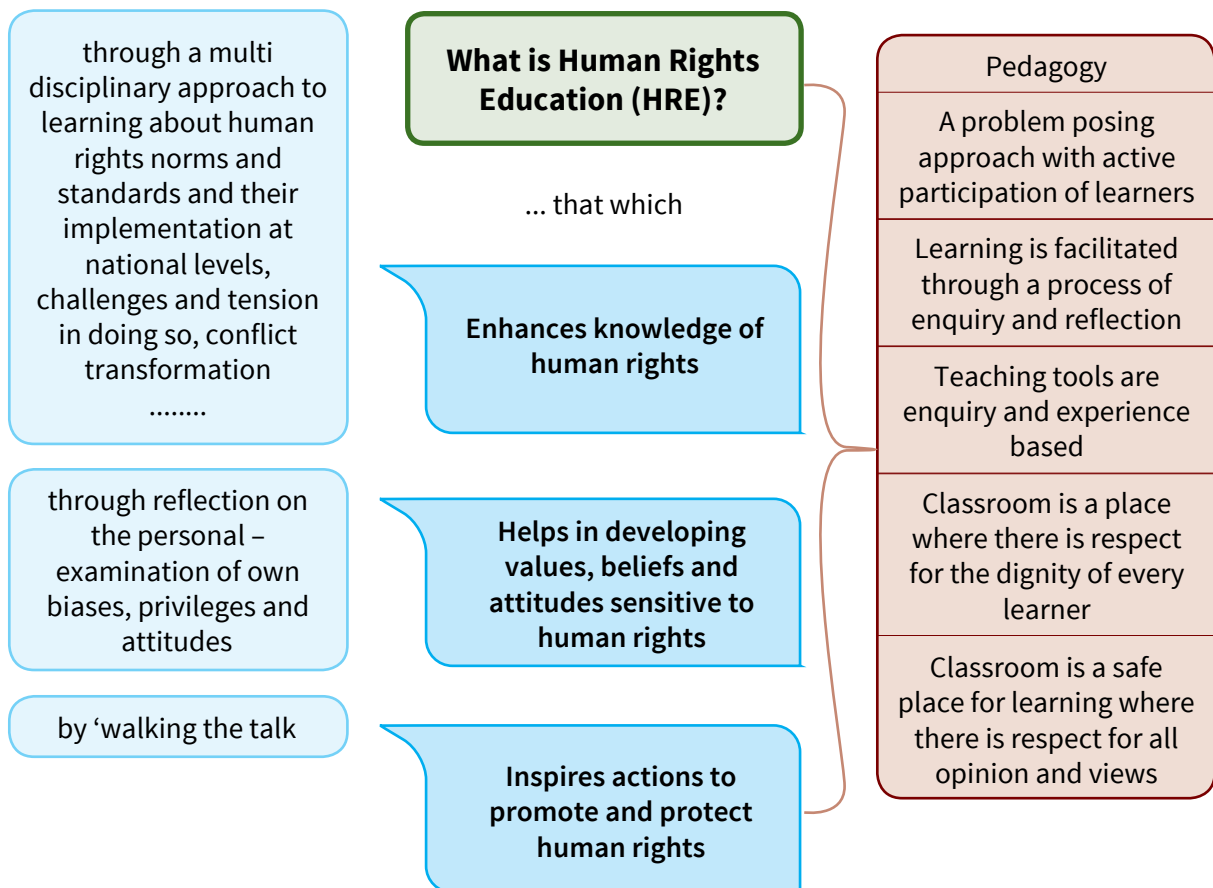
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Human Rights Textbook Volumes 1-2 and Teaching Manual

Human Rights Textbooks	Teaching Manual
Volume 1	Part I: Fundamental and International Human Rights
Chapter 1 The Fundamentals of Human Rights	Chapter 1 The Fundamentals of Human Rights
Chapter 2 International Human Rights Standards	Chapter 2 International Human Rights Standards
Chapter 3 International Human Rights Treaties: ICCPR & ICESCR	Chapter 3 International Human Rights Treaties: ICCPR & ICESCR
Chapter 4 Protecting Human Rights in Southeast Asia	Part II: Protecting Human Rights
Chapter 5 Human Rights Protection: The United Nations and the International System	Chapter 4 Protecting Human Rights in Southeast Asia
Chapter 6 The Rights of Non-Citizens: Refugees and the Stateless	Chapter 5 Human Rights Protection: The United Nations and the International System
Chapter 7 The Rights of Non-Citizens: Migrant Workers and Trafficked Persons	Part III: Rights of Specific Groups
Volume 2	Chapter 6 Children's Human Rights
Chapter 8 Human Rights in Southeast Asian History	Chapter 7 Women's Human Rights
Chapter 9 Women's Human Rights	Chapter 8 Sex and Gender Diversity
Chapter 10 Children's Human Rights	Chapter 9 The Rights of Non-Citizens: Refugees and the Stateless
Chapter 11 Sex and Gender Diversity	Chapter 10 The Rights of Non-Citizens: Migrant Workers and Trafficked Persons
Chapter 12 Human Rights and Development	Part IV: Thematic Issues
Chapter 13 Business and Human Rights	Chapter 11 Human Rights and Development
Chapter 14 The Environment and Human Rights	Chapter 12 Business and Human Rights
Chapter 15 Political Rights, Democracy, and the Media in Southeast Asia	Chapter 13 The Environment and Human Rights
	Chapter 14 Political Rights, Democracy, and the Media in Southeast Asia
	Chapter 15 Human Rights in Southeast Asian History

E-learning: Online Courses on Human Rights (in Southeast Asia)

The Online Course on Human Rights (in Southeast Asia) is sponsored by ASEAN Cyber University (ACU), the Republic of Korea (ROK), and is produced by ASEAN University Network–Human Rights Education (AUN-HRE).

Course outline

The course is composed of 13 sessions based on the Human Rights Textbooks and was developed and produced by Strengthening Human Rights and Peace Education and Research in ASEAN/Southeast Asia (SHAPE-SEA).

No.	Module	Lecturers	URL Link VDO
1	Fundamentals of Human Rights	Dr Mike Hayes Institute of Human Rights and Peace Studies (IHRP), Mahidol University	https://youtu.be/5yVgU3orSzY
2	National and Regional Protection Mechanisms	Dr Sriprapha Petcharamesree Institute of Human Rights and Peace Studies (IHRP), Mahidol University Mr Joel Mark Barredo	https://youtu.be/-b9sCjjWJ6Q
3	Women's Rights as Human Rights	Dr Vachararutai Boontinand Institute of Human Rights and Peace Studies (IHRP), Mahidol University	https://youtu.be/21g3QxkH-Gs
4	Child Rights	Dr Victor Karunan (expert on child rights) Dr Azmi Sharom, Associate Professor Faculty of Law, University of Malaya	https://youtu.be/lpq3M-5Ax5g
5	Rights of Persons with Disabilities	Dr Seree Nonthasoot Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights (AICHR) Dr Sriprapha Petcharamesree Institute of Human Rights and Peace Studies (IHRP), Mahidol University	https://youtu.be/ICT6N00Ucgo
6	Indigenous and Minority Rights	Dr Robin Ramcharan Executive Director, Asia Center	https://youtu.be/39NCgK70-QU
7	Sexuality	Prof Dr Douglas Sanders Institute of Human Rights and Peace Studies (IHRP), Mahidol University Mr Joel Mark Barredo	https://youtu.be/15nWffBtlts
8	Refugees	Dr Mike Hayes Institute of Human Rights and Peace Studies (IHRP), Mahidol University	https://youtu.be/_t2iuUeLkfo
9	Statelessness	Dr Sriprapha Petcharamesree Institute of Human Rights and Peace Studies (IHRP), Mahidol University Ms Helen Brunt (statelessness expert)	https://youtu.be/4kcz8TNJoOQ
10	Migrant Workers	Dr Naparat Kranrattanasuit Institute of Human Rights and Peace Studies (IHRP), Mahidol University	https://youtu.be/bvKKJvVQ0S0
11	Development and Human Rights	Dr Vachararutai Boontinand Institute of Human Rights and Peace Studies (IHRP), Mahidol University	https://youtu.be/gPBYG1ZCPuw
12	Environment	Dr Azmi Sharom, Associate Professor Faculty of Law, University of Malaya	https://youtu.be/FMd0kJEbddM
13	Human Rights and Business	Dr Azmi Sharom, Associate Professor Faculty of Law, University of Malaya	https://youtu.be/hi-SXxB_9E

List of Acronyms

AAAQ	Availability, Accessibility, Acceptability, Quality framework
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
CAT	Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment
CoM	Children on the Move
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
ECOSOC	Economic and Social Council
ESCAP	Economic and Social Commission for Asia and the Pacific
ETOs	Extra-Territorial Obligations
FPIC	principle of Free, Prior and Informed Consent
GA	General Assembly
GANHRI	Global Alliance of National Human Rights Institutions
ICC	International Coordinating Committee of NHRIs
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IDC	Immigration Detention Centre
ILO	International Labour Organization
IOM	International Organization for Migration

LGBTQ	Lesbian, Gay, Bisexual, Transgender, and Queer
MDGs	Millennium Development Goals
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
OPAC	Optional Protocol on the Involvement of Children in Armed Conflict
OPSC	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
OP3	Optional Protocol on a Communications Procedure
RCEP	Regional Comprehensive Economic Partnership
RSD	Refugee Status Determination
SDGs	Sustainable Development Goals
SLAPP	Strategic Lawsuits Against Public Participation
TIP	Trafficking in Persons
UASC	Unaccompanied and Separated Children
UN	United Nations
UN ACT	United Nations Action for Cooperation Against Trafficking
UNDP	United Nations Development Program
UNDRIP	United Nations Declarations on the Rights of Indigenous Peoples
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNGP	United Nations Guiding Principles
UNSC	United Nations Security Council
UN WOMEN	United Nations Entity for Gender Equality and the Empowerment of Women
UDHR	Universal Declaration of Human Rights
UPR	Universal Periodic Review
VDPA	Vienna Declaration and Program of Action

PART I

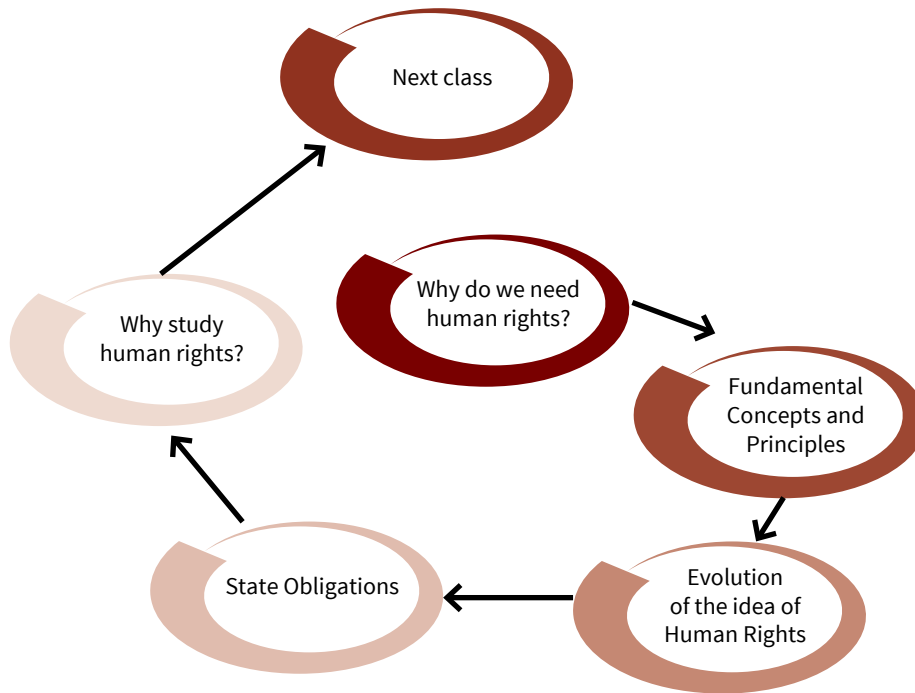
Fundamental and
International
Human Rights

Chapter 1

The Fundamentals of Human Rights

1.1 Introduction

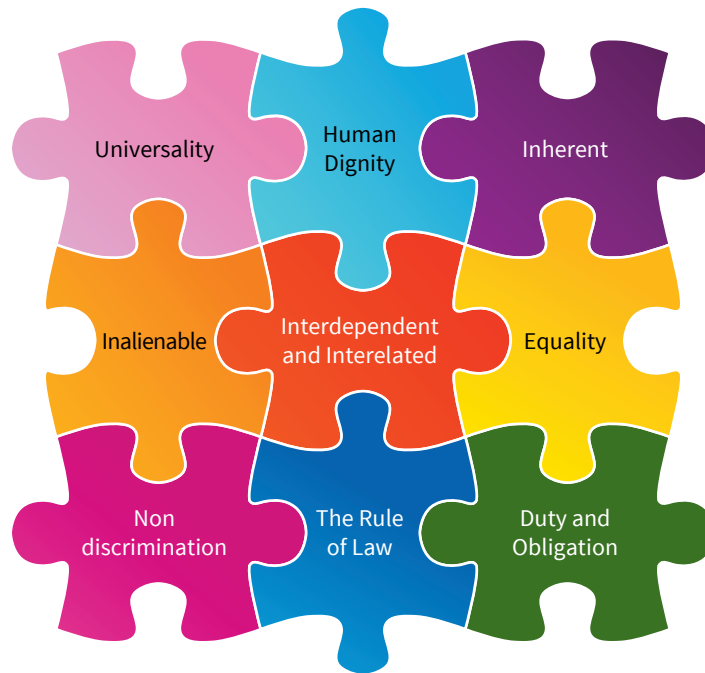
An introductory class on human rights which aims to give students enough understanding about the evolution and fundamental concepts of human rights standards such that they will be able to identify instances of infringements and critically discuss the value and importance of human rights.



1.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Why do we need human rights?	To understand the importance of human rights	<ul style="list-style-type: none"> Understanding why we have human rights
2. Fundamental concepts and principles	To understand the fundamental concepts and principles	<ul style="list-style-type: none"> Explaining the fundamental concepts and principles
3. Evolution of the idea of human rights	To analyse the historical evolution of human rights	<ul style="list-style-type: none"> Structuring the evolution of human rights at the country level Outlining the historical evolution of human rights at the international level
4. Uniqueness of human rights: State Obligations	To analyse the framework of human rights obligations and apply them to case studies	<ul style="list-style-type: none"> Clarifying the nature of State obligations Distinguishing cases having human rights dimensions
5. Why study human rights?	To reflect on key debates in human rights	<ul style="list-style-type: none"> Evaluating the main criticisms of human rights such as why they are important and who decides what is a human right

1.3 Key Elements



1.4 Class Structure: Design

1.4.1 Why do we need human rights?

Specific objective	Enabling objectives
To understand the importance of human rights	<ul style="list-style-type: none">Understanding why we have human rights



Steps

Lead the class in a brainstorming session on the definition of human rights and why they are necessary.

- Start by asking: “What are human rights?”
- Students may respond by listing human rights, or giving key words such as human dignity, equality, justice, etc.
- Note responses on the board.
- Lead the class in analysing the responses and link them with the idea of human rights. For example, justice in simple terms can mean freedom from fear and freedom from want. Explore why such values are important in society. Link with the idea that respect for these values or standards enables a person to live a life of human dignity.
- Explain that human rights are inherent in every person so they can live a life of human dignity.
- Explain the concept of human dignity.
- Take examples of the rights shared by the students, introduce different categories of rights such as civil liberties, political rights, absolute rights, rights in the administration of justice, and economic, social, and cultural rights.

TEACHING NOTES

Categories of Human Rights



Absolute rights

Includes rights such as the right to equality before the law, the right to non-discrimination, freedom from slavery and torture, the right to life, and freedom of religion. While in times of national emergency a State can temporarily suspend enjoyment of other rights, States can never limit the enjoyment of absolute rights.

Rights in the administration of justice

These rights recognise that every person is equal before the law and is entitled to equal protection of the law. These also include equal rights to access the justice system for redress and remedy.

Civil rights

Civil rights are rights that protect individual liberties and enable individuals to participate in society and live with dignity. These rights limit the power of States to interfere with individual freedoms in society.

Political rights

These enable people to participate in politics and decision-making. The exercise of these rights can help to establish a fair political system.

Economic and social rights

Economic and social rights enable an individual to have equal access to the resources and opportunities to build their capabilities to enjoy a life of fulfilment and dignity. These rights also ensure all persons are able to enjoy minimum levels of the basic necessities of life such as food, water, education, healthcare, and adequate housing.

Cultural rights

These protect the rights of individuals to practice their cultural way of life.

1.4.2 Fundamental concepts: Human rights

Specific objective	Enabling objectives
To understand the fundamental concepts and principles	<ul style="list-style-type: none">Explaining the fundamental concepts and principles



Steps

- Carrying forward the discussion in section 1.4.1, initiate a dialogue to facilitate understanding of the fundamental concepts: universality, inherence, interdependency and interlinkages, inalienability, equality, non-discrimination, and the rule of law.
- Ask leading questions to facilitate discussion on the fundamental concepts and principles. Some examples of leading questions are provided in the teaching note below.

TEACHING NOTES

Human Rights – Fundamental Concepts and Principles

Universality

Human rights are universal and inherent in all human beings. Thus, every human should be able to enjoy these rights, anywhere, and at all times.

Human dignity

In order to understand this concept, first think about what distinguishes human beings from animals. People have the capacity to think and reason, and to act as we think best for both animals and other humans. This quality can also be understood in terms of the power or agency that exists within each person.

In order to understand human dignity better, reflect upon this question – why is slavery considered a grave wrong? It is because slaves are held to be the property of another. They are denied the freedom to act as they wish. Even if they exercise their capacity to reason, they cannot express themselves in action or words unless permitted by their owner. Thus, they are reduced to a similar status as animals. In other words, they lose their human dignity.

The concept of dignity is at the heart of international human rights and serves two purposes. First, it seeks to reaffirm that all human beings are equal despite their differences. Further, every person has an inherent human dignity and all are equal in this dignity. Second, it helps to identify the conditions necessary to make dignity a reality, or the freedoms and entitlements every person must have in order to live a life of human dignity. Thus, just as seeds need nutrition from the soil and sun and protection from predators (whether animal or human) to grow and blossom, similarly, humans need recognition of their basic freedoms to realise their unique potential.

Inherent

Inherent refers to something being a permanent or inseparable part of something. Human rights are inherent to humans. Consequently, as a permanent and inseparable part of each and every person, such rights exist no matter the situation.

It also implies that governments cannot arbitrarily give or take away a person's human rights. While the domestic laws of a country may not necessarily include explicit recognition of all human rights, the idea of their inherence provides a moral force which gives power to those struggling for the legal recognition of such rights.

Inalienable

Anything deemed inalienable cannot be removed, surrendered, or transferred. Furthermore, such rights cannot be bought, sold, or negotiated with.

Interdependent and Interrelated

Rights are interdependent and interlinked. For example, full enjoyment of civil liberties depends on other rights such as the administration of justice, political rights, economic and social rights, and so on.

Equality and non-discrimination

Article 1 of the Universal Declaration of Human Rights (UDHR) reaffirms that all persons are born free and are equal in dignity and rights. This implies that no person should be discriminated against in the enjoyment of their rights and freedoms.





All societies include a diversity of people in terms of sex and gender, religious belief, ethnicity, race, culture, political belief, etc. The principle of non-discrimination recognises that despite these differences, no person should be treated differently in such a way as to leave them unable to enjoy and access their civil, political, economic, social, and cultural rights on an equal footing with others.

The rule of law

The rule of law refers to a principle of governance in which all persons, institutions, and entities are accountable to publicly promulgated laws that are equally enforced and independently adjudicated and which are consistent with international human rights norms and standards.

Duty and obligation

Every right necessitates a corresponding duty or obligation on another. Thus, where there is a rights holder, there is also a duty bearer. In other words, human rights carry duties at two levels. First, each member of society has a duty to respect the human dignity and rights of their fellow society members. Second, the State which holds legislative, administrative, and judicial power, has an obligation to take the necessary steps to enable all persons to enjoy their rights on an equal footing with others.

Suggestions for leading questions and responses

Are human rights available to only special groups of people, or are they available to all people living everywhere?

Human rights are **inherent** in every person. Thus, they are **universal**. Every person, around the globe, possesses these rights.

Do governments have the power to take away human rights?

No. Since human rights are **inherent** in every person, no government has the power to give or take away human rights.

The idea of governments ‘giving’ rights has to be distinguished from administrations providing legal recognition of such rights. For example, although the right against torture may not be recognised in the laws of a country, this does not mean citizens of that country lack the right to be free from torture. Every person has this right and the idea that such rights are inherent in every person, gives power to the people to advocate for their legal recognition.

Similarly, the notion of a government ‘taking away’ human rights must be distinguished from governments imposing limitations on these rights. While administrations cannot arbitrarily remove a right, they do have the power to impose restrictions on their enjoyment. However, this power can only be exercised if certain conditions (as clarified in the chapter on international human rights treaties) are fulfilled.

Can a person surrender his or her human rights? Does a person who has been convicted of stealing lose his or her rights?

Human rights are inherent in every person by virtue of their human dignity. For this reason, they are **inalienable** meaning individuals cannot surrender their human rights. Thus, a woman who silently suffers domestic violence does not surrender her rights but continues to hold them. The day she feels strong enough to stand up against her family members, she can exercise those rights and file a complaint.

Similarly, a person convicted of stealing must therefore have committed a criminal offence in society. The domestic laws of most countries prescribe punishments for such wrongful acts including imprisonment. Thus, the penalty does take away certain

rights of the convicted person for a limited period (e.g. the right to move freely). However, he or she continues to hold other rights, such as the right to food, adequate healthcare, freedom of speech, and the right not to be tortured in prison, etc.

It is said that human rights are interdependent and interrelated. Is this true? If yes, can you give an example?

The ability to enjoy a particular right is dependent on the enjoyment of other rights. For example, freedom of speech and the right to criticize one’s government is dependent on the right to be free from arbitrary detention. Likewise, the right to an education is dependent on the right to basic necessities such as food, clothing, and shelter. Thus, every right is **interdependent and interrelated** with the enjoyment of other human rights.

The right to equality is a human right. Does this mean every person in society should be the same as the other/hold the same status?

No. The **right to equality** only implies that all persons are equal in their human dignity irrespective of the status they are born with. As such, they should be able to access the basic necessities of life to realise their potentialities. Moreover, individuals should also be entitled to equal protection of the law so they can freely exercise their rights and freedoms.

Returning to the seed that helped us understand the concept of human dignity, all seeds need basic nutrients and protection to grow, eventually becoming plants with unique characteristics. Although plants may display similarities in terms of their species, even within species, plants may differ.

Similarly, the right to equality implies that no person should be deprived of the basic necessities and every person should have equal protection of the law thereby enabling individuals to realise their potentiality.

1.4.3 Evolution of the idea of human rights

Specific objective	Enabling objectives
To analyse the historical evolution of human rights	<ul style="list-style-type: none"> Structuring the evolution of human rights at the country level Outlining the historical evolution of human rights at the international level



Steps

1. Conduct a brainstorming session on the evolution of human rights in the country context.
 - Divide the class into groups and ask each group to prepare a timeline of events in their country’s history having a major impact (positive or negative) on human rights.
 - Ask one group to present its timeline. During the presentation, ask the students to explain how the events impacted human rights.
 - Ask other groups to add additional events missed by the lead group.

- During the discussions, recognise that most developments regarding human rights are often sparked by struggles against abuses of power, or mobilisation of the marginalised and vulnerable groups to secure recognition of their needs and demands.
 - Also recognise that the evolution of human rights does not necessarily follow a linear progression. Even events that negatively impact rights may create a momentum for change. It is through such gradual processes that societies develop a culture that is respectful of human rights, where human rights norms are fully internalised by all.
2. Conclude the discussion by giving a lecture/presentation on the historical evolution of the idea of human rights.

TEACHING NOTES

Historical Evolution of the Idea of Human Rights

Doctrine of natural law in the age of enlightenment in Europe

- John Locke, Thomas Paine, Jean Jacques, Rousseau, and other philosophers of the 17th and 18th centuries
- French and American revolutions
- Ideas of democracy, liberalism, and civil political rights which were at the core of the classical idea of human rights

Socialism

- Critique of the classical idea of human rights, and the implication that there should be separation of State and society
- Growth of the idea of economic, social, and cultural rights as reflected in the Russian and other socialist revolutions

Antecedents to international human rights

- International humanitarian law providing minimum rules for the treatment of persons in armed conflicts
- The League of Nations
- International Labour Office (later known as International Labour Organisation)

International human rights law

- Holocaust during World War II
- Formation of the United Nations at the end of World War II
- Establishment of the nine human rights treaties in international law in the post war period
- Difference between human rights law and classical international law
- The fundamental principles of human rights

Three generations theory and Interrelated rights

The three generations of human rights: civil and political rights; economic social and cultural rights; and the collective rights of peoples.

Criticism of the three generations theory

The Vienna Declaration and Program of Action (1993) broke the generational divide by proclaiming all human rights are universal, indivisible, interdependent, and interrelated. The importance of understanding rights as indivisible and interrelated. This can be linked to criticism of 'Asian Values.'



1.4.4 Uniqueness of human rights: State obligations

Specific objective	Enabling objectives
To analyse the framework of human rights obligations and apply it to case studies	<ul style="list-style-type: none"> • Clarifying the nature of State obligations • Distinguishing cases having human rights dimensions



Steps

- Conduct a brainstorming session on the uniqueness of human rights.
- Give students exercises to strengthen understanding of human rights and corresponding obligations. Example exercises are provided in Handout 1.

TEACHING NOTES

Nature of State Obligations

Uniqueness of human rights

Why are human rights different from other rights, e.g. student rights?

Rights are in the nature of moral or legal entitlements. By asserting a right, the right holder demands particular goods or behaviour from others who are duty bound to meet such demands.

These duties may arise out of moral values such as the duties of parents towards their children. When these duties are breached, available remedies include social sanctions.

Duties may also arise out of legal agreements such as sale or tenancy agreements which are governed by a country's laws. When these are breached, remedies are available under applicable laws.

Now, how are human rights different?

Human rights are claims upon the State to establish and provide conditions enabling a person to fully enjoy their rights and live with human dignity. Thus, the State is the principal duty bearer; it holds obligations towards individuals who are the rights holders.

Human rights also cast a moral duty on all individuals to respect the rights of others living in their society. But again, the duty lies upon the State to protect persons from the harm caused by others. For example, every person has the right to life. As such, all have a moral duty not to kill one another. But humans are not perfect and killings do occur. So, the State has a duty to enact laws establishing the action of killing another person as a 'wrong in society' or an offence. It also has a duty to establish processes by which wrong doers can be identified and brought to justice to prevent the innocent from being punished (rights in the administration of justice).

Nature of State obligations

At a generic level, State obligations can be categorised into the obligations to respect, protect, and fulfil.





Obligation to respect: The State itself should not take any action that infringes upon the enjoyment of such rights. Some examples are:

- The State should not arbitrarily arrest individuals, restrict freedom of speech, or evict people from their homes.
- The State should not discriminate against any person in the enjoyment of their rights because of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status.

Obligation to Protect: The State must take appropriate measures to protect rights from being infringed upon by non-state actors. Some examples are:

- The State must establish laws, such as to protect against domestic violence and pollution, and to protect labour rights, etc.
- The State must also establish adequate systems to administer justice to facilitate the investigation, prosecution, and punishment of those who infringe upon the rights of others.

Obligation to Fulfil: States must take steps to ensure everyone can actually enjoy the rights guaranteed to them. This obligation can be further categorised in the following ways:

- **Facilitate** – States must take measures aimed at improving a person’s access to rights. An example is:
 - » Facilitating access to justice by providing legal aid to those unable to hire defence lawyers.
- **Promote** – States should take measures to inform people about their rights and the process of claiming such rights. An example is:
 - » Taking measures to inform accused persons of their rights in the administration of justice and the means by which they can claim such rights, e.g. rights to claim legal aid.
- **Provide** – States must provide basic goods and services to people, if for reasons beyond their control, they are unable to provide for themselves. Examples include the following:
 - » Providing night shelters for the homeless.
 - » Arranging to provide basic necessities including food, clothing, and shelter when people have been displaced from their homes due to natural disasters such as floods or earthquakes.
- **Prevent** – States must take adequate measures to prevent infringements of rights. Examples include the following:
 - » Training the police force to investigate and take action against offenders.
 - » Equipping police forces with adequate training and equipment so they can control crowds peacefully.

HANDOUT 1

Identifying Infringements of Human Rights

1. Identify State obligations (Respect, Protect, Fulfil)

- a. Right to be free from torture
- b. Right to primary education

2. Identify whether or not an infringement of human rights has occurred and if it has, identify the right which has been infringed and explain the nature of the infringement.

- a. X is unfaithful towards his wife.
- b. X has been unfaithful towards his wife, Y. Y wants to divorce X. Under the country's Law on Marriage and Divorce, a wife cannot seek divorce on the grounds of adultery. But the same law permits a husband to do so if his wife commits the same act.
- c. R, an employee of a shopping mall, is found to be secretly taking photographs of people using the changing rooms in the shopping mall.
- d. Littering in public places.
- e. The university provides condom vending machines in the men's toilet but not in the women's toilet.
- f. The police refuse to file a complaint of theft by a migrant worker because he is a non-citizen.
- g. A person protests against the performance of religious ceremonies using loudspeakers as his sleep is disturbed. Others in society get angry and force the person to vacate his house.
- h. A person is tortured in custody by the police.

Key to HANDOUT 1

1. Identify State obligations (Respect, Protect, Fulfil)

- a. Right to be free from torture
 - Respect:** The State should not torture anyone.
 - Protect:** The State should take action against its agent or any other person committing an act of torture.
 - Fulfil:** The State should provide training on investigation techniques to police officers so they will not be tempted to use torture to acquire information.

- b. Right to primary education
 - Respect:** The State should not take any action that deprives a child from the right to access primary education.
 - Protect:** The State should take action against any person preventing a child from accessing free education.
 - Fulfil:** The State must adopt policies to provide for an adequate number of schools, sufficient text books and uniforms so every child can access the right to free primary education.

2. Identify whether or not there is an infringement of human rights. If such an infringement has occurred, identify the right and explain the nature of the infringement.

The key in this exercise is to identify whether or not the State has failed in its obligations to respect, protect, or fulfil rights. Or can the dispute be characterised as a private matter between two or more parties?

a. ***X is unfaithful towards his wife.***

X, by being unfaithful to his wife, has broken her trust thereby breaching the moral duty that exists between spouses. However, as a private matter between two individuals, there is no obligation upon the State to act, nor has there been an infringement of human rights.

b. ***X has been unfaithful towards his wife, Y. Y wants to divorce X. Under the country's Law on Marriage and Divorce, a wife cannot seek divorce on the grounds of adultery but the same law permits a husband to so file if his wife commits the same act.***

In this case, a wife wants to divorce her unfaithful husband. Breakdown of relationships between spouses is a private matter regulated by the Law on Marriage and Divorce which provides protection to the rights arising out of marriage. In the above case, the existing law discriminates on the basis of gender; while it permits the husband to seek divorce on grounds of adultery, the same opportunity is not available to his wife.

Thus, the State has committed a breach of its obligation to provide equal protection of the law by enacting a legal provision that discriminates on the basis of gender. Thus, in the present case, there is an infringement of Y's right to equality and non-discrimination.

c. ***R, an employee of a shopping mall, is found to be secretly taking photographs of people using the changing rooms in the shopping mall.***

People using changing rooms in a shopping mall expect privacy. R, by secretly taking photographs, has committed a public wrong, or a wrong against society.

The country's laws should provide protection against such wrongs. Thus, any person who has been secretly photographed, or the owners of the shopping mall, can file a complaint against R under criminal laws.

However, in case of a gap in the legal framework, for example, if no laws exist to protect the privacy of a person against such wrongful acts, there would be a failure in the State's obligation to protect the right to privacy, and hence, an infringement of the right to privacy.

d. ***Littering in public places.***

It is the duty of every citizen to not litter in public places. By so doing, a person violates this duty and may become liable to any punishment under the law for the offence of littering. Littering by itself is not a human rights issue. However, if in a particular country, the problem is so great, it poses a risk to public health, it may become so because the right to health is a basic human right. As such, States are obliged to ensure healthy environmental conditions and to take action to prevent and control diseases.

d. ***The university provides condom vending machines in the men's toilet but not in the women's toilet.***

Though access to condoms comprises part of the right to reproductive health, universities are generally not bound to provide condom vending machines. However, when a university installs one in the men's toilet but fails to do the same in the women's toilet, it discriminates against women on the basis of gender by depriving them of the opportunity to access condoms and engage in safe sexual behaviour on the same footing as men. Thus, the right to equality and non-discrimination has been infringed.

e. ***The police refuse to file a complaint of theft by a migrant worker because he is a non-citizen.***

Every person has the right to equal protection of the law. Despite his or her lack of citizenship, migrant workers are similarly entitled to such protection in the countries they currently live and work. Thus, they should be able to file a complaint of theft before the police. Discrimination on the basis of nationality and citizenship occurs when this right is denied. Accordingly, when the police deny the worker's right to equal protection of the law, they also violate his or her right to live with human dignity.

f. ***A person protests against the performance of religious ceremonies over loudspeakers outside his house as it disturbs his sleep. Angered, others in society force the person to vacate his house.***

While freedom of religion, including the right to practice one's faith however one desires, is a basic right, individuals also have a right to freedom of residence (i.e. the freedom to choose one's place of residence within the borders of the country). In the above case, a conflict between the two arises. The question is, which takes precedence?

In diverse societies, individuals will invariably belong to different religions and hold diverse political beliefs and opinions, etc. In order to live peacefully, people should therefore respect these differences. In the above case, a man whose sleep is disturbed by daily religious ceremonies utilizing loudspeakers is within his rights to protest their use. Further, by forcing him to vacate his house, the society in which he lives displays an intolerance of the rights of others.

g. ***A person is tortured in custody by the police.***

Every person has the right to live free from torture. By torturing the person in custody, the police have therefore infringed upon his or her rights.

1.4.5 Why should we study human rights?

Specific objective	Enabling objectives
To reflect on key debates in human rights	<ul style="list-style-type: none">Evaluating the main criticisms of human rights such as why they are important and who decides what they are



Steps

- Engage in an open discussion on the question, “Why should we study human rights?”
- Go through students’ answers. Conclude with the observation that human rights act as a check on majoritarian powers in a democracy, laying down the minimum conditions that all governments should provide to every person living under its control and jurisdiction.

A. Discussion on Difficult Questions

Are human rights western?

This can be responded to in a number of ways. First, it is a fact that a number of countries contributed to post-World War II human rights. In Southeast Asia, the Philippines was actively involved in the drafting of the Universal Declaration of Human Rights, alongside China, Chile, and Eastern Europe. The drafting of more recent treaties was even more global.

Another response to this question is to ask why people argue that the very notion of human rights is western. Does this imply the rest of the world has no need of such rights?

The answer can also address the idea of ‘Asian Values.’ Asian values are based on the myth that westerners are individualistic whereas Asians are more collective in nature. While western cultures may be more self-expressive and exhibit different power relationships, this is not innately cultural. Also, these differences are not universal in ‘the west’ nor in ‘Asia’ (for example, there is a world of difference between Indians and the Chinese).

Should human rights obey cultural values, or should it be the other way around? Or do human rights impose foreign values over other cultures? Are they really universal?

The moral values that guide human rights, such as reciprocity, equality, justice, fairness, etc, are universal across all cultures. However, the way these values are translated into legal entitlements may differ across societies.

It is important to ask, *who contests the universality of rights?* More often than not, it is those in power who do so to protect their own interests. In such cases, it is also useful to ask, do all groups in society share the same view regarding universality as those holding power?

Given the large number of human rights violations in the world, what is the point of having human rights?

Human rights are normative, that is, they are based on how the world should be and not how it actually is (i.e. they are not positivist). Additionally, it is untrue to say all people abide by the law at all times. On the contrary, despite the existence of criminal law sanctions, it is a fact that people still commit theft and murder. In such cases, society does not question whether criminal laws are necessary if crimes continue to occur.

Why should we respect the human rights of terrorists, rapists, etc?

Respecting human rights does not imply condoning acts of violence. Instead, the State should enact appropriate laws to address such issues as terrorism or sexual violence including introducing punishments proportional to the gravity of the offence. Further, States should provide an adequate system to administer justice under which individuals accused of such crimes can stand trial and be punished according to the law if found guilty.

A system including such mechanisms helps to ensure the innocent are not punished for offences they did not commit, all of which helps to prevent abuse of power, and establish a rule of law based society.

When a person is imprisoned, he or she loses the right to liberty and other related rights. However, States will still be obliged to provide for their basic rights, i.e. food, clothing, health, security within the jail, etc.

B. Resources

Textbooks available for free on the internet

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

In its third edition, this is a good introduction and general purpose textbook which has also been translated into Vietnamese and Chinese. Additionally, a training manual is available from the ETC Graz home page including PowerPoints and background material.

Sepulveda, M, and Gudmundsdóttir, GD, (2004), *Human Rights Reference Book*, Costa Rica: University for Peace.

Sepulveda, M and Gudmundsdóttir, GD, (2004), *Human Rights Protection: Cases and Commentary*, University for Peace, Costa Rica.

Introductory texts covering a broad range of topics. Also contains legal cases and a collection of relevant human rights treaties.

Textbooks available to purchase

Alston, P, and Goodman, R, (2013 3rd edition), *International Human Rights*, Oxford: Oxford University Press.

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

Goodhart, M (ed), (2013 2nd ed), *Human Rights Politics and Practice*, 2nd ed, Oxford: Oxford University Press.

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

Smith, R, (2014), *International Human Rights*, 7th ed, Oxford: Oxford University Press.

The Alston and Smith texts are aimed at law students, while Goodhart is geared more towards the social and political sciences. Although the Novak textbook is very useful, it is difficult to find (no PDF and only available online).

Useful texts for lecturers

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

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

Office of the High Commissioner for Human Rights (OHCHR), (2001), *Human Rights: A Basic Handbook for UN Staff*, Geneva: OHCHR.

Orend, B, (2002), *Human Rights Concept and Context*, Ontario: Broadview Publishing.

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

Useful multimedia

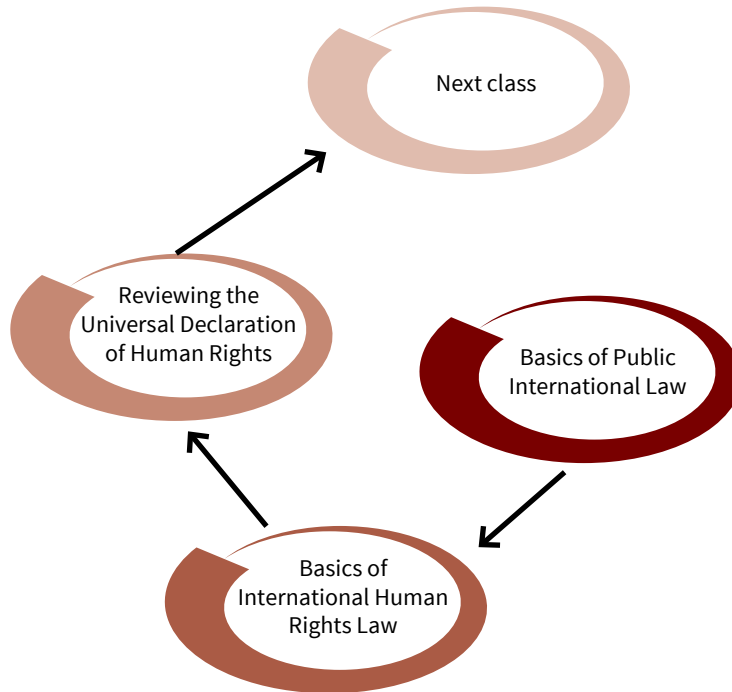
- Useful websites include the OHCHR which has a number of helpful texts and documents, although it does tend to employ many official UN documents which undergraduate students may be reluctant to read. In particular, students are encouraged to look at the OHCHR's professional training series, fact sheets, and books on women's rights, disability, and education, all available for free in pdf format. Available at www.ohchr.org.
- Another useful source is the Human Rights Education Association (HREA) which has a huge online library of texts on human rights issues. Available at www.hrea.org.
- Short videos introducing human rights are available to view on the UN Human Rights YouTube channel. Available at <https://www.youtube.com/user/UNOHCHR>.
- Many short videos (over 100) are free to view online from MOOC Chile on a variety of human rights topics. Available at <https://mooc.udp.cl/>.

Chapter 2

International Human Rights Standards

2.1 Introduction

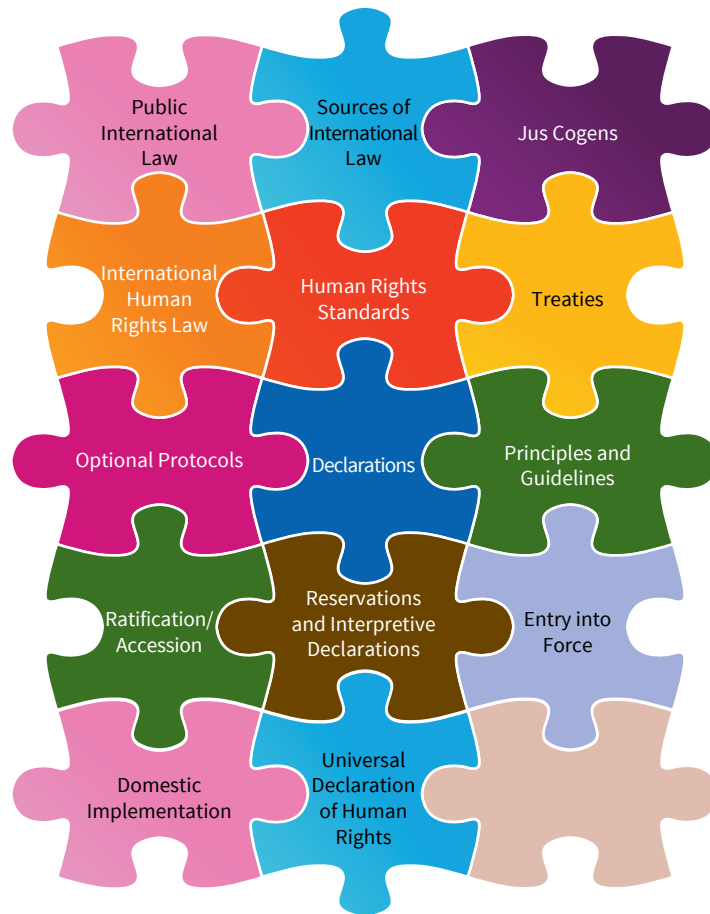
Provides an outline for classes on the basics of public international law, international human rights law, and the Universal Declaration of Human Rights.



2.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Basics of Public International Law	To understand the basics of public international law	<ul style="list-style-type: none"> • Clarifying understanding of public international law • Identifying the sources of international law
2. Basics of International Human Rights Law	To review the basics of international human rights law	<ul style="list-style-type: none"> • Clarifying the difference between public international law and international human rights law • Reviewing the codified sources of international human rights law • Reviewing the process involved in the making of a human rights treaty
3. Reviewing the Universal Declaration of Human Rights	To review the Universal Declaration of Human Rights	<ul style="list-style-type: none"> • Reviewing the scope and content of the Universal Declaration of Human Rights

2.3 Key Elements



2.4 Class Structure: Design

2.4.1 Basics of public international law

Specific objective	Enabling objectives
To understand the basics of public international law	<ul style="list-style-type: none"> Clarifying understanding of public international law Identifying the sources of international law



Steps

- Clarify understanding of public international law.
- Identify the different sources of public international law and further clarify understanding about them.
- Clarify the differences between domestic legal systems and public international law.

TEACHING NOTES

Basics of Public International Law

What is public international law?

Public international law is the legal order which structures the interaction between different sovereign States and shapes relations between them. It may focus on different fields such as the sea, trade and commerce, human rights, and diplomatic relations, etc.

Sources of international law

Article 38 of the Statute of the International Court of Justice, lists the different sources of international law. They are:

Treaties: Codified agreements between States. Agreements between two States are known as bilateral treaties, while those concluded between two or more States are known as multilateral treaties. States which have agreed and signed or become a 'party' to treaties will then be bound by their provisions.

International custom: General practices accepted as law. For a custom to be accepted as a source of law, it must satisfy two fundamental elements. First, it must be an actual practice or behaviour of States, and second, States must accept such practices as law. The actual practice of States can be established by consistency, repetition, and generality of particular kinds of State behaviour. An example of such a custom is the practice of diplomatic immunity.

General principles of law: Commonly used principles of nation States also accepted as sources of international law. Examples are the general principles of fairness and justice which are applied universally in legal systems around the world.

Judicial decisions: Decisions of international judicial bodies and tribunals, such as the International Court of Justice and the International Criminal Court. By clarifying the meaning of treaty provisions and applying international law to actual disputes, such decisions help to set precedents and develop the body of international law.

Difference between domestic legal systems and public international law

The principal difference between domestic legal systems and public international law is the manner in which decisions are enforced. At the domestic level, laws and judicial decisions are enforced through a system of courts and the police. However, at the international level, comparable powers are not available to enforce compliance. Rather, the decisions of international courts are enforced through sanctions and diplomatic efforts, etc.

Jus Cogens

Jus cogens or peremptory norms refer to certain fundamental principles of international law that must be respected at all times. Article 53 of the Vienna Convention on the Law of Treaties provides that a treaty shall be considered void if it is found to conflict with a peremptory norm of general international law. Examples of *jus cogens* norms include prohibitions against crimes against humanity, genocide, and human trafficking.



2.4.2 Basics of international human rights law

Specific objective	Enabling objectives
To review the basics of international human rights law	<ul style="list-style-type: none">• Clarifying the difference between public international law and international human rights law• Reviewing the codified sources of international human rights law• Reviewing the process of making a human rights treaty



Steps

- Discuss the following topics with students:
 - » The difference between public international law and international human rights law
 - » The meaning of human rights standards
 - » Where are international human rights standards codified?
 - » Clarify the terms, Declarations, Treaties, and General Comments
 - » The process of making international human rights law
- Suggested activities with regard to the process of making international human rights law
 - » Role play the treaty-making process, highlighting its different stages
 - » Alternatively, prepare cards on the different stages of the treaty-making process. After asking for volunteers, assign one card to each student. Ask the group to arrange themselves according to the sequential order they think appropriate and explain the steps depicted on the cards.

TEACHING NOTES

Basics of International Human Rights Law

Public International law and international human rights law

While international human rights law is a component of public international law, there is a major difference between the two. Public international law concerns the rights and duties of State parties which have agreed to enter into agreements over particular subjects. For example, a treaty between two countries over water-sharing may include the entitlements of each country and their ensuing obligations.

By contrast, international human rights law covers the rights of persons and the corresponding obligations of States. Thus, the focus of international human rights law is the people.

Human rights standards

Human rights standards refer to the quality of life every human being is entitled to. These standards have been codified into international human rights law in the form of the Declarations, Treaties, General Comments, and the Rules and Principles developed by States.

Treaties

Treaties generally refer to agreements between States. Human rights treaties refer to agreements between States on common standards of achievement as regards the rights of people. For example, the International Covenant on Civil and Political Rights is an agreement between States regarding standards that ought to be respected and achieved in the sphere of civil and political rights. Similarly, the Convention on the Rights of the Child is an agreement covering the rights of children. There are nine core human rights treaties:

- (1) International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD)
- (2) International Covenant on Civil and Political Rights, 1966 (ICCPR)
- (3) International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)
- (4) Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)
- (5) Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, 1984 (CAT)
- (6) Convention on the Rights of the Child, 1989 (CRC)
- (7) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICRMW)
- (8) International Convention for the Protection of All Persons from Enforced Disappearance, 2006 (CED)
- (9) Convention on the Rights of Persons with Disabilities, 2006 (CRPD)

General comments

The nine core treaties are monitored by committees of experts established under every treaty. Such committees of experts are known as Treaty Bodies and each has a mandate to monitor the implementation of particular treaties by State parties. In addition, treaty bodies also issue explanatory notes on different articles therein. These are known as General Comments or General Recommendations, and are designed to help in the interpretation of such rights.

Optional protocols

Protocols are in the nature of addendums to a treaty and are generally enacted to provide procedures to clarify substantive aspects of the treaty. For example, the ICCPR has two optional protocols: the first provides for an individual complaints mechanism and the second concerns abolition of the death penalty.



As the name suggests, protocols are ‘optional.’ A State ratifying a principal treaty may prefer not to ratify its attached protocol. For example, while Thailand ratified the ICCPR in 1996, it chose not to ratify either of its two optional protocols.

Declarations

Similar to a treaty, a Declaration also refers to shared commitments of States. However, there is one major difference between the two. Treaties are legally binding on ratifying States meaning they will be accountable for any actions taken to implement its provisions.

By contrast, declarations are in the nature of open commitments and therefore lack monitoring mechanisms. An example can be found in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Principles and guidelines

Experts and stakeholders have also helped to build the body of international human rights law by developing principles, guidelines, and minimum rules on a range of issues. Some examples include the Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty adopted by the UN in 1984 and the United Nations Standard Minimum Rules for the Treatment of Prisoners or the Nelson Mandela Rules adopted in 2015.

These guidelines and rules help to give meaning to the rights guaranteed in the core treaties whilst also helping to establish the law and policy frameworks necessary to implement such rights.

How are international human rights laws made?

There are a number of steps to this process as described below:

Lobbying process: Interested parties such as States, international organisations, civil society, social movements, etc, gather together, discuss ideas, and develop a plan of action.

Drafting: The UN takes the lead in preparing the draft of the treaty. Usually, a working group is established for this process.

Adoption: Once a draft is developed, it is placed for adoption by the UN. Under this process, UN member States hold discussions and cast their votes accordingly. A minimum number of votes is necessary for a draft to be adopted. Once adopted, the treaty becomes open for ratification. If rejected, the drafting stage begins again.

Signature: By ‘signing’ a treaty, States express their willingness to become a party to the agreement. Following, it is usual for a State to review its domestic legal system to ensure it is in harmony with the core elements of the treaty. If contradictions are found, the State must address the anomalies before proceeding to the ratification stage.

Ratification: By ratifying a treaty, a State agrees to be bound by it and comply with its provisions. Ratification is accomplished by submitting the required documents to the concerned UN body.

Reservations and interpretive declarations: At the time of ratification, occasionally a State may agree to become a part of a treaty, but may not wish to comply with certain obligations arising therein. In such cases, the State may make reservations to certain articles during the ratification process. However, these reservations cannot be incompatible with the objects and purposes of the treaty as explained in the Vienna Convention on the Law of Treaties, 1969 (Art 2(1d), and Arts 19-23).





In some cases, during the signing process, States can make ‘Declarations’ as to their interpretation of particular treaty provisions. However, these are not always legally binding and only indicate an opinion of the State.

Entry into force: A treaty enters into force once the required number of States have consented to be bound by it.

Accession: In cases where a treaty has already entered into force, and a State decides to become part of it, this act is known as ‘accession.’ It has the same legal effect as ratification.

Domestic implementation: Upon ratification of a treaty, in some systems, treaties automatically become part of the domestic legal system. These are known as ‘monist systems.’

In others however, international law is not directly applicable and States must adopt national laws compatible with the international treaty. These are known as ‘dualist systems.’

2.4.3 Reviewing the Universal Declaration of Human Rights

Specific objective	Enabling objectives
To review the Universal Declaration of Human Rights	<ul style="list-style-type: none">Reviewing the scope and content of the Universal Declaration of Human Rights



Steps

- Discuss the history of the drafting and adoption of the UDHR.
- Alternatively, screen the short videos mentioned at the end of the chapter (Resources, Multimedia).
- Ask students to review the rights recognised in the UDHR as summarised in Handout 2 and classify them into the different categories of civil and political rights, and economic, social and cultural rights.

HANDOUT 2

Rights Recognised in the UDHR

- Article 1 Everyone is born equal
- Article 2 Freedom from discrimination
- Article 3 Right to life, liberty, and personal security
- Article 4 Freedom from slavery
- Article 5 Freedom from torture or degrading treatment
- Article 6 Right to recognition as a person before the law
- Article 7 Right to equality before the law
- Article 8 Right to remedy by competent tribunal
- Article 9 Freedom from arbitrary arrest, detention, and exile
- Article 10 Right to a fair public hearing
- Article 11 Right to be considered innocent until proven guilty
- Article 12 Freedom from interference with privacy or reputation
- Article 13 Right to free movement
- Article 14 Right to asylum
- Article 15 Right to nationality and the freedom to change it
- Article 16 Right to marriage and family
- Article 17 Right to own property
- Article 18 Freedom of belief and religion
- Article 19 Freedom of expression and information
- Article 20 Right of peaceful assembly and association
- Article 21 Right to participate in government and in free elections
- Article 22 Right to social security
- Article 23 Right to work and to join trade unions
- Article 24 Right to rest and leisure
- Article 25 Right to adequate living standards, including healthcare, food, housing
- Article 26 Right to education
- Article 27 Right to participate in the cultural life of a community
- Article 28 Right to a world where human rights are protected
- Article 29 Community duties essential to free and full development
- Article 30 Duty not to use rights to interfere with others

A. Discussion on Difficult Questions

If the UDHR is only a 'declaration,' is it legally binding?

The UDHR is a declaration which means State parties do not have to go through a ratification process, and no monitoring mechanism is specifically attached to it. However, because of a number of other related factors, non-requirement of ratification or the absence of monitoring mechanisms has become less relevant. These factors are:

- (1) Some of the standards recognised in the UDHR have come to be recognised as customary law, such as the right to freedom from slavery and torture, and freedom of religion.
- (2) The rights recognised in the UDHR were further elaborated upon in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Once States ratify these two covenants, the question regarding the UDHR's legality becomes less significant.
- (3) Under the Universal Periodic Review process, the status of human rights in every member State of the UN is reviewed periodically by the Human Rights Council. If a State has not ratified the ICCPR and the ICESCR, the UDHR is taken as the standard of reference. Thus, since every member State has to submit itself to the UPR process, the UDHR is essentially binding upon them.

B. Resources

OHCHR, 'Ratification of 18 international human rights treaties' available at <https://indicators.ohchr.org/>

OHHCR, 'The core international human rights instruments and their monitoring bodies' available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

United Nations Treaty Collection, 'A glossary of terms relating to treaty actions' available at https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml

Vienna Convention on the Law of Treaties, 1969.

Multimedia

UN Human Rights, *UDHR@70: Perspective* (duration 3:59 mins), 17 November 2017, available at <https://www.youtube.com/watch?v=JaHwy5tdLOY>

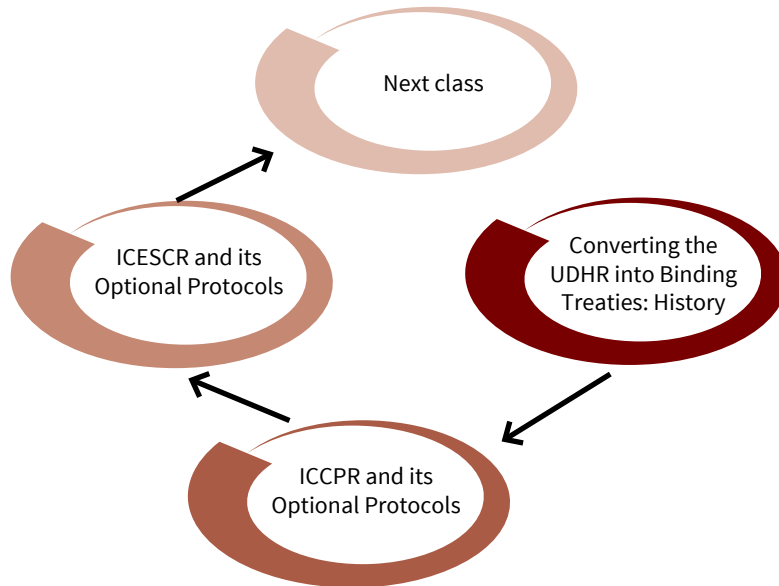
UN Human Rights, *UDHR@70: The History* (duration 6:07 mins), 22 November 2017, available at <https://www.youtube.com/watch?v=uA1IZkWycMk>

Chapter 3

International Human Rights Treaties: ICCPR & ICESCR

3.1 Introduction

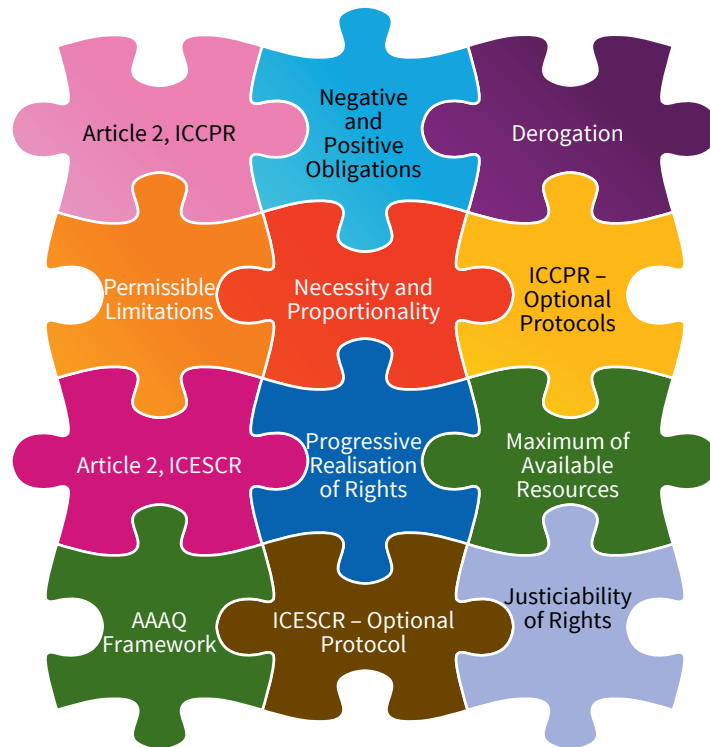
The class on international human rights treaties should give students sufficient understanding of the context in which the Universal Declaration of Human Rights was translated into binding treaties, i.e. the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Further, the class should provide students with an in-depth understanding of the rights recognised in the treaties and the tools to apply the standards to real life situations.



3.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Converting the UDHR into Binding Treaties: History	To understand the debate regarding the ICCPR and ICESCR	<ul style="list-style-type: none"> Clarifying the reasons as to why the UDHR was divided into two separate covenants (the ICCPR and ICESCR) Clarifying the reasons as to the inordinate delay in finalising the drafts of the two treaties
2. The International Covenant on Civil and Political Rights and its Optional Protocols	To critically assess the ICCPR and its related Optional Protocols	<ul style="list-style-type: none"> Outlining the scope and content of the rights enumerated in the ICCPR Applying the ICCPR to identify rights violations and remedial actions Clarifying the content of the Optional Protocols to the ICCPR
3. The International Covenant on Economic, Social and Cultural Rights and its Optional Protocols	To critically assess the ICESCR and its related Optional Protocol	<ul style="list-style-type: none"> Outlining the scope and content of the rights enumerated in the ICESCR Applying the ICESCR to identify rights violations and remedial action Clarifying the content of the Optional Protocol to the ICESCR

3.3 Key Elements



3.4 Class Structure: Design

3.4.1 Converting the UDHR into binding treaties: History

Specific objective	Enabling objectives
To understand the debate regarding the two separate covenants, ICCPR and ICESCR	<ul style="list-style-type: none"> • Clarifying the reasons as to why the UDHR was divided into the separate covenants of ICCPR and ICESCR • Clarifying the reasons as to why there was an inordinate delay in finalising the draft of the two treaties



Steps

- Brainstorm with students as to why a single treaty could not be adopted to give binding effect to the UDHR.

TEACHING NOTES

Converting the UDHR into Binding Treaties



- Changed geo-politics since the UDHR was adopted. Political divisions caused by the Cold War and newly independent colonies joining the UN.
- Different States had distinct perspectives on human rights. For example, while States in the west (mostly capitalist democracies) prioritised civil and political rights, socialist countries considered the provision of economic and social rights to be more important.
- States giving priority to civil and political rights did not want economic, social, and cultural rights (ESCR) to be allowed the same treatment. They argued that while civil and political rights could be enforced immediately, more State resources were necessary to ensure full enjoyment of ESCR.
- The above reasons led to the drafting and eventual adoption of two separate covenants: the ICCPR and the ICESCR. The difference between the two can be seen in the framing of Art 2 of each covenant focusing on State obligations.

3.4.2 The International Covenant on Civil and Political Rights (ICCPR)

Specific objective	Enabling objectives
To critically assess the ICCPR and its related Optional Protocols	<ul style="list-style-type: none"> • Outlining the scope and content of the rights enumerated in the ICCPR • Applying the ICCPR to identify rights violations and remedial actions • Clarifying the content of the Optional Protocols to the ICCPR



Steps

- Review the ICCPR, such that students are able to:
 - » Summarise the rights contained therein according to different categories: absolute rights; rights in the administration of justice; civil rights and freedoms; and political rights.
 - » Analyse the principles of derogation and limitations on rights and apply them to the case studies in HANDOUT 3.
 - » Use the standards to identify rights violations and remedial action (see HANDOUT 4).

TEACHING NOTES

Fundamental Principles of the ICCPR

State obligations under the ICCPR

Article 2 of the ICCPR outlines State obligations. General Comment 31, issued by the Human Rights Committee, clarifies the nature of such obligations. Some points to note are:

- ***Whose rights are protected?*** All individuals present in a State's territory or within its power or effective control should be able to access and enjoy these rights. General Comment 15 clarified that the enjoyment of Covenant rights should not be limited to citizens of State parties but should be made available to all individuals regardless of nationality or citizenship such as asylum seekers, refugees, migrant workers, and other persons within the territory or subject to the jurisdiction of the State party.
- ***Negative and positive obligations:*** Obligations under Art 2 are both negative and positive in nature. States are obliged to refrain from actions which may violate human rights (negative obligation). States are further required to adopt legislative, judicial, administrative, educative, and other appropriate measures to enable enjoyment of said rights (positive obligation).
- ***Protection from actions of State agents and non-state actors:*** A State must take measures to protect individuals from the actions of State and non-state actors. As such, a State should not enable its agents to be excused from personal liability through legal immunities. Moreover, a State must also protect individuals from the actions of private persons and entities. In this respect, States must exercise due diligence to prevent, punish, investigate, or redress the harm caused by the acts of private persons or entities.
- ***Access to effective remedies:*** States should adopt appropriate judicial and administrative measures to facilitate access to effective remedies against violations of rights.

Derogation

Article 4 of the ICCPR allows a State to suspend enjoyment of certain rights in times of public emergencies. This is known as a derogation from obligation. It must be noted that derogation differs from limitations which may also be imposed on rights. However, while a limitation on rights refers to measures that are applicable at all times, a State may only be derogated from its obligations in times of public emergency.

Article 4(1) lays down some conditions for derogations. These are:

- There must be an officially proclaimed public emergency;
- Derogations must be in accordance with the principles of legality and the rule of law;
- Derogations must be strictly according to the needs of a situation and also be in accordance with the principles of proportionality; and
- Derogations should not involve discrimination solely based on race, colour, sex, language, religion, or social origin.



At the same time, Art 4(2) enumerates certain rights which cannot be suspended even in times of public emergency. These non-derogable rights are:

- Right to life (Art 6)
- Freedom from torture or cruel, inhuman, or degrading treatment (Art 7)
- Right not to be held in slavery or involuntary servitude (Art 8)
- Principle of legality, the rule of law, and the right to a fair trial (Art 15 read with General Comment No 29)
- Right of every person to be recognised as a person before the law (Art 16)
- Right to freedom of thought, conscience, and religion (Article 18)
- Rights to non-discrimination (Art 2)

Limitations on rights

Rights guaranteed in the ICCPR are not absolute and States may impose limitations on their enjoyment. However, such limitations need to follow certain conditions:

- (1) The enjoyment of rights must satisfy the principle of legality. Any law imposing limitations must be clear and precise so as not to give unfettered discretion to the authorities responsible for enforcement.
- (2) The purpose or aim of imposing such restrictions must be legitimate in a democratic society. Permissible aims as mentioned in various articles of the Covenant include, protection of national security, public safety, public health, public morals, public order, and to protect the rights and freedoms of others in society.
- (3) Restrictions must be necessary to achieve a desired purpose.
- (4) Restrictions must be proportionate. In other words, restrictions must be the least intrusive means of achieving the desired purpose. In other words, if another alternative measure can be adopted which does not limit the enjoyment of the right to the same extent, the restriction cannot be said to be proportionate.
- (5) States must recognise that limitations on the exercise of rights are in the nature of 'exceptions' and cannot threaten the substance of the right itself.



HANDOUT 3

Exercise on Derogation and Limitations

Exercise 1

The government of Country X announces a State of Emergency (to last 60 days) in response to increasing political protests which are blocking roads, government offices, and transportation. The Emergency Decree gives authorised officials special powers such as to:

- Arrest and detain persons suspected of having a role in causing the emergency situation; and
- Inspect letters, books, printed matters, telephone communications, or any other means of communication.

Question

Does the Emergency Decree violate the standards recognised in the ICCPR?

Exercise 2

Section 15 of the Peace Demonstration Act provides that any person(s) wishing to organize a peaceful assembly must send a request seeking prior permission at least five days in advance.

Section 16 states that the request must be submitted to the District Administration who may refuse permission in the interests of protecting public order.

Question

Are the limitations prescribed by sections 15 and 16 according to international human rights principles as recognized in the ICCPR?

Key to HANDOUT 3

Exercise 1

Does the Emergency Decree violate the standards recognised in the ICCPR?

The emergency decree restricts enjoyment of Art 9 (the right to liberty and security), Art 17 (the right to privacy), and the right to freedom of speech and expression (Art 19). Thus, the State is derogating from its obligations under the ICCPR due to the state of emergency.

But while imposing restrictions on the enjoyment of rights during the public emergency, has the State followed the specified conditions? This question must be examined against the parameters prescribed in Art 4:

- a. *Has the state of emergency been officially proclaimed?* In the present case, it appears the state of emergency was publicly announced and the decree was therefore promulgated as per prescribed procedures.
- b. *Does the Emergency Decree impact on non-derogable rights as specified in Art 4(2) of the ICCPR?* In the present case, it appears the decree does not infringe upon non-derogable rights.
- c. *Were the restrictions 'strictly according to the exigencies of the situation' as prescribed in Art 4(1) of the ICCPR?* In other words, were the restrictions proportional to the needs of the situation? To answer this question, let us examine two restrictions:
 - *The power to detain and arrest persons suspected of playing a role in the emergency situation:* This clause gives the State power to detain and arrest **any** person merely suspected of being involved in the emergency. Thus, this power is extremely broad as it gives the State unlimited power to arrest any person against whom it harbours a suspicion. As such, it fails to meet the requirement of proportionality and the State should narrow such powers. For example, the provision could be more specific and only 'detain and arrest persons who assemble together in groups of 5 or more in a public place.'
 - *The power to inspect books, printed matters, telephone communications, or any other means of communication:* Again, this clause grants the State broad or unlimited power to restrict the enjoyment of rights. It is also unclear why such broad powers are necessary to counter the problem of increasing public protests. Therefore, this clause also fails to meet the proportionality test.

Based on this reasoning, the above Emergency Decree does not appear to meet the requirements of Art 4 of the ICCPR.

Exercise 2

Are the limitations prescribed by sections 15 and 16 according to international human rights principles as recognized in the ICCPR?

In the present case, a person seeking to organise a peaceful assembly needs to seek permission from the administrative authorities who have discretion to refuse. Thus, restrictions have been placed on the enjoyment of this right.

Article 21 guarantees the right of peaceful assembly.

Article 21 also provides that States may place restrictions on the exercise of the right if certain conditions are followed:

- The restriction must be imposed by law; and
- It must be necessary to protect the interests of national security or public safety, public order, public health or morals, or the rights and freedom of others.

Does the restriction meet with these conditions?

- *Is the restriction provided under law?* Yes, the restriction is stipulated in the Peace and Demonstration Act.
- *Does the restriction have a legitimate aim?* Yes, the restriction seeks to protect the interests of public order which is permissible under Art 21 of the ICCPR.
- *Is the restriction necessary to protect the interests of public order?* This involves an examination of whether the restriction is proportionate and the least intrusive measure to protect the desired interest. In the present case, the right to hold a public assembly is entirely dependent on the district administration. In other words, the law gives it full authority to decide who can hold a public assembly and who cannot. This level of control is not necessary in a democratic society. Further, the State could also protect public order by increasing its police presence during the assembly thereby preventing any disturbance from happening.

For these reasons, it can be said that the restriction does not meet the human rights standards recognised in Art 21 of the ICCPR.

HANDOUT 4

Exercise on Identifying Rights Violations

Identify if any rights violations have occurred in the cases below. If so, identify the measures a State should take to address such violations.

Case study 1

To address the growing problem of drug abuse in society, the leader of a country issues an executive order with the objective of eliminating the drug trade. This enables police to 'shoot to kill' any person suspected of being involved in the illegal trade.

Case study 2

A national human rights organisation releases a report on torture in police custody. The report contains information about 84 such cases. The State denounces the report as containing false information and dismisses it despite having ratified the ICCPR. At the same time, draft of a law against torture is still under discussion.

Case study 3

B is arrested under the Digital Security Act for publishing a blog post criticising the Prime Minister of the country. B claims his right to free speech has been violated. Section 3 of the Digital Security Act authorises the State to prosecute any person who publishes in electronic form, material harming the image of the State.

Key to HANDOUT 4

Case Study 1

The order, 'shoot to kill' violates the right to life (Art 6) and also the right to a fair trial (Art 14).

Every person has a right to be presumed innocent until proven guilty according to law as guaranteed in Art 14(2). Further, Art 6 provides that no person should be arbitrarily deprived of life.

By enabling 'shoot to kill' on mere suspicion of a drug offence, the law gives the police power to decide a person's guilt. This is wrong as it can lead to arbitrariness. Rather, police should arrest the suspect and allow him to stand trial in a court of law. Upon consideration of the evidence, it is the court that should decide on the individual's guilt or innocence, and if guilty, it is also the court that should mete out the appropriate punishment as prescribed by law.

Therefore, the State should repeal the Executive Order.

Case Study 2

Article 7 provides that no one shall be subject to torture. In the present case, having ratified the ICCPR, the State is bound by its obligations under Art 7. Instead of dismissing the complaints as false information, it should have taken appropriate steps to meet those obligations, the different levels of which are:

- *Obligation of respect*: The State and its agents should not engage in torture.
- *Obligation to protect*: The State should protect persons against the actions of its agents and third parties by investigating complaints of torture, bringing the accused before a court of law, and enforcing the ensuing judgement.
- *Obligation to fulfil*: The State should create conditions that prevent the use of torture.

States can discharge these obligations, by first and foremost, enacting laws to prohibit torture and that recognise torture as an offence punishable under law, whilst providing a mechanism to investigate such complaints. Moreover, it should introduce preventive steps, by, for example, giving appropriate training to the police on investigation techniques to discourage torture.

As regards the above case, it can also set up a Commission of Enquiry or other such mechanism to investigate the 84 complaints recorded by the National Human Rights Commission.

Case Study 3

Article 19 of the ICCPR guarantees the right to express one's opinion freely through any medium of communication. However, this right is not absolute and States can impose restrictions in the interests of protecting the rights and freedoms of others, and national security,

In the present case, the Digital Security Act limits exercise of the rights to freedom of speech and expression. The question is, are such limitations permissible under the ICCPR?

- *Is the limitation prescribed by law?* Yes, the Digital Security Act authorises the State to restrict freedom of speech.
- *Does the limitation have a legitimate aim?* As per Section 3 of the Digital Security Act, speech may be restricted to protect the 'image of the State.' One could argue that the concept, 'image of the State' is too vague and subjective and not comparable to the notion of national security. Thus, it cannot be said that the restriction has a legitimate aim.

Since the restriction does not have the legitimate aim, section 3 of the Digital Security Act can be said to violate Art 19 of the ICCPR. Therefore, the State should not only repeal section 3 but also dismiss charges against B.

Since section 3 fails the test of legitimate purpose, there is no need to examine the aspect of proportionality.

3.4.3 Optional Protocols to the ICCPR

Specific objective	Enabling objectives
To critically assess the related Optional Protocols to the ICCPR	<ul style="list-style-type: none">• Clarifying the content of the Optional Protocols to the ICCPR



Steps

- Present the key components of the two Optional Protocols.
- Facilitate discussions to enable students to better understand the purpose and need for the Optional Protocols.

TEACHING NOTES

Optional Protocols to the ICCPR

First Optional Protocol to the ICCPR

- Adopted in 1966; came into force in 1976.
- Enables the Human Rights Committee to receive and consider complaints from individuals regarding human rights violations.
- Any individual claiming their ICCPR rights have been violated can submit a written complaint to the Committee, provided the individual has exhausted all domestic remedies.
- The Committee brings such complaints to the attention of the State which must then submit a written explanation or statement on the matter to the Committee within six months of receiving its communication.
- The Protocol is applicable only to those States who have ratified it.

Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty

- Adopted in 1989; came into force in 1991.
- State parties which ratify the Protocol are required to abolish the death penalty within its jurisdiction.
- However, Art 2 allows States to reserve the right to apply the death penalty during war time for serious military offences committed during war time.



3.4.4 The International Covenant on Economic, Social and Cultural Rights

Specific objective	Enabling objectives
To critically assess the ICESCR	<ul style="list-style-type: none">• Outlining the scope and content of the rights enumerated in the ICESCR• Applying the ICESCR to identify rights violations and remedial action



Steps

- Review the ICESCR such as to enable students to:
- Summarise the rights contained in the ICESCR;
- Construct the scope and content of each right guaranteed in the ICESCR using the AAAQ framework (see sample exercise in HANDOUT 5);
- Identify the different State obligations with respect to each of the ICESCR rights (see sample exercise in HANDOUT 5); and
- Use the standards to identify rights violations and remedial action (see sample case studies in HANDOUT 5).

TEACHING NOTES

ICESCR State Obligations and the AAAQ Framework

State obligations under ICESCR

Article 2 of the ICESCR outlines the obligations on State Parties. These have been further clarified in General Comment 3 issued by the Committee on Economic, Social and Cultural Rights, and the Limburg Principles on the implementation of the ICESCR. Some clauses to note are:

- **Obligation to ‘take steps’:** Article 2.1 requires States Parties to ‘take steps’ to ensure the full enjoyment of the guaranteed rights. According to the Limburg Principles, this implies that States should adopt all appropriate means, including legislative, administrative, judicial, economic, social, and educational measures to fulfil obligations under the Covenant.
- **Progressive realisation of rights:** Article 2.1 allows States to take steps for ‘achieving progressively the full realisation of the rights.’ This implies that States should move as expeditiously as possible towards the full realisation of such rights by developing targeted and legally consistent policies (Limburg Principles 21-24). Further, the obligation of progressive realisation includes an obligation not to take regressive measures that lower the level of enjoyment of said rights.
- **Maximum use of available resources:** According to the Limburg Principles, States are under an obligation to ensure minimum subsistence rights for everyone, regardless of its level of economic development (Limburg Principles 25-28). Moreover, a State must give priority to its ICESCR obligations in the allocation of its national budget. Available resources include international assistance and support.

Apart from the specific obligations under Art 2, States also have generic obligations to respect, protect, and fulfil, and not to discriminate against certain groups.

AAAQ framework

The AAAQ Framework was developed by the Committee on Economic, Social and Cultural Rights through its General Comments. This framework helps to identify the scope and content of different ESCR, i.e. the rights to adequate health, food, education, housing, and water. The AAAQ framework refers to:

- **Availability:** Goods/facilities must be available in sufficient quantity
- **Accessibility:** Goods/facilities must be accessible to everyone. Accessibility has four further dimensions:
 - » Non-discrimination meaning the goods/facilities must be accessible to all
 - » Physical accessibility meaning the goods/facilities must be within physical reach of the target group
 - » Economic affordability meaning the goods/facilities must be priced in such a way that they are affordable to all
 - » Information accessibility meaning important information about the goods/facilities must be accessible to all
- **Acceptability:** The goods/services should be culturally appropriate
- **Quality:** The goods/services must be of sufficient quality



HANDOUT 5

Exercises and Case Study Analysis on the ICESCR

Exercise 1

Use the AAAQ (Availability, Accessibility, Acceptability, Quality) framework to map out the content of one economic and social right.

Exercise 2

Taking one economic or social right, identify the State obligations of non-discrimination, progressive realisation, maximum availability of resources, minimum core, and the obligations to respect, protect, and fulfil.

Exercise 3

Examine the case studies below. Identify whether or not rights violations have taken place. If so, identify the measures the State could take to address them.

Case Study 1

The government is pushing forward with a plan to build a dam. It will result in the eviction of certain people from their homes. No study has been conducted to assess the impact of the dam construction on the lives of this population.

Case Study 2

X suffers a road accident and is badly injured. Although passers-by take him to the nearest public hospital, staff say that since it was an accident, it is a police case and certain procedures must be followed before they can treat him.

Case Study 3

Under the Air and Water Pollution Control Act, factories are prohibited from discharging waste products into the air and bodies of water without first treating them. However, a tanning factory has been violating the laws and releases untreated waste into the river. People using water from the river as part of their daily routine, fall sick.

Case Study 4

A study over five years shows that the quality of education in public schools has steadily declined. The number of dropouts increased due, the report claims, to school budget allocations remaining constant despite rising admissions.

Case Study 5

The government privatises the distribution of water for domestic use. Company Y is awarded the contract for such distribution and immediately imposes 'user fees' as a result of which poorer communities are forced to restrict their water usage, impacting negatively on their enjoyment of said rights.

Key to HANDOUT 5

Exercise 1

Article 12 of the ICESCR recognises the right of everyone to the highest attainable standards of physical and mental health. General Comment 14 issued by the Committee on Economic, Social, and Cultural Rights clarifies the content of this right to health.

One component is the right to healthcare facilities, goods, and services (Art 12.2d). The different aspects of this right are:

Availability: A sufficient number of functioning healthcare facilities, goods, and services should be available.

Accessibility: Accessibility has four dimensions. Thus, healthcare facilities, goods, and services should be accessible to everyone, in terms of:

- **Non-discrimination:** no person should be denied enjoyment of the facilities on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- **Physical accessibility:** healthcare facilities must be within physical reach of everyone. For example, hospitals must be located a reasonable distance from communities, and buildings must be accessible to people with disabilities.
- **Affordability:** public healthcare facilities, goods, and services must not be priced so high, they are beyond the reach of the masses.
- **Information accessibility:** information about healthcare facilities, goods, and services must be freely and easily accessible to all.

Acceptability: Healthcare facilities, goods, and services should be culturally appropriate and sensitive to gender and life-cycle requirements. They should also be respectful of medical ethics.

Quality: Healthcare facilities, goods, and services should be of acceptable quality and scientifically and medically appropriate.

Exercise 2

State obligations with respect to Art 12.2d (on the right to healthcare facilities, goods, and services) are elaborated in General Comment 14. Some examples are:

Non-discrimination: The right to healthcare should be guaranteed to all persons on the basis of equality and non-discrimination.

Progressive realisation: States should take steps to move as expeditiously and effectively as possible for the full realisation of this right. Retrogressive measures should not be taken by the State.

Minimum core: States should ensure that minimum levels of healthcare are available and accessible to all, including primary healthcare services, reproductive healthcare, or emergency healthcare.

- Obligation to respect:** In providing healthcare goods and services, States cannot discriminate against persons on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status.
- Obligation to protect:** States should ensure that private healthcare providers maintain adequate levels of care. If the State has allowed privatisation of healthcare services, it should take steps to ensure providers do not threaten the availability, accessibility, acceptability, and quality of healthcare goods and services.
- Obligation to fulfil:** States should enact a national healthcare policy that provides a detailed plan for realising the right to health. The implementation of such a policy should be periodically reviewed and remedial measures should be taken. Appropriate budget allocations should be made for effective implementation of the policy. The obligation to fulfil also reflects upon the steps taken to progressively realise this right.

Exercise 3

Case Study 1

In this example, the right to adequate housing is under threat.

While Art 11 of the Covenant recognises the right of everyone to adequate food, clothing, housing, and living conditions, General Comment 7 clarifies the right to adequate housing. It explains that no person should be evicted from their home without first being offered an opportunity for genuine consultation. Thus, the State should respect the right of everyone to adequate housing and not take any action arbitrarily depriving them of this right.

If a State intends to construct a dam, it should conduct an assessment of the ways in which the dam could impact on the social, economic, and cultural life of the local population. Information about the plan should be made available to enable all interested parties to easily access the information and participate in an informed manner.

The State should proceed with the construction only if adverse impacts can be addressed through appropriate measures. For example, if the proposed project would result in people being displaced, the State should provide those affected with alternative land to ensure they have security of housing and are also able to earn an adequate living.

It should be noted that the right to food, housing, and an adequate standard of living are all interconnected. If one of these rights is infringed, enjoyment of the others may also be threatened.

Case Study 2

X is being denied emergency healthcare despite it being one of the core components of Art 12 of the ICESCR (pertaining to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health). The State has an obligation to protect the person against the actions of others such as hospitals which may have rigid admission procedures.

Thus, the State should enact policies/regulations clearly prescribing that in the event of an accident, the first duty of a hospital is to provide emergency

healthcare. Completion of procedural formalities such as the requirement to notify the police should not be a pre-condition of providing emergency healthcare.

Case Study 3

The people falling sick due to polluted water have had their right to health infringed by the actions of the tanning factories as well as by the State's ineffective enforcement of existing laws.

Moreover, States have an obligation to protect such rights against the actions of State agencies as well as non-state actors.

In the above example, the State must therefore take action against the tanning factory which is polluting the river. It is also obligated to strengthen regulatory mechanisms established under the Air and Water Pollution Control Act to prevent other factories from doing the same.

Case Study 4

In this case, children are dropping out of schools because of the declining quality of the education provided by public schools. Thus, their right to an education is being violated.

One reason identified for this decline is insufficient budgeting because while this has remained constant, the number of admissions has steadily increased effectively meaning budget allocations per student have declined over the years.

States have an obligation to take measures to progressively realise the right to an education. This includes an obligation to allocate adequate budgetary resources to facilitate provision of the right. By failing to increase it proportionately to match the increase in the number of students, the State has effectively taken a backward step and should therefore take corrective measures in this regard.

Case Study 5

The right to water has been recognised as an integral component of the right to an adequate standard of living, including the rights to adequate food, clothing, and housing, as guaranteed by Art 11 of the ICESCR.

This includes an obligation to protect enjoyment of the right from the actions of third parties.

In this case, private company, Y, by imposing 'user fees' on the distribution of water, has effectively restricted the ability of poor communities to access sufficient quantities of water necessary for meeting their domestic needs.

Thus, the State has an obligation to set up a mechanism to regulate the imposition of such user fees. The rates should not restrict economically disadvantaged sections of society from accessing sufficient quantities of water to meet their daily needs.

A point to be noted is that this right is intricately connected with the rights to adequate food and health. Similarly, the rights to education and housing are also impacted by the ability of people to access affordable water services.

3.4.5 Optional Protocols to the ICESCR

Specific objective	Enabling objectives
To critically assess the related Optional Protocols to the ICESCR	<ul style="list-style-type: none"> Clarifying the content of the Optional Protocols to the ICESCR



Steps

- Present the key components of the Optional Protocol.
- Facilitate discussions such that students are able to understand the purpose and need for the Optional Protocol.

TEACHING NOTES

Optional Protocol to the ICESCR

Optional Protocol to the ICESCR

- Adopted in 2008; came into force in 2013.
- Enables the Committee on Economic, Social and Cultural Rights to receive and consider complaints from individuals/groups claiming violations of their economic, social and cultural rights.
- Any individual/group who claims their ICESCR rights have been violated can submit a written complaint to the Committee provided that all available domestic remedies have been exhausted.
- Such communication must be submitted within one year of the exhaustion of domestic remedies unless the applicant(s) can show it was not possible to submit the complaint within one year.
- The Committee brings such complaints to the attention of the State. The State must submit written explanation or statement on the matter to the Committee within six months of receiving such a communication.



A. Discussion on Difficult Questions

Why should governments be obligated to fulfil economic, social, and cultural rights (or ESCR) requiring budget allocations?

It is not true that only these rights require budget allocations as civil and political rights also require financial resources.

For example, ensuring the right to speedy and fair trials requires States to establish a sufficient number of courtrooms and appoint adequate numbers of judicial officers. Likewise, protecting the right to peaceful assembly requires States to properly train law enforcement officers on peaceful methods of crowd control. Thus, protecting civil and political rights also requires public expenditure.

Are ESCR justiciable?

Justiciability is understood as the ability to judicially determine whether a right has been violated or not.

It has often been argued that ESCR are to be progressively realised. Further, the scope and content of these rights are vague and thus cannot be enforced by courts. In other words, they are considered non-justiciable.

However, developments in the theory and practice of ESCR demonstrate that such arguments are not entirely true. Indeed, the Committee on Economic, Social and Cultural Rights through its General Comments has clarified their scope and content.

It can also be clearly shown that each right has components requiring immediate implementation by the State, such as the obligations of non-discrimination, to provide a minimum core, not to arbitrarily interfere in the enjoyment of a right, and the obligation not to infringe upon the right to access justice and remedies. All these elements can and are being adjudicated by the courts. Thus, ESCR are justiciable.

B. Resources

An overview of developments at the UN level regarding the ICCPR can be reviewed from the website of the Human Rights Committee which monitors compliance of the ICCPR. The website also contains links to several non-governmental organisations seeking to strengthen the protection and promotion of civil and political rights. Available at <https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx>

ICCPR general comments can be found at OHCHR, 'UN treaty body database' OHCHR, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

ICESCR general comments can be found at OHCHR, 'UN treaty body database' OHCHR, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

Developments in the field of ESCR can be reviewed from the website of the Committee on Economic, Social and Cultural Rights, the treaty body monitoring compliance of the ICESCR. The website also contains links to different non-governmental organisations focussing on ESCR. Available at <https://www.ohchr.org/EN/HRBodies/CESCR/pages/cescrindex.aspx>

The Limburg Principles on the Implementation of the ICESCR can be found at <https://www.escr-net.org/resources/limburg-principles-implementation-international-covenant-economic-social-and-cultural>

PART II

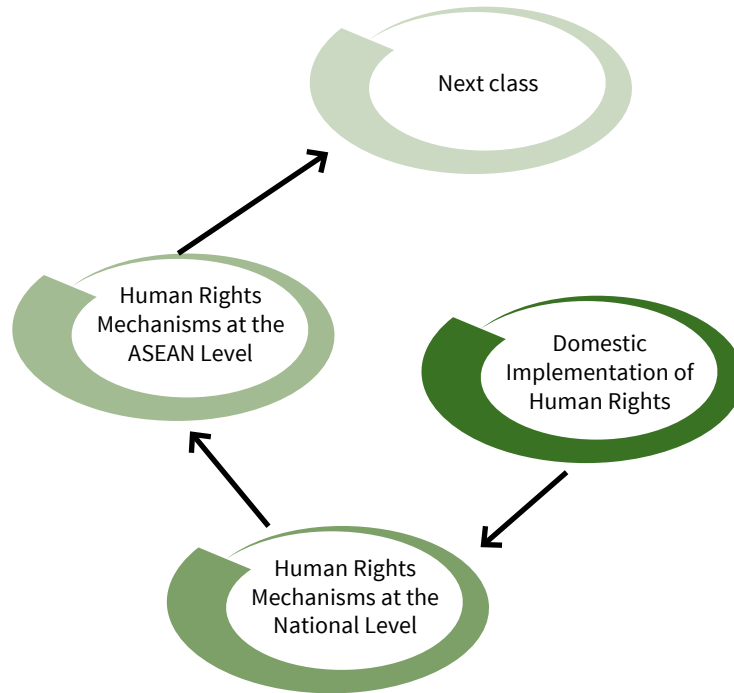
Protecting
Human Rights

Chapter 4

Protecting Human Rights in Southeast Asia

4.1 Introduction

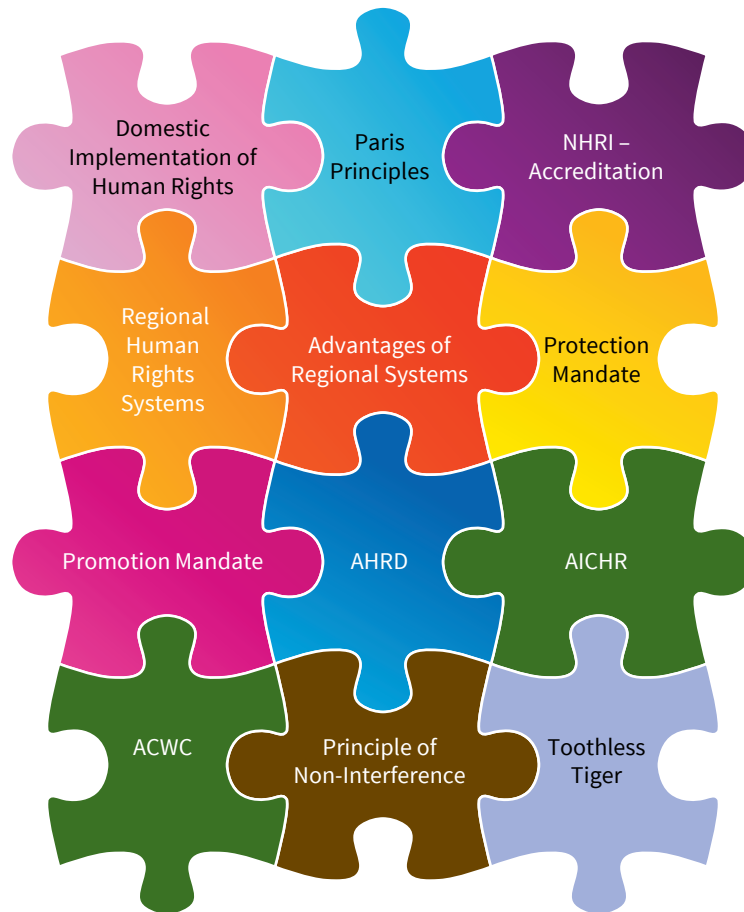
This class focusses specifically on the protection of human rights in Southeast Asia. It has three main elements: domestic implementation of human rights, human rights mechanisms at the national level, and human rights mechanisms at the ASEAN level.



4.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Domestic Implementation of Human Rights	To understand strategies for the implementation of human rights at the domestic level	<ul style="list-style-type: none"> Clarifying the ways in which human rights are implemented at the domestic level
2. Human Rights Mechanisms at the National Level	To review human rights mechanisms at the national level	<ul style="list-style-type: none"> Outlining the mechanisms that exist at the national level to protect rights Reflecting on the effectiveness of mechanisms at the national level
3. Human Rights Mechanisms at the ASEAN Level	To review human rights mechanisms at the ASEAN level	<ul style="list-style-type: none"> Outlining human rights mechanisms in Southeast Asia Reflecting on the effectiveness of mechanisms at the regional level

4.3 Key Elements



4.4 Class Structure: Design

4.4.1 Domestic implementation of human rights

Specific objective	Enabling objectives
To understand strategies for the implementation of human rights at the domestic level	<ul style="list-style-type: none"> Clarifying the ways in which human rights are implemented at the domestic level



Steps

- Discuss the different ways in which international human rights standards are applied at the domestic level.
- Exercises to assist this discussion are provided in HANDOUT 6.

HANDOUT 6

Exercises on the Domestic Implementation of Human Rights

Exercise 1

List the different ways in which international human rights standards are applied at the domestic level.

Exercise 2

- a. Choose a Constitution and identify the rights/provisions corresponding to the:
 - Right to life
 - Right to liberty and security of person
 - Right to equality and non-discrimination
 - Right to freedom of association
 - Right to nationality
 - Right to education
 - Right to work
 - Right to health
- b. Are the provisions relating to the rights to equality and liberty (civil and political rights) equal in status to provisions relating to the rights to work, health, and food (economic, social, and cultural rights)?

Key to HANDOUT 6

Exercise 1

International human rights standards may be applied at the domestic level in a number of ways:

- By incorporating international standards into constitutions;
- By enacting laws, such as those prohibiting torture or legislation ensuring the right to an education; and
- By using international human rights standards as a reference to aid the interpretation of rights guaranteed in constitutions, and by drafting laws and policies on rights issues.

Exercise 2

a. Taking the example of the 1987 Constitution of the Republic of the Philippines, the main articles corresponding to international standards are:

- *Right to Life*: Art 3, s.1
- *Right to Liberty and Security of Person*: Art 3, ss.1-2
- *Right to equality and non-discrimination*: No specific provision corresponds to the right to equality and non-discrimination in Art 3 (Bill of Rights). However, it is mentioned in the preamble under Art 2 (Declaration of Principles and State Policy Principles), and in Art 13 (Social Justice and Human Rights). Also, the Bill of Rights is worded in a way that suggests the rights enumerated in it are guaranteed to all persons on the basis of equality and non-discrimination.
- *Right to freedom of association*: Art 3, s.8
- *Right to nationality*: Not mentioned in Art 3. However, Art 4 of the Constitution provides for citizenship and enumerates those to be considered citizens and the factors leading to a loss of citizenship.
- *Right to education*: Not included in the Bill of Rights. However, Art 14 focusses on the right to education. It also lists the obligations of the State.
- *Right to work*: Not mentioned in the Bill of Rights. However, s.3 of Art 13 (Social Justice and Human Rights) focuses on the right to work.
- *Right to Health*: Art 13, ss.11-13

b. Taking the example of the 1987 Constitution of the Republic of the Philippines, the Bill of Rights chapter (Art 3) recognises civil and political rights such as the right to life (s.1), the right to liberty and security of person (ss.1 and 2), and the right to association (s.8).

Most economic, social, and cultural rights mentioned in Art 2 on State policies are framed as guiding principles the government should follow in policy-making. These are further clarified in Art 13 (Social Justice and Human Rights) which stipulates the steps the government should take on issues of labour, agrarian and natural resource reform, urban land reform and housing, health, and women. In addition, Art 14 discusses measures the government should take with respect to education.

This difference becomes notable when examining the powers of the Supreme Court to receive complaints of rights violations. For example, s.5(5) of Art 8 states that the Supreme Court shall have power to promulgate rules concerning the protection and enforcement of constitutional rights.

A point for further research enquiry concerns whether the term 'constitutional rights' includes only the rights guaranteed in Art 3 (Bill of Rights), or whether it also includes those mentioned in Art 2 (State Policies), Art X13 (Social Justice and Human Rights), or Art 14.

4.4.2 Human rights mechanisms at the national level

Specific objective	Enabling objectives
To review human rights mechanisms at the national level	<ul style="list-style-type: none"> • Outlining mechanisms to protect rights at the national level • Reflecting on the effectiveness of mechanisms at the national level



Steps

- Brainstorm with students to identify human rights mechanisms existing at the national level.
- Initiate a discussion on the desired characteristics of an efficient national human rights mechanism.
- Introduce the Principles Relating to the Status of National Institutions (Paris Principles) adopted by the United Nations General Assembly in 1993.
- Screen the video, 'The Paris Principles and NHRIs,' produced by the Danish Institute for Human Rights, available at: <https://www.humanrights.dk/learning-hub/paris-principles-nhris>

Once screening is over, initiate a discussion with students on the main points elucidated therein. Some leading questions could be:

- » What are the main criteria for a credible national human rights institution?
- » What should be the competencies of an effective national human rights institution (mandate)?
- Ask the students to select a national human rights institution and review it against the minimum standards contained in the Paris Principles.

TEACHING NOTES

The Paris Principles

The Principles relating to the Status of National Institutions or the Paris Principles were adopted by the United Nations General Assembly in 1993.

These principles set out the main criteria a National Human Rights Institution (NHRI) is required to meet. As such, NHRIs should:

- Be established under a law or constitution guaranteeing its independence in terms of its operations, budget, and policy;
- Be pluralistic in terms of its composition;
- Have a broad mandate that includes the promotion and protection of human rights;
- Have adequate powers to enable NHRIs to initiate inquiries and investigations, gather the necessary evidence and documents to proceed, consult with NGOs and State institutions, and publicise their reports, findings, and recommendations;





- Have adequate resources so NHRIs can have the funding, staffing, infrastructure, and institutional capacity to perform their functions and discharge their responsibilities; and
- Be able to work cooperatively with national and international actors, including civil society.

In 1993, at a global conference in Tunis, NHRIs established the International Coordinating Committee of NHRIs (ICC) with the aim of strengthening the work of such institutions. In 2016, the ICC was renamed the Global Alliance of National Human Rights Institutions (GANHRI). GANHRI, through its Sub-Committee on Accreditation (SCA), periodically evaluates NHRIs against the Paris Principles and accredits them with one of the following statuses:

- ‘A’ status: fully compliant with the Paris Principles
- ‘B’ status: partially compliant with the Paris Principles
- ‘C’ status: not compliant with the Paris Principles

NHRIs attaining an ‘A’ status secure the right to participate in international forums such as the UN Human Rights Council and UN treaty bodies.

Human rights protection systems at the national level

Protection systems at the national level should include the following:

- International human rights standards should be reflected in the national constitution and incorporated in national legislation;
- The judiciary should have the capacity to enforce human rights standards reflected in the constitution and national legislation;
- Specialised human rights institutions to promote and protect human rights;
- A system to monitor the human rights situation in the country, specifically with respect to vulnerable sections of the population; and
- Human rights education at schools and other institutions of learning.

4.4.3 Human rights mechanisms at the ASEAN level

Specific objective	Enabling objectives
To review human rights mechanisms at the ASEAN level	<ul style="list-style-type: none">• Outlining human rights mechanisms in the Southeast Asian region• Reflecting on the effectiveness of mechanisms at the regional level



Steps

- Initiate a discussion on the question, “Do we need human rights mechanisms at the regional level?” Ask students to explain their responses.
- Provide an overview of the human rights mechanisms existing in Europe, the Americas, and Africa. Discuss the reasons for the absence of a regional human rights mechanism in Asia.

- Introduce the human rights mechanisms present at the ASEAN level, namely the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).
- Ask students to review the mandates of the AICHR and ACWC (see HANDOUT 7) and summarise in their own words. Do the mandates include both the promotion and protection of rights?
- Critically discuss the effectiveness of the AICHR and ACWC in terms of strengthening the promotion and protection of human rights in the ASEAN region.

TEACHING NOTES

Regional Human Rights Mechanisms

Importance of regional human rights systems

There are certain benefits to having regional human rights systems:

- Regional systems can help localise international human rights norms. However, there is a risk that localisation may result in a dilution of the standards recognised in the international bill of rights.
- Regional systems can provide mechanisms which are more easily accessible to the people. Enforcement mechanisms can also be designed to suit the regional context.
- Regional systems can more effectively provide assistance to national governments in the implementation of international human rights standards, and in addressing human rights issues that are cross-boundary or transnational in nature.

Human rights mechanisms at the regional level

Regional human rights systems in the form of regional instruments and mechanisms have an important role in the promotion and protection of human rights. They can help to localise international human rights standards by focussing on the particular concerns of human rights in the region.

A regional human rights mechanism can be important in the promotion and protection of human rights, by:

- Assisting national governments to implement international human rights obligations;
- Providing people with more accessible mechanisms for the protection of human rights after all remedies at the national level have been exhausted;
- Providing a regional perspective in the development of international human rights norms and standards;
- Helping national governments address human rights concerns in the region; and
- Helping to raise awareness by placing human rights in the context of the region and highlighting the particular concerns of the region.



Overview of regional systems in Europe, the Americas, and Africa

(Modified from the website of the Office of the High Commissioner for Human Rights, Regional Office for South-East Asia, available at <https://bangkok.ohchr.org/programme/other-regional-systems.aspx>)

Regional human rights mechanisms have been established in Europe, the Americas, and Africa, all of which share some common features:

- They are subsidiary to national human rights protection systems. Regional systems can only be accessed after remedies at the domestic level have been exhausted.
- Human rights instruments have been adopted in these regions to provide a normative framework to the mechanisms.
- The mechanisms are independent and composed of impartial experts in human rights serving in their individual capacities.
- The mandate of the mechanisms include both promotion and protection work. These mechanisms can:
 - » Receive and decide on both individual and interstate complaints,
 - » Provide access to a regional court that can order legally binding decisions and reparations,
 - » Make country visits and engage in country level activities,
 - » Hold meetings in different member states,
 - » Develop other mechanisms such as special rapporteurs that can engage in both promotion and protection work.
- The functioning of mechanisms is supported by full time secretariats.
- Established procedures exist for interaction with civil society and NHRIs.

Overview of the ASEAN Intergovernmental Commission on Human Rights (AICHR), and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

The preamble of the ASEAN Charter, which was ratified by all member states in 2008, reaffirmed the commitment of member states to the “principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental principles.”

Article 1(7) of the Charter stipulates strengthening democracy, enhancing good governance and the rule of law, and promoting and protecting human rights and fundamental freedoms amongst the purposes of ASEAN.

Further, Art 14 provides for the establishment of an ASEAN human rights body in conformity with the purposes and principles of ASEAN.

Thus, the ASEAN Charter created momentum for the establishment of a human rights mechanism in the ASEAN region. Accordingly, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in October 2009, with the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) following in April 2010.





ASEAN has also adopted several regional instruments on human rights, such as:

- The ASEAN Declaration on the Elimination of Violence Against Women (adopted in 2004);
- The Declaration on the Protection of the Rights of Migrant Workers (adopted in 2007); and
- The ASEAN Human Rights Declaration (adopted in November 2012).

The mandates of the AICHR and ACWC are provided in HANDOUT 7.

ASEAN Human Rights Declaration (AHRD), 2012

- Based on the Universal Declaration of Human Rights (UDHR).
- While recognising that all persons are equal in dignity and rights (Art 1), the UDHR strongly emphasises the duties of every individual towards other individuals, the community, and the society in which one lives (Art 6). This emphasis on duties resonates with the ASEAN region's understanding of human rights. It needs to be mentioned that the UDHR also recognises that every person has duties to the community (Art 29) and no person or group can engage in activities that are aimed at the destruction of the rights and freedoms of others (Art 30).
- Article 7 of the Declaration again stresses regional particularities. In particular, it mentions that realisation of human rights “must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.” This provision is double-edged. On the one hand, it can be used to add meaning to rights guaranteed in the international bill of rights and reaffirmed in the AHRD. For example, it can be used to elaborate on the question, what would the right to adequate and affordable food as recognised in Art 28(a) mean in the social and economic context of ASEAN? On the other, it can also be used to justify inaction on human rights problems existing in the region.
- The Declaration also recognises the rights to development (Arts 35-37) and peace (Arts 38-40). These rights are not recognised in the UDHR.

Effectiveness of regional human rights mechanisms in ASEAN

Some points for discussion are:

- The ASEAN Human Rights Declaration was adopted in 2012 and provides a normative framework for AICHR. However, the Declaration is non-binding. As of yet, no ASEAN regional instrument on human rights is binding in nature, as exists in Europe, the Americas, and Africa.
- AICHR and ACWC lack complaints procedures. Thus, victims of human rights violations cannot access them directly to seek redress.
- AICHR and ACWC lack explicit mandates to monitor violations in ASEAN countries, carry out fact-finding missions, or engage in country visits.
- The existing mandate of AICHR as mentioned in its Terms of Reference (ToR) can provide a basis for engaging in monitoring activities, such as clause 4.10 which stipulates that the AICHR can obtain information from ASEAN Member States on the promotion and protection of human rights.
- However, the ToR also mentions that the AICHR is guided by the principle of non-interference in the internal affairs of ASEAN Member States (2.1.b). Further, Principle 6.1 states that decision-making shall be based on consultation and consensus. These provisions have already been used to justify inaction on cases of human rights violations in the region.
- For these reasons, the AICHR is often criticised for being a toothless tiger.

HANDOUT 7 Mandates, the AICHR, and the ACWC

Clause 4 of the Terms of Reference (ToR) for the ASEAN Intergovernmental Commission on Human Rights (AICHR) provides for its mandate and functions.

Clause 5 of the ToR for the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) provides for its mandate and functions.

The mandates and functions of both these bodies are provided in the table below. Review the mandates and summarise. Do the mandates include both protection and promotion work?

AICHR MANDATE AND FUNCTIONS	ACWC MANDATE AND FUNCTIONS
4.1 To develop strategies for the promotion and protection of human rights and fundamental freedoms to complement the building of the ASEAN Community;	5.1 To promote the implementation of international instruments, ASEAN instruments, and other instruments related to the rights of women and children;
4.2 To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights;	5.2 To develop policies, programs, and innovative strategies to promote and protect the rights of women and children to complement the building of the ASEAN Community;
4.3 To enhance public awareness of human rights among the peoples of ASEAN through education, research, and dissemination of information;	5.3 To promote public awareness and education of the rights of women and children in ASEAN;
4.4 To promote capacity-building for the effective implementation of international human rights treaty obligations undertaken by ASEAN Member States;	5.4 To advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage ASEAN Member States to improve their situation;
4.5 To encourage ASEAN Member States to consider acceding to and ratifying international human rights instruments;	5.5 To build capacities of relevant stakeholders at all levels, e.g. administrative, legislative, judicial, civil society, community leaders, women and children machineries, through the provision of technical assistance, training, and workshops, towards the realisation of the rights of women and children;
4.6 To promote the full implementation of ASEAN instruments related to human rights;	5.6 To assist, upon request by ASEAN Member States, in preparing for CEDAW and CRC Periodic Reports, the Human Rights Council's Universal Periodic Review (UPR) and reports for other Treaty Bodies, with specific reference to the rights of women and children in ASEAN;
4.7 To provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request;	5.7 To assist, upon request by ASEAN Member States, in implementing the Concluding Observations of CEDAW and CRC and other Treaty Bodies related to the rights of women and children;
4.8 To engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organisations and other stakeholders, as provided for in Chapter V of the ASEAN Charter;	5.8 To encourage ASEAN Member States on the collection and analysis of disaggregated data by sex, age, etc, related to the promotion and protection of the rights of women and children;
4.9 To consult, as may be appropriate, with other national, regional, and international institutions and entities concerned with the promotion and protection of human rights;	
4.10 To obtain information from ASEAN Member States on the promotion and protection of human rights;	

AICHR MANDATE AND FUNCTIONS	ACWC MANDATE AND FUNCTIONS
<p>4.11 To develop common approaches and positions on human rights matters of interest to ASEAN;</p> <p>4.12 To prepare studies on thematic issues of human rights in ASEAN;</p> <p>4.13 To submit an annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting; and</p> <p>4.14 To perform any other tasks as may be assigned to it by the ASEAN Foreign Ministers Meeting.</p>	<p>5.9 To promote studies and research related to the situation and well-being of women and children with the view to fostering effective implementation of the rights of women and children in the region;</p> <p>5.10 To encourage ASEAN Member States to undertake periodic reviews of national legislations, regulations, policies, and practices related to the rights of women and children;</p> <p>5.11 To facilitate sharing of experiences and good practices, including thematic issues, between and among ASEAN Member States related to the situation and well-being of women and children and to enhance the effective implementation of CEDAW and CRC through, among others, exchange of visits, seminars and conferences.</p> <p>5.12 To propose and promote appropriate measures, mechanisms, and strategies for the prevention and elimination of all forms of violation of the rights of women and children, including the protection of victims;</p> <p>5.13 To encourage ASEAN Member States to consider acceding to, and ratifying, international human rights instruments related to women and children;</p> <p>5.14 To support the participation of ASEAN women and children in dialogue and consultation processes in ASEAN related to the promotion and protection of their rights;</p> <p>5.15 To provide advisory services on matters pertaining to the promotion and protection of the rights of women and children to ASEAN sectoral bodies upon request; and</p> <p>5.16 To perform any other tasks related to the rights of women and children as may be delegated by the ASEAN Leaders and Foreign Ministers.</p>

A. Discussion on Difficult Questions

It is said that AICHR is a toothless tiger as its mandate includes only the ‘promotion’ of human rights. It does not have the power to consider individual complaints or investigate allegations of violations. In such circumstances, what is the benefit of engaging with the AICHR?

It is true that the AICHR does not have a mandate to protect human rights.

The AICHR came into being after almost 15 years of advocacy (e.g. the Working Group for an ASEAN Human Rights Mechanism which was established in 1995) by civil society.

Its establishment reflects a commitment of ASEAN Member States towards the promotion and protection of human rights in the region. That commitment was further strengthened by the adoption of the ASEAN Human Rights Declaration in 2012.

ASEAN is open to amending the ToR of the AICHR, and it is hoped that the mandate will be revised to include ‘protection’ as well.

Only through engagement with the AICHR can it be further strengthened.

B. Resources

ASEAN Committee on Migrant Workers, available at <https://humanrightsinasean.info/asean-committee-migrant-workers/about.html>

ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, available at <https://asean.org/asean-socio-cultural/asean-ministerial-meeting-on-social-welfare-and-development-ammswd/acwc-php/>

ASEAN Intergovernmental Commission on Human Rights, available at <http://aichr.org>

Petcharamesree, S, (2013), ‘The ASEAN human rights architecture: Its development and challenges’ *The Equal Rights Review*, Vol 11.

Wahyuningrum, Y, *The ASEAN Intergovernmental Commission on Human Rights: Origins, Evolution and the Way Forward*, Stockholm: International Institute for Democracy and Electoral Assistance, 2014. Available at <https://www.idea.int/sites/default/files/publications/the-asean-intergovernmental-commission-on-human-rights-origins-evolution-and-the-way-forward.pdf>

Working Group for an ASEAN Human Rights Mechanism, available at <http://www.aseanhrmech.org/aboutus.html>

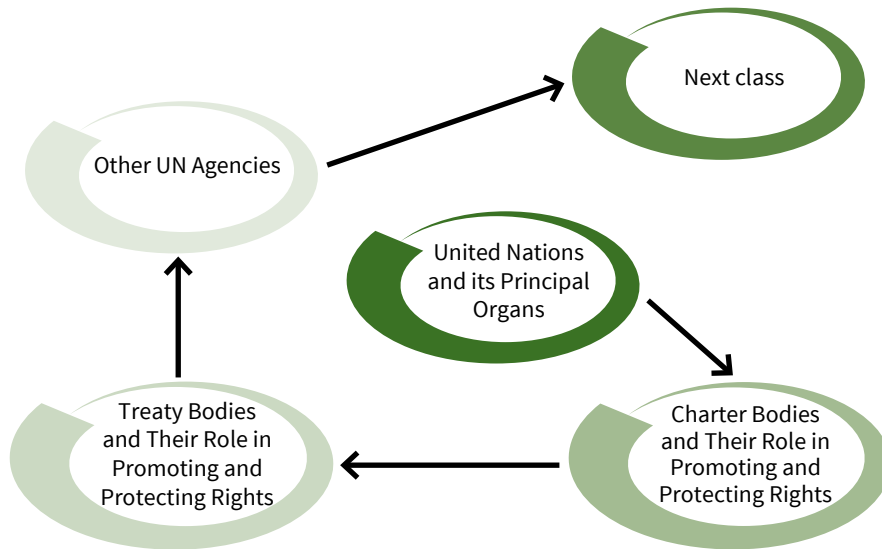
Provides an account of the advocacy efforts contributing to the establishment of the ASEAN Intergovernmental Commission on Human Rights.

Chapter 5

Human Rights Protection: The United Nations and the International System

5.1 Introduction

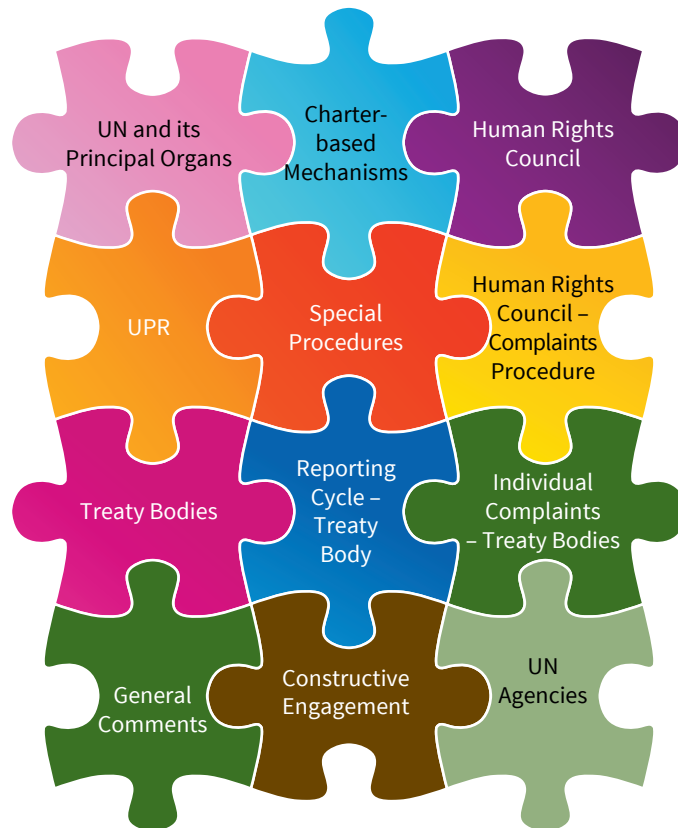
The mandate of the United Nations is to promote and protect human rights. A class on the UN human rights protection system should therefore provide an introduction to the UN and its different organs. Further, it should critically assess the different ways in which charter bodies and treaty bodies promote and protect rights.



5.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. United Nations and its Principal Organs	To summarise the role of the UN and its principal organs	<ul style="list-style-type: none"> Clarifying the role of the UN and its principal organs in promoting and protecting human rights
2. Charter Bodies and their role in Promoting and Protecting Rights	To summarise the role of Charter Bodies in promoting and protecting rights	<ul style="list-style-type: none"> Assessing the role of the Human Rights Council in promoting and protecting rights Assessing the role of the Special Procedures in promoting and protecting rights
3. Treaty Bodies and their role in Promoting and Protecting Rights	To summarise the role of Treaty Bodies in promoting and protecting rights	<ul style="list-style-type: none"> Assessing the role of Treaty Bodies in promoting and protecting rights
4. Other UN Agencies	To summarise the role of other UN agencies in promoting and protecting rights	<ul style="list-style-type: none"> Clarifying the role of other UN agencies in promoting and protecting rights

5.3 Key Elements



5.4 Class Structure and Design

5.4.1 United Nations and its principal organs

Specific objective	Enabling objectives
To summarise the role of the UN and its principal organs	<ul style="list-style-type: none"> Clarifying the role of the UN and its principal organs in promoting and protecting human rights



Steps

- Examine the different organs of the United Nations (UN).
- Alternatively, ask the students to go through the websites of the UN organs and prepare a brief presentation to explain their mandates.
- Conclude by discussing the mandates of different organs with a critical perspective or by sharing examples of important interventions made by the organs.

TEACHING NOTES

Principal Organs of the United Nations

The principal organs of the UN as mentioned in Chapter III of the UN Charter include the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat.

UN General Assembly

- The General Assembly (GA) is the main deliberative and policy-making organ of the UN.
- All Member States are represented in the GA. Each country has one vote. Decisions on important questions, such as peace and security, admission of new members, and budgetary matters require a two thirds majority, while decisions on other issues may pass with a simple majority.
- The GA meets annually from September to December for its regular session.
- The GA influences human rights in a number of ways, such as by adopting resolutions on various issues. Through such resolutions it can call upon particular States to take action regarding a human rights issue, or call upon other bodies of the UN to conduct investigations, research, or other activities in countries with poor human rights records.
- For example, in December 2017, the GA adopted a Resolution on the ‘Situation of Human Rights in Myanmar,’ particularly on the situation in Rakhine, Kachin, and the northern Shan States. The Resolution, amongst other issues, requested the Secretary General to appoint a special envoy on Myanmar. Following this Resolution, in April 2018, Christine Schraner Burgener, a Swiss diplomat with experience in conflict resolution in Southeast Asia, was appointed as a special envoy for Myanmar.

UN Security Council

- The Security Council (SC) has a mandate to maintain international peace and security. It has 15 members; five permanent members and ten non-permanent members elected for a term of two years. The permanent members have the power to veto resolutions.
- The SC is the only organ with the power to make decisions that are legally binding on member States. Other organs can only issue recommendations.
- Upon receiving a complaint regarding a threat to international peace and security, the SC’s first action is to recommend conflicting parties reach an agreement by peaceful means. In order to facilitate this, the SC may undertake investigation and mediation, dispatch a mission, appoint special envoys, or request the Secretary General to take action to facilitate peaceful settlement of the dispute. In cases where the dispute leads to hostilities, the SC’s interventions are directed towards ending such hostilities as soon as possible. Such interventions may include issuing directives for ceasefire or dispatching military observers or peacekeeping forces. The SC may also adopt enforcement measures such as sanctions, severance of diplomatic relations, or collective military action.
- In recent years, the SC has adopted resolutions on countries such as the Sudan and South Sudan, the situation in the Middle East, the Democratic Republic of the Congo, the situation in Mali, Libya, Afghanistan, and Iraq. It has also adopted resolutions on the issue of children and armed conflict, the protection of civilians in armed conflict, and threats to international peace and security by terrorist acts.





Economic and Social Council

- The Economic and Social Council (ECOSOC) is concerned with advancing three dimensions of sustainable development: economic, social, and environmental. Further, the ECOSOC has the responsibility to follow up on major UN conferences and summits.
- The ECOSOC links different UN entities dedicated to sustainable development and provides overall guidance and coordination. These entities include the Commission on Population and Development, the Commission on the Status for Women, regional commissions such as the Economic and Social Commission for Asia and the Pacific (ESCAP), standing committees, expert bodies, and other entities.

International Court of Justice

- The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It is located at The Hague in the Netherlands.
- The role of the court is to settle disputes submitted to it by States according to international law, and to give advisory opinions on legal questions referred to it by UN organs or specialised agencies.
- The ICJ through its decisions and advisory opinions contributes to the interpretation and development of international human rights law and principles.

UN Secretariat

- The Secretariat is the main organ responsible for administration of the UN. The Secretariat is headed by the United Nations Secretary General.
- The Secretariat is organised along departmental lines, with each department having distinct areas of work and responsibility.

The Trusteeship Council was established to promote the advancement of Trust territories and their development towards self-government or independence. The Council suspended its operations in 1994 after the last remaining UN trust territory, Palau, gained independence.

5.4.2 Charter Bodies and their role in promoting and protecting rights

Specific objective	Enabling objectives
To summarise the role of Charter Bodies in promoting and protecting rights	<ul style="list-style-type: none"> Assessing the role of the Human Rights Council in promoting and protecting rights Assessing the role of the Special Procedures in promoting and protecting rights



Steps

- Introduce the Charter-based mechanisms.
- Present the key features of the Human Rights Council, the Universal Periodic Review (UPR), and the Special Procedures. The videos below may be used as tools to introduce the mechanisms:

Human Rights Council

OHCHR, 'What is the Human Rights Council?' (duration 1:22 minutes), available at <https://www.youtube.com/watch?v=k2YJgfJ1rC4>

A short description of the Human Rights Council which introduces the Special Procedures and the Universal Periodic Review.

Universal Periodic Review

UPR Info, 'What is the UPR?' (duration 3:05 mins), available at <https://www.youtube.com/watch?v=n4Hr1GMSjkM>

A short introduction to the Universal Periodic Review process.

Suggested activity on the UPR

- Ask the students to review the documents pertaining to the UPR of a country and reflect on questions such as:
 - » What is the nature of the national report in terms of its contents?
 - » What is the purpose of this compilation of information by UN agencies and stakeholders?
 - » Which recommendations were rejected by the State under review? What could be the reasons for rejecting such recommendations?
- Ask the students to visit the section on 'Complaints Procedures' in the Human Rights Council webpage and prepare a short presentation. Discuss how the complaints procedure works in general, and the required criteria for sending complaints to the Council.

Special Procedures

International Service for Human Rights (ISHR) Global, 'The Special Procedures: The basics' (duration 3:14 mins), available at <https://www.youtube.com/watch?v=d7gD4mTRt8M>,

A short introduction to the Special Procedures.

Suggested activity on Special Procedures

- Ask the students to visit the website of the Special Procedures and identify the different mandates. Ask them to select a particular mandate, review the work done by the selected Special Procedure, and prepare a brief presentation.

TEACHING NOTES

Charter-Based Mechanisms

Charter-based mechanisms

Established under the Charter of the United Nations.

Human Rights Council

- The Human Rights Council, created in 2006 by a resolution of the General Assembly, is an inter-governmental body responsible for the promotion and protection of human rights around the globe. The Council replaced the earlier United Nations Commission on Human Rights.
- The Council is composed of 47 UN Member States elected by the General Assembly through a secret ballot which helps to keep out countries with poor human rights records.
- The mandate of the Council includes the Universal Periodic Review mechanism and the Complaints Procedure that allows individuals and organisations to bring issues of human rights violations before the Council.

Universal Periodic Review – Human Rights Council

- The Universal Periodic Review is a process under which the human rights situation of all Member States is reviewed every five years.
- The human rights record of 42 States are reviewed each year during three sessions of the Council.
- As part of this process, the State under review has to submit a national report explaining its accomplishments and challenges in implementing recommendations given during the previous review cycle. The Office of the High Commissioner for Human Rights (OHCHR) prepares a compilation of the information it receives from different UN agencies regarding the human rights situation in the country. Further, the OHCHR also compiles reports submitted by stakeholders such as the National Human Rights Institution and civil society organisations.
- The review is conducted by a working group of three Member States selected by the Human Rights Council. At the end of the review process, the State under review receives recommendations for improving the human rights situation in the country. The State may choose to either accept or reject (referred to as ‘noting’) the recommendations.
- The recommendations are not legally binding.





Human Rights Council – Complaints Procedure

- In 2007, the Human Rights Council adopted a resolution to establish a complaint procedure to address consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.
- Individuals, groups, or non-government organisations claiming to be victims of human rights violations or who have direct and reliable information of such allegations may submit communications to the complaints procedure.
- Two distinct working groups, the Working Group on Communications and the Working Group on Situations, are responsible for examining complaints.
- If such complaints are considered admissible by the Working Groups, the Human Rights Council considers them in a confidential manner and decides upon a course of action. Such action may include: keeping the situation under review, appointing independent and qualified experts to monitor the situation, and recommending the OHCHR provide technical cooperation, capacity-building assistance, or advisory services.
- The Complaints Procedure replaces the former 1503 procedure.

Special Procedures

- Special Procedures refer to independent human rights experts having a mandate to report and advise on human rights. Such special procedures may be thematic such as on arbitrary detention or the right to food, or specific countries such as Cambodia and the Sudan.
- Special Procedures may be composed of individual experts such as the Special Rapporteur on Violence against Women, or a group of experts such as the Working Group on ‘the issue of human rights and transnational corporations and other business enterprises’ (also known as the Working Group on Business and Human Rights).
- Special Procedures are appointed by the Human Rights Council but serve in their personal capacities. They are not staff of the United Nations and do not receive financial remuneration for their work. As such, they are independent in their functioning.
- Special Procedures undertake country visits, act upon individual cases or concerns of a structural nature, communicate with the relevant States, conduct thematic studies, engage in advocacy, and contribute to the development of international human rights standards and practices.
- Special Procedures require an official invitation from States to make visits to countries they wish to investigate. This creates challenges as many States may not extend such an invitation. However, many States have issued ‘standing invitations’ indicating their openness to such visits.

5.4.3 Treaty Bodies and their role in promoting and protecting rights

Specific objective	Enabling objectives
To summarise the role of Treaty Bodies in promoting and protecting rights	<ul style="list-style-type: none">Assessing the role of Treaty Bodies in promoting and protecting rights



Steps

- Discuss the functioning of the Treaty Bodies.
- For a short introduction, screen the following video: UN Human Rights, 'The Treaty Bodies: Bringing rights home' (duration 1:09 mins), available at https://www.youtube.com/watch?v=JP0fB-_X0l8&feature=youtu.be

Suggested activities

- Ask the students to identify a country and a treaty ratified by it. Then, ask them to:
 - » Review the reporting cycle with regard to the selected treaty and the number of periodic reports submitted by the State Party.
 - » With regard to the latest reporting cycle, review the State report, the reports of civil society organisations, if any, and recommendations given by the Treaty Body. Ask students to identify a particular rights issue and report on the State Party as regards the article, the information presented by civil society organisations on the same article, and the recommendations given by the Treaty Body. For example, if the treaty selected is the ICCPR, choose a particular right such as the right to liberty and security of person guaranteed in Art 9, and present a report on the State Party with respect to Art 9, the information shared by civil society organisations on Art 9, and the recommendations of the Treaty Body on the same issue.
 - » In the above presentation, students should highlight the differences, if any, between the information presented by the State and civil society organisations.
 - » If the State has not submitted its periodic report on time, ask the students to find out if the State has given any explanation for the non-submission.
- Ask the students to select a treaty, read the General Comments issued by the Treaty Body and present a short report on the issues covered.

TEACHING NOTES

Treaty Bodies

Treaty Bodies

- Human rights Treaty Bodies are committees of experts who monitor the implementation of the core human rights treaties.
- The mandate of the Treaty Bodies include: issuing general comments to clarify the scope and content of the different rights recognised in the treaties, monitoring State compliance with treaty obligations, and considering individual complaints where the treaty so provides.

General Comments

These are issued to explain the scope of different articles, or to discuss relevant emerging issues. For example, in 2005, the Committee on the Elimination of Racial Discrimination issued General Comment 30 on 'Discrimination Against Non-Citizens' to clarify the applicability of the Convention to non-citizens and the corresponding obligations of States. The General Comments provide assistance to States in framing laws and policies on rights issues.

Monitoring State compliance

Once a State ratifies a treaty, it also accepts the obligation to submit periodic reports to the Treaty Body regarding implementation of the treaty. It reviews such reports and issues recommendations for strengthening compliance with the treaty obligations. During this process, it also receives information from other sources, such as civil society organisations (national, regional, and international), academics, and national human rights institutions.

Receiving individual complaints

At present, all core human rights treaties except the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, have optional protocols that enable the submission of individual complaints. Thus, if a State Party has ratified an Optional Protocol, the concerned Treaty Body can consider individual complaints alleging violations of rights recognised in the treaty. However, Art 33 of the International Convention for the Protection of All Persons from Enforced Disappearances (CED), allows the submission of individual complaints. Thus, in the case of the CED, the competence of the Treaty Body to receive complaints is recognised in the treaty itself.

Complaints can be submitted by individuals or third parties acting on behalf of individuals (in such cases, third parties need the consent of the aggrieved individuals in writing). If consent cannot be provided because of certain circumstances, such reasons must be stated clearly.

Domestic remedies must be exhausted prior to submitted complaints before the Treaty Bodies.

Upon receiving a complaint, the Treaty Body can initiate inquiries. Upon completion of the enquiry, it transmits its findings to the State Party along with any comments and recommendations, if any. At all stages of the enquiry, the State Party is invited to co-operate.

Constructive engagement

The term 'constructive engagement' is often used to describe the interaction between UN human rights mechanisms and States. UN human rights mechanisms such as the Universal Periodic Review Process, the Treaty Body monitoring process, or the complaints mechanisms do not have punitive powers and as such cannot enforce their opinions. Rather, their opinions are more in the nature of recommendations and only have persuasive value. For this reason, UN human rights mechanisms seek





to establish a process of constructive engagement with the States, such that their recommendations are accepted positively.

Constructive engagement is a process that involves giving State Parties the space to present their achievements and challenges with regard to implementing rights, and giving them opportunities to respond to the queries raised by the review bodies. Further, recommendations that arise from the outcome of such processes are in the nature of guidelines for States to improve their performance before the next reporting cycle.

As regards the complaints procedure, the UN mechanisms can only accept complaints once the available domestic remedies have been exhausted. This principle, while giving respect to the domestic legal system, prevents confrontation between domestic systems and UN mechanisms and thus is part of a constructive engagement process.

5.4.4 Other UN agencies

Specific objective	Enabling objectives
To summarise the role of other UN agencies in promoting and protecting rights	<ul style="list-style-type: none">• Clarifying the role of other UN agencies in promoting and protecting rights



Steps

- Discuss the mandate of other important UN Agencies in promoting and protecting rights, such as:
 - » The United Nations Children’s Fund (UNICEF)
 - » The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)
 - » The United Nations Entity for Gender Equality and the Empowerment of Women (UN WOMEN)
 - » The United Nations Action for Cooperation Against Trafficking (UN ACT)
- As an activity, ask students to visit the websites of the agencies and present short reports on their mandates.

TEACHING NOTES

Other UN Agencies

The UN family is also comprised of specialised agencies, programs, and funds. These other bodies are independent international organisations, having their own leadership and budgets. They raise their own funds from donors. Generally, these agencies receive formal endorsement from the United Nations General Assembly and they provide critical support to the UN in achieving its goals to promote and protect rights.



A. Discussion on Difficult Questions

Do politics trump the Security Council's mandate of human rights protection?

The five permanent members of the UN Security Council have the power to veto resolutions. Exercise of this power is influenced by State politics and is often used to help allies. For example, USA regularly vetoes resolutions on Israel. Similarly, in 2017, China and Russia vetoed a resolution on the human rights situation in Rakhine State in Myanmar.

Nevertheless, a large number of resolutions on human rights protection pass without being vetoed. Thus, while it is acknowledged that the real interests of permanent members of the Security Council does influence decision-making in some situations, the Security Council has played and still plays a vital role in protecting human rights around the globe.

The recommendations arising from the UPR process are not binding. Is the UPR process effective?

The UPR process has some strengths: each State is reviewed every four years, civil society organisations have the space to contribute their views, and the process covers the entire spectrum of human rights. For example, a State must report on its civil and political rights situation even if it has not ratified the ICCPR.

There are also weaknesses: States are reviewed by other States, and thus criticism is often couched in polite and diplomatic language. Further, recommendations are not legally binding. Moreover, a State may choose to reject critical recommendations.

Despite the above drawbacks, the process has some critical advantages. It provides civil society with legitimate space to organise and develop a 'stakeholders report' and raise issues of concern. It also creates a space for advocacy with the government on implementing recommendations arising out of the UPR process.

States often do not submit reports to Treaty Bodies on time. How effective is the treaty monitoring process?

The Treaty Body reporting process is an important mechanism for strengthening the promotion and protection of rights. The fact that they are composed of independent experts ensures their independence and distinguishes them from the UPR process where States are reviewed by fellow States.

At the same time, an expansion of the Treaty Body system has occurred in the last few decades. The expansion resulted from: the adoption of new treaties, an expansion of the functions of existing bodies such as the examination of individual complaints, and increased ratifications of existing treaties and optional protocols. As a result, Treaty Bodies are often not able to follow up on overdue reports.

The UN has deliberated ways to reform the treaty monitoring process to overcome such challenges. Some measures being considered are: increasing meeting times for the consideration of reports and increasing budgetary resources allocated to the Treaty Bodies.

B. Resources

The websites of different UN organs and agencies comprise a rich source of information about the latest UN developments including:

Office of the High Commissioner of Human Rights (OHCHR)

Available at <https://www.ohchr.org/EN/Pages/Home.aspx>

The publications section offers an extensive range of downloadable resources. Through this website, one can review the human rights records of many different countries. Further, links are provided to the work of charter and treaty-based bodies.

United Nations Economic and Social Council

Available at <https://www.un.org/ecosoc/en/home>

United Nations General Assembly

Available at <https://www.un.org/en/ga/>

United National Security Council

Available at <https://www.un.org/en/sc/>

PART III

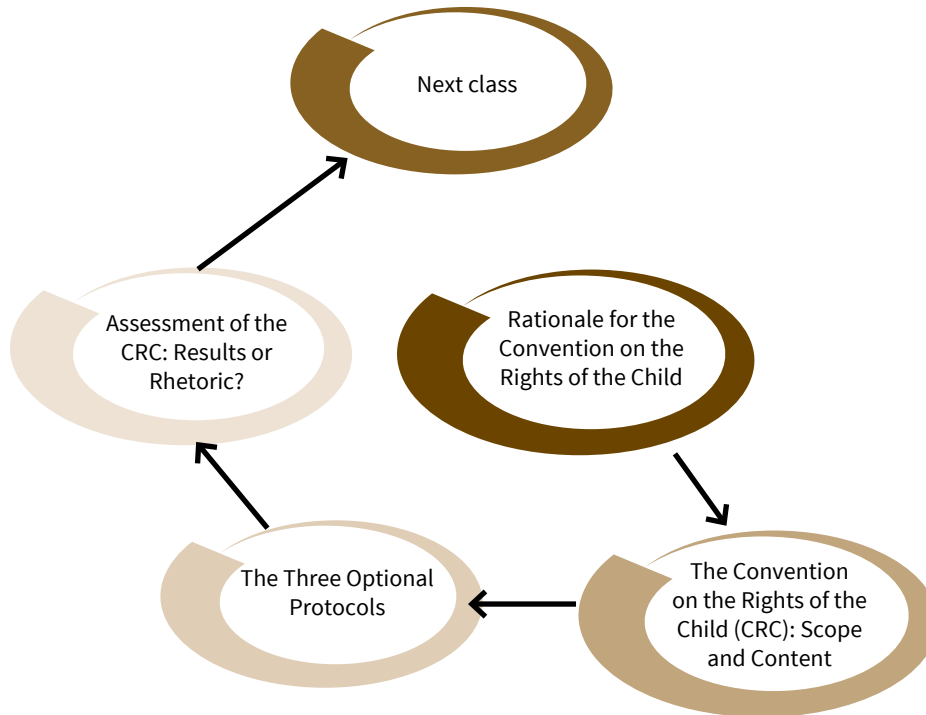
Rights of Specific Groups

Chapter 6

Children's Rights

6.1 Introduction

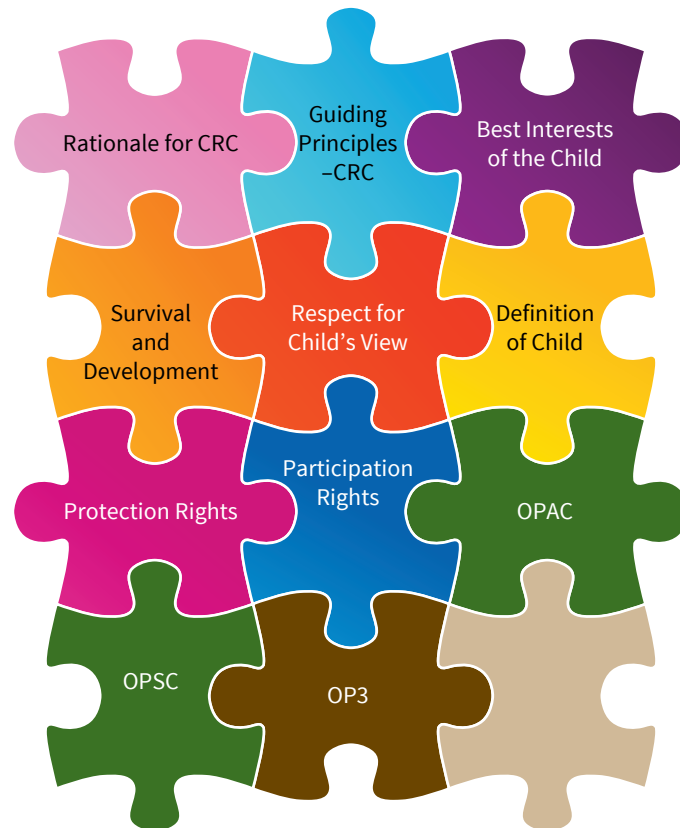
The class on children’s rights should give students sufficient understanding and context of the vision enshrined in the most widely ratified human rights treaty, the Convention on the Rights of the Child (CRC). It should therefore provide an overview of the Convention and its three Optional Protocols and explore its strengths and apparent weaknesses.



6.2 Expected Learning Outcomes

	Specific objective	Enabling objectives
1. Rationale for the Convention on the Rights of the Child	To understand the specific rights of children	<ul style="list-style-type: none"> Unpacking the notion that children have independent human rights Detailing the background to the CRC
2. The Convention on the Rights of the Child (CRC): Scope and Content	To analyse the historic evolution and development of the CRC	<ul style="list-style-type: none"> Outlining the key concepts, categories of rights, and provisions in the CRC Reflecting upon key issues concerning children against the rights outlined in the CRC
3. The Three Optional Protocols	To identify the added value of the three Optional Protocols to the CRC	<ul style="list-style-type: none"> Clarifying the purpose and need for the Optional Protocols Detailing the core components of each of the three Optional Protocols
4. Assessment of the CRC: Results or Rhetoric?	To scrutinize the real life practical difficulties in implementing the CRC	<ul style="list-style-type: none"> Reflecting upon the collective responsibility of duty-bearers to realizing the rights of children Analysing the evolving nature of child rights violations and protection Constructing and analysing real life examples of current child rights concerns

6.3 Key Elements



6.4 Class Structure and Design

6.4.1 Rationale of a separate convention for children

Specific objective	Enabling objectives
To understand the specific rights of children	<ul style="list-style-type: none"> Unpacking the notion that children have independent human rights Detailing the background to the CRC



Steps

- Discuss the special care and assistance that children need to enable them to reach their full potential.
- Discussion points could include:
 - » Children are individual social actors. As such, they are neither possessions of their parents nor of the State.
 - » Children start life as completely dependent beings, relying on adults to nurture and guide them. However, when the primary caregivers, such as adults in the family, are not able to fulfil these responsibilities, the State and society must step in.

- » Changes in society such as changes in the family structure, the influence of globalization, shifts in employment patterns, etc, have a differential impact on children. As such, State policies on health, education, food, etc, also impact children more strongly than other groups in society.
 - » Children’s views are rarely heard or considered in political processes.
 - » The costs of society of failing children are immense as it undermines their development and determines their contribution or cost to society in the future.
- Trace the background to the CRC. Some points could include:
 - » The passing of labour laws to protect children in industrialised European countries
 - » Laws on compulsory education introduced in Europe
 - » Adoption of the Geneva Declaration on the Rights of Children (1924)
 - » Establishment of Save the Children in 1919
 - » The introduction of juvenile justice systems

6.4.2 The Convention on the Rights of the Child: Scope and content

Specific objective	Enabling objectives
To analyse the historic evolution and development of the CRC	<ul style="list-style-type: none"> • Outlining the key concepts, categories of rights, and provisions in the CRC • Reflecting upon key issues concerning children against the rights outlined in the CRC



Steps

- Review the Guiding Principles of the CRC: non-discrimination, best interests of the child, survival and development, respect for the child’s views, and the right to participation.
- Some leading questions to facilitate discussion on the fundamentals of the CRC are:
 - » Who is considered a child under domestic laws? Is there harmony between the legal age to marry, the age of criminal responsibility, and the age to vote, etc?
 - » What different forms of discrimination do children with certain identities face?
 - » Name an example where the principle, best interests of the child, has been integrated into law and/or policy?
 - » Name some areas in which respect for the views of the child or a child’s right to participate are considered crucial?
 - » What are the different forms of violence against children?
 - » Does corporal punishment occur in schools? What can be done to end such practices?
 - » What factors distinguish juvenile justice systems from those applicable to adults suspected/convicted of a crime? Why is there a need for juvenile justice systems?
 - » What information should children receive about reproductive health?

TEACHING NOTES

Fundamentals of the CRC

The guiding principles of the CRC

- **Non-discrimination:** Article 2 of the Convention states that no child should be denied enjoyment of their rights because of discrimination of any kind.
- **Best interests of the child:** Article 3 stipulates that best interests of the child must be appropriately integrated and consistently applied in every action taken by public institutions as well as by the private sector, which directly or indirectly impacts upon children. Public institutions include administrative, legislative, and judicial bodies. However, the Convention does not define the term 'best interests of the child.' The Committee on the Rights of the Children has clarified that it is a dynamic concept encompassing various issues and one which continuously evolves (General Comment 14).
- **Survival and development:** Article 6 recognises that every child has an inherent right to life and that States have an obligation to ensure the survival and development of the child to the maximum extent possible. The Committee has suggested that States should interpret 'development' as a holistic concept that embraces the child's physical, mental, spiritual, moral, psychological, and social development (General Comment 5).
- **Respect for the views of the child, or the right of children to participate:** Article 12 recognises that every child who is capable of forming an opinion shall have the right to express such views freely in all matters affecting him/her. Accordingly, administrative and judicial bodies should provide opportunity to children to participate in proceedings concerning them, and their views should be given due weight in accordance with the child's age and maturity. This principle recognises children as active subjects who can contribute to decisions concerning them.



Main components of the CRC

- **Definition of a child:** Article 1 defines a child as a person below 18 years of age, unless the domestic laws applicable to children provide otherwise.
- **Obligations and duties:** Article 4 requires State parties to take appropriate measures to implement the rights contained in the Covenant. Article 5 requires States to respect the rights and responsibilities of families to direct and guide their children.
- **Survival and development rights:** These include the basic rights to life, survival, and development of one's full potential. Further, they also comprise the rights to identity and nationality, health, social security, and education, etc, a child's right to live in a family with his or her parents, and the right of vulnerable children to receive care and assistance.
- **Protection rights:** To shield children from harm, these rights include protection against all forms of violence, the right to care and protection where children are deprived of a family environment, and rights in the administration of justice when children come into conflict with the law.
- **Participation rights:** Children have the right to express an opinion and have a say in matters regarding their well-being. Thus, they have rights to freedom of expression, thought, conscience, religion, association, privacy, as well as the right to access information.

6.4.3 Optional Protocols to the CRC

Specific objective	Enabling objectives
To identify the added value of the three Optional Protocols to the CRC	<ul style="list-style-type: none"> • Clarifying the purpose and need for the Optional Protocols • Detailing the core components of each of the three Optional Protocols



Steps

- Present the key components/provisions of the three Optional Protocols and explain why they go further than the CRC.
- Select some key issues, concepts, and terminology found in relation to each of the three Optional Protocols and ask students to discuss their meanings and the implications of their inclusion in the Protocols.
- Facilitate discussions such that students are able to:
 - » Understand the purpose and need for the Optional Protocols;
 - » Be aware of the importance of child rights-focussed terminology and evolving issues; and
 - » Reflect on how certain concepts are legally codified in the three Protocols.

TEACHING NOTES

Optional Protocols to the CRC

Meaning of the term 'protocol'

- An additional legal instrument that complements and adds to a treaty.
- Relevant to the original treaty and used either to further address something in the original treaty, address a new or emerging concern, or add a procedure for the operation and enforcement of the treaty.
- 'Optional' because it is not automatically binding on States that have already ratified the original treaty; States must independently ratify or accede to a protocol.

Optional Protocol on the involvement of children in armed conflict (OPAC)

- Adopted in 2000; came into force in 2002.
- Protects children in armed conflicts.
- Requires State Parties to take measures to ensure that members of the armed forces under the age of 18 do not take a direct part in hostilities.
- Requires State Parties to ensure that persons under 18 years of age are not compulsorily recruited into the armed forces.
- Requires State Parties to ensure that voluntary recruitment under age 18 into the armed forces includes safeguards.
- Imposes a ban on compulsory recruitment under the age of 18.
- Prohibits independent armed groups from using children in conflicts.
- As of February 2018, 167 States are party to the protocol while a further 13 have signed but not ratified it.

Points for reflection

The term '*child soldier*' refers to any person below 18 years of age who is, or has been recruited or used by an armed force or armed group in any capacity, including but not limited to the roles of fighter, cook, porter, spy, and for sexual purposes. However, OPAC differs, preferring instead to use the term 'children in armed conflict' therefore limiting its application to minors taking a 'direct part in hostilities.' This compromise during the drafting of OPAC accommodated the interests and concerns of States whose national laws and practices permitted such recruitment of children.





Optional Protocol on the sale of children, child prostitution, and child pornography (OPSC)

- Adopted in 2000; came into force in 2002.
- Gives focus to the criminalization of the sale of children for sexual exploitation, the transfer of organs for profit, child labour, child pornography, and child prostitution.
- Requires States to adopt laws punishing both intermediaries (facilitators) and perpetrators.
- Requires States to adopt measures to eliminate the sale of children, child prostitution, and child pornography.
- Requires States to assist each other with investigations.
- Requires States to adopt measures to protect the rights and interests of child victims.
- Requires States to promote public awareness about the preventive measures and harmful effects of the sale of children, child prostitution, and child pornography

Points for reflection

Child prostitution: Refers to the use of children in sexual activities for remuneration or any other form of consideration (Art 2 of the OPSC). Use of the term ‘child prostitution’ has recently been questioned, since it may be misinterpreted to imply that the phenomenon represents a legitimate form of sex work or that the child has given his/her informed consent. To avoid the risk of stigmatising children, the term more commonly used now is ‘children exploited through/in prostitution.’

Child pornography: OPSC uses the term ‘child pornography’ in Art 2, and defines it as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes.” More recently, the term ‘child sexual abuse material’ is increasingly being used to replace the term ‘child pornography’ based on the argument that such sexualised material of children is a form of child sexual abuse, and should not be described as ‘pornography.’

Sale of children: OPSC defines ‘the sale of children’ in Art 2 as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.” This could include the following forms of sale: sale by adoption, sale for child labour exploitation, sale of a child’s organs, and some forms of child marriage.

Optional Protocol on a communications procedure (OP3 CRC)

- Adopted in 2011; came into force in 2014.
- Allows the Committee on the Rights of the Child to hear complaints regarding violation of rights recognised in the Convention and its Optional Protocols if national legal systems have not been able to provide remedy.
- Such complaints may be filed by children, groups of children or their representatives, against any State that has ratified the Optional Protocol.
- The CRC Committee can launch investigations into grave or systematic violations.
- States may also agree to bring complaints against each other.

Points for reflection

Quasi-judicial mechanism: In relation to OP3 CRC, the decisions of the Committee are not legally binding on the State concerned. This is similar to other treaty communications procedures but experience has shown that decisions are still taken seriously by some States.



Exhaust domestic remedies: Before submitting a communication to the OP3 CRC, the complainant must first “exhaust domestic remedies,” i.e. the child must first bring his/her case before national jurisdictions and obtain a final decision. However, this provision will not apply if the complainant can demonstrate that the State’s domestic remedies are ineffective or unreasonably prolonged.

Collective communications: This was initially included during the drafting of OP3 CRC and referred to communications concerning potential or actual violations of rights within the CRC (and/or its existing two Optional Protocols) not identifying specific cases involving a child victim or groups of victims. This was later abandoned in the final text (as also occurred with other international human rights communication procedures). Further disappointments that made the final version of the OP3 CRC included the possibility of State Parties opting out of the Protocol’s inquiry procedure and State Parties making reservations under the Optional Protocol.

6.4.4 Assessment of the CRC: Results or rhetoric?

Specific objective	Enabling objectives
To scrutinize the real life practical difficulties in implementing the CRC	<ul style="list-style-type: none">• Reflecting upon the collective responsibility of duty-bearers to realizing the rights of children• Analysing the evolving nature of child rights violations and protection• Constructing and analysing real life examples of current child rights concerns



Steps

- Discuss some issues pertaining to child rights, such as child labour, children on the move, and the sexual exploitation of children, etc.
- With reference to these issues, reflect on the practical realities of safeguarding children’s rights, and the difficulties in implementing the CRC.

TEACHING NOTES

Challenges in Implementing the Convention

While discussing the issues, examine the reasons why some children are pushed into vulnerable positions. The discussion points could include poverty, human trafficking, displacement, fleeing conflict or persecution, weak laws, poor access to quality education, gender issues, and peer pressure, etc.

Ask students to identify the stakeholders involved in these contexts, and the actions that can be taken to protect children from such rights violations.

Case Study 1: Child labour

The global number of children in child labour has reportedly declined by one third since 2000, from 246 million to 168 million children, according to the International Labour Organisation.

Despite this sharp decline, child labour remains entrenched among younger children – more than 70 percent are between 5 and 14 years old and work in agriculture. Children living in more rural areas can begin working at a very young age. The prevalence of child labour is highest in sub-Saharan Africa. In most regions, girls are just as likely as boys to be involved in child labour such as domestic work.

Case Study 2: Children on the move

According to UNICEF, 50 million children around the world are on the move and the number is likely to increase in the future. Many travel with their families, many others are forced to move on their own. Migrant children and women, especially those without documentation, are vulnerable to trafficking, abuse, and exploitation. In transit and destination countries, migrants and their families often find themselves victims of discrimination, hardship, and social marginalization.

Over the last decade, the number of child refugees has reportedly doubled around the world and almost 1 in 10 children live in countries and areas affected by armed conflicts. UNICEF estimates that refugee children are five times more likely to be out of school than other children. Irregular child migrants (i.e. undocumented) can sometimes end up in immigration detention centres.

Case Study 3: Sexual exploitation of children

Developments in information and communication technology (ICT) over recent years has led to completely new ways of sharing information and establishing and maintaining relationships; even more so for children and youth. However, the benefits of the internet, mobile phones, and interactive technologies are often off-set by a downside as it also contributes to an increase in the sexual exploitation of children.

In 2014, the US National Centre for Missing and Exploited Children (NCMEC) received 78,946 reports from the public and 1,027,126 reports from Internet Service Providers related to child abuse material online. The increased use of live video streaming of child sexual abuse continues to be identified as a growing threat to children by law enforcement agencies. ECPAT International recently reported a growth in the sexual extortion and online coercion of children, particularly in relation to the production of self-generated (“sexting”) child sexual abuse materials.



A. Discussion on Difficult Questions

Some argue the CRC is biased towards western notions of policy and childhood – is this fair?

The CRC does have a strong bias towards the protection of children; this sometimes leads to a presumption of the ‘over vulnerability’ of children. While it is true child participation is not common in many cultures, the fact women, children, and young people have previously been treated in particular ways does not justify continuing to do so. The challenge is to promote the general principles of non-discrimination, survival and development, the best interests of the child, and respect for the views of children in all parts of the world.

There is a conflict between the CRC and the variety of cultural attitudes to children around the world and it is wrong to impose a single standard on other cultures. Do you agree?

While ratifying the Convention, Singapore made a ‘Declaration,’ part of which is reproduced below:

- (1) *The Republic of Singapore considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family.*
- (2) *The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit:*
[...]
 - (c) *the judicious application of corporal punishment in the best interest of the child.*

Thus, Singapore’s Declaration reflects the tensions that exist between societal attitudes towards children and the rights recognised in the CRC.

The CRC is not prescriptive; rather it is more akin to a checklist of issues for States to consider and review. While change can be introduced in ways that are sensitive to cultural traditions and religious practices, in some cases, governments may use the cultural argument to justify harmful practices.

Is it true that child rights come at the expense of parental rights in the CRC?

Parents are responsible for the upbringing, education, and protection of their children, and indeed, the CRC expressly affirms this responsibility. Parents also have the right to legally represent their children.

Notwithstanding the above, children have rights too and the principle, ‘best interest of the child’ (Art 3) may mean a child’s right to protection can override a parent’s right to make decisions on his or her behalf. Some countries have made reservations/ declarations against Art 3 fearing it may encourage children to act too individualistically in defiance of the authoritative adults in their lives.

Why is the USA the only State in the world not to have ratified the CRC?

Although the US government played an active role in drafting the Convention and actually signed it in 1995, opposition to ratification emerged from religious groups and various political conservatives who claimed the CRC conflicted with their constitution and the country's sovereignty and federalism (i.e. interference with States' rights and subversion of parental authority). In particular, the United States objects to Art 37 which prohibits the sentencing of children to life in prison although this is hardly surprising as the US only stopped sentencing juveniles to death in 2005.

Does the CRC extend political rights to children?

Some countries (e.g. Nicaragua and Iran) have gone beyond the rights espoused by the CRC and have offered the right to vote to some older children. As children's rights continue to adapt to our fast changing societies, we may see increased demands to extend the right to vote to older children. Despite lacking formal political rights, many children around the world now take part in political actions, movements, campaigns, armed struggles, and are even members of political parties.

Isn't there a danger that giving children more of a voice (Art 12) will lead to a lack of respect for parents?

In actual fact, one could argue that listening to children helps to instil respect for others. It is not about teaching children to ignore their parents; indeed, Art 29 specifically includes developing respect for one's parents as a goal.

By finding solutions and promoting understanding, listening is actually an effective way of resolving conflicts and is thus beneficial to family life. In other words, children should not be led to believe they alone have the right to express an opinion; rather, families should make decisions together.

B. Resources

OHCHR, 'Rights of the child in the administration of justice' available at <https://www.ohchr.org/Documents/Publications/training9chapter10en.pdf>

Plan International USA, 'The Convention on the Rights of the Child' available at <https://www.planusa.org/docs/yea/crctoolkit.pdf>

UNICEF, 'The toolkit' Child Rights Toolkit, available at <http://www.childrightstoolkit.com/downloads/toolkit/#english>

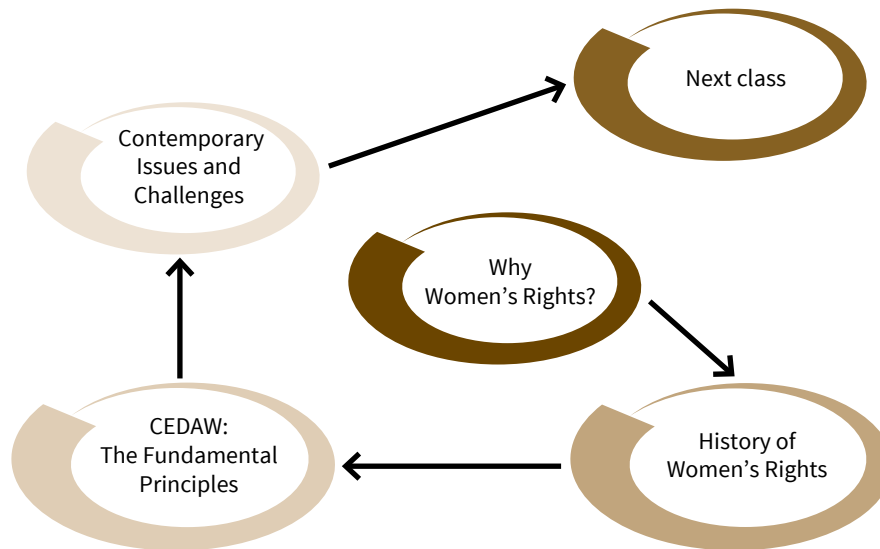
Discusses some of the guiding principles and how they are integrated into action to address child rights.

Chapter 7

Women's Human Rights

7.1 Introduction

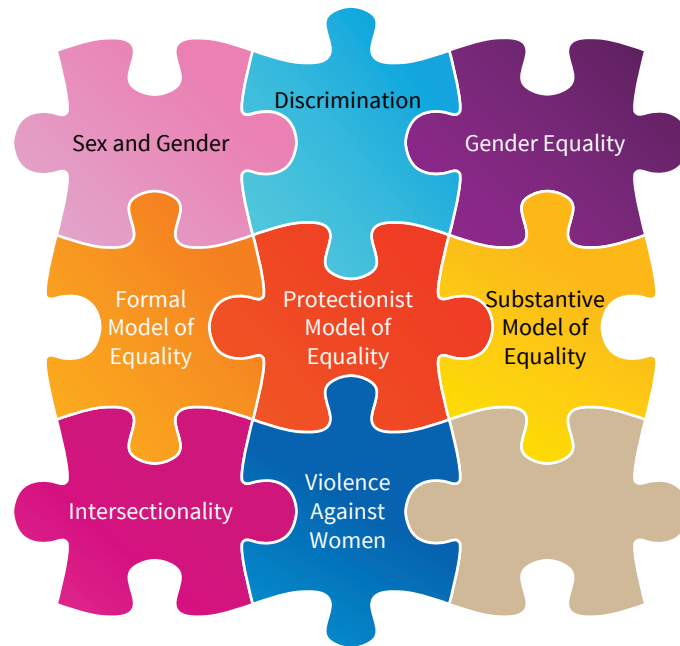
This class examines the issue of discrimination against women. It also discusses the principles recognised in the Convention on the Elimination of All Forms of Discrimination Against Women or CEDAW. Lastly, it discusses some of the contemporary issues relating to gender equality and the measures that should be adopted to eliminate discrimination.



7.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Why Women's Rights?	To understand the need for recognition of women's rights	<ul style="list-style-type: none"> Clarifying the difference between sex and gender Reflecting on the nature of gender-based discrimination
2. History of Women's Rights	To remember the history of women's rights	<ul style="list-style-type: none"> Detailing the history of women's rights
3. CEDAW: The Fundamental Principles	To summarise the fundamental principles enshrined in CEDAW	<ul style="list-style-type: none"> Identifying the rights recognised in CEDAW and the corresponding State obligations Applying CEDAW to case studies to identify rights violations and the actions needed to respond to such violations
4. Contemporary Issues and Challenges	To evaluate achievements towards the goal of gender equality	<ul style="list-style-type: none"> Reflecting on progress towards the goal of gender equality including the challenges

7.3 Key Elements



7.4 Class Structure and Design

7.4.1 Why women's rights?

Specific objective	Enabling objectives
To understand the need for recognition of women's rights	<ul style="list-style-type: none"> • Clarifying the difference between sex and gender • Reflecting on the nature of gender-based discrimination



Steps

- Initiate a brainstorming session on gender-based discrimination. The lead questions could be:
 - » Have you been treated differently because of your gender? Or have you seen others being treated differently because of their sex?
 - » What was the impact of this difference in treatment?
 - » What ideas influenced this difference in treatment?
- Introduce the concepts of 'sex' and 'gender.'
- Discuss how gender influences behaviour in the family, the economic sphere, and in the making of laws and policies. One example is provided in the teaching notes. Similar examples from different country contexts may also be discussed.
- HANDOUT 8 is a newspaper article on the situation of women's rights in Southeast Asia. Ask students to review the article and identify the problems/ issues faced by women.

TEACHING NOTES

Why Women's Rights?

Difference between 'sex' and 'gender'

'Sex' refers to the biological characteristics distinguishing men and women.

'Gender' refers to the roles, behaviours, activities, and attributes society considers appropriate for such groups. Gender determines what is expected of men and women, and boys and girls, and is learnt through the processes of socialisation. However, it is not static but is context and time specific.

Gender normative

Gender conventions ensure that women and men behave according to society's expectations. Roles or behaviours not conforming with these conventions may be criticised or punished. As a result of these processes of socialisation, gender norms are internalised by boys and girls and help to create 'gender normative' adults, i.e. people who conform to society's expectations of them.

Gender divisions of labour

This refers to the way society divides work between girls and boys, men and women. For example, in many societies women are expected to do all the housework, while men are expected to earn a wage and provide for the family.

How gender influences behaviour in the family, the economic sphere, and in the making of laws and policies

The gender norm, 'men are providers and women are nurturers' is a notion many societies adhere to.

At the family level, this norm influences the way girls and boys are raised. As such, more value is placed on educating boys who are accordingly taught to place more importance on their professional careers and are steered towards opportunities that will enable them to earn a good living.

In the production cycle or economic sphere, pursuant to the idea that men are providers, men are considered the primary breadwinners in the family. For this reason, they are paid higher, resulting in a gender pay gap.

Law and policy-making: As men are generally considered the primary bread winners, they are usually not expected to contribute to childcare. Thus, in many countries, laws do not provide for paternity leave.



HANDOUT 8

Situation of Women's Rights in the Southeast Asian Region

Women's rights in the region still have a long way to go

(Ariffin, E, 'Women's rights in the region still have a long way to go' *The ASEAN POST*, 8 March 2018, available at <https://theaseanpost.com/article/womens-rights-region-still-has-long-way-go>, accessed on 5 December 2019)



People take part in the 2018 Women's March rally in Jakarta on March 3, 2018. (AFP Photo/Bay Ismoyo)

Stories of brave women in the region are plentiful. In Vietnam, women were instrumental in liberating the country from American occupation. When the Philippines was colonized by Spain, women like Gabriela Silang played a significant role in fighting colonialism. In Malaysia, women like Shamsiah Fakeh led the women's wing of the Malay Nationalist Party in fighting for independence from the British.

Just like anywhere else in the world, women here have always played a strong role in developing the region. Without the aforementioned women, the Southeast Asia we know today could be completely different. These women also show that the concept of women asserting their position in society isn't merely a Western concept but a universal one. However, despite the prominent role women have played in making Southeast Asia a better place, the region still has a long way to go in terms of appreciating women, valuing their contributions and treating them equally.

While there have been plenty of women holding positions of power in Southeast Asia such as Arroyo in Philippines, Megawati in Indonesia and most recently, Halimah Yaacob in Singapore, female representation in the governments of many Southeast Asian countries is still lacking. At the moment, only the Philippines has more than 10% women's representation in politics. Furthermore, some feminists have spoken out against celebrating Halimah Yaacob's position as she was appointed rather than elected and that the presidential seat in Singapore is largely ceremonial.

Despite the significant growth in its economy over the past decade, Southeast Asian women are still not getting their fair share of the acquired wealth. In an Asian Development Bank study in 2015, it was found that on average, women earned 30% lower than their male counterparts. In Malaysia, the average gender pay gap is 21% despite the increasing number of women in the workforce. In Vietnam, despite the fact that women make up an overwhelming 72% of the workforce and are contributing more to the nation's wealth, men are still being paid 13% more than women there.

In many cases, women still find trouble finding jobs. According to the Asian Development Bank, "... on average women are 70 percent less likely than men to be in the labour force. This gap persists despite economic growth, decreasing fertility rates, and increasing education."



Source: World Economic Forum Global Gender Gap Report 2016

Tan Heang-Lee from Malaysian women's rights NGO, Women's Rights Association (WAO) told the ASEAN Post in 2017 that "... women, especially mothers, experience discrimination at work. According to a 2016 survey by WAO, about 40 percent of pregnant women were discriminated by employers. This includes making their positions redundant, denying them promotions, placing them on prolonged probation, demoting them, and terminating their jobs."

According to the World Economic Forum's Global Gender Gap Report 2016, the Philippines remains the only country in Southeast Asia to be in the top 10. The only other country close to the Philippines in narrowing the gender gap is Lao PDR. The nation has made significant progress in narrowing the wage gap, labour participation and representation in politics.

The report also highlighted that Vietnam, Thailand and Indonesia have made progress in narrowing the gender gap but still have plenty to do if they want to catch up with the Philippines and Lao PDR. Meanwhile, the report also points out that Cambodia received a lower score this year as women's labour participation and estimated earned income numbers declined.

It doesn't just stop in the job market. Women constantly face the threat of violence in the form of sexual harassment, domestic violence and other types of abuse. Adequate laws in protecting women are still not in place in many countries in the region. For example, in Malaysia, marital rape is still not considered a crime. Meanwhile, according to the United Nations (UN), Southeast Asia has one of the highest rates of violence against women.

If Southeast Asia wants to be a developed region, then it needs to recognize the contributions that women make to its economy too. Women in the region deserve to be fairly compensated for their labour and be given the same opportunities men get in the job market. It doesn't just stop there, strong protections against violence and harassment need to be set up too.

Last Saturday, women in Jakarta marched and demanded their voices be heard. Women in Malaysia will be doing the same this weekend. To achieve gender equality in the region, governments need to listen to their concerns and have enough political will to implement true reforms for a more equal Southeast Asia.

7.4.2 History of women’s rights

Specific objective	Enabling objectives
To remember the history of women’s rights	<ul style="list-style-type: none"> Detailing the history of women’s rights
To understand the need for recognition of women’s rights	<ul style="list-style-type: none"> Clarifying the difference between sex and gender Reflecting on the nature of gender-based discrimination



Steps

- Present key moments in the history of the women’s movement.

TEACHING NOTES

History of the Women’s Movement

- During the European enlightenment, Mary Wollstonecraft authored ‘A Vindication of the Rights of Women (1792), one of the earliest works on the oppression of women in society and how they are denied opportunities to realise their full potential.
- In the early 19th century, the Suffragettes actively worked for recognition of women’s right to vote.
- The principle of universal respect for human rights and fundamental freedoms without discrimination on the basis of sex was recognised in the Charter of the United Nations in 1945.
- In 1951, the ILO Convention on equal remuneration for equal work was adopted.
- In the 1960s and 1970s, the women’s movement gained momentum. Influential voices included Simone de Beauvoir, Gloria Steinman, and Betty Friedan.
- In 1967, the UN adopted the Declaration on the Elimination of Discrimination Against Women, which stated that discrimination against women is an offence against human dignity.
- 1975 was proclaimed as International Women’s Year. A world conference was organised in Mexico City, and the decade of 1975-1985 was recognised as the United Nations Decade for Women. In 1979, the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted. It opened for signature in 1980 at the International Conference on Women held in Copenhagen. The Convention entered into force in 1981.
- In 1993, the World Conference on Human Rights was held in Vienna. Activists campaigned to ensure that women’s rights were integrated into the agenda under the slogan, “Women’s rights are human rights.” The Vienna Declaration and Program of Action adopted at the conference stated that, “the human rights of women and of the girl child are an inalienable, integral, and indivisible part of universal human rights” (Para 18).
- The Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women in September 1995, focussed on strategic objectives to eliminate discrimination against women and achieve equality between the sexes.



7.4.3 CEDAW: The fundamental principles

Specific objective	Enabling objectives
To summarise the fundamental principles enshrined in CEDAW	<ul style="list-style-type: none"> Identifying the rights recognised in CEDAW and the corresponding State obligations Applying CEDAW to case studies to identify the rights, violations, and actions needed to respond to such violations



Steps

- Use the fable of ‘The Fox and the Crane’ to unpack the concept of substantive equality (see HANDOUT 9).

In the story, a fox invites a crane to dinner. The fox serves soup on two flat plates. Because of her narrow beak, the crane is unable to eat. She can only wet the end of her beak. After a few days, the crane invites the fox for dinner and serves food in a deep vase. Because of his short and wide face, this time the fox cannot eat.

Leading question: What do you think of this story?

Key point of this story

This story highlights that equal treatment does not necessarily lead to equal outcomes. In other words, the fox served food on a flat plate because that was how he ate. In so doing, he failed to understand the differences in the crane’s physiology, that her long beak would prevent her from eating on such a plate. Thus, her differences meant she could not take advantage of the fox’s hospitality.

In the same way, substantive equality is about identifying barriers that could restrict certain persons from accessing opportunities.

- Discuss the principles of non-discrimination, substantive equality, and State obligations as covered by CEDAW. View the following short videos to assist the discussion.

» UN Women, ‘CEDAW quick and concise: Explaining the principle of non-discrimination’ available at <https://www.youtube.com/watch?v=OBdDB5PKrmk>

Leading question: Ask students to explain the term ‘discrimination’ using examples.

» UN Women, ‘CEDAW quick and concise: Principles of substantive equality’ available at <https://www.youtube.com/watch?v=r18lNB-XMIk>

Leading question: Ask students to compare different models of equality in terms of addressing gender discrimination in society.

» UN Women, ‘CEDAW quick and concise: The principles of State obligation’ available at https://www.youtube.com/watch?v=FKYM7g_gFRA

Leading question: Ask students to summarise generic State obligations with respect to eliminating discrimination against women.

- Use case studies to deepen their understanding regarding the implementation of CEDAW principles. Some examples are provided in HANDOUT 10.

TEACHING NOTES

Key Concepts and Principles (CEDAW)

Discrimination

Article 1 of CEDAW defines discrimination as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

This definition has several significant aspects, such as:

- (a) It specifies that discrimination can happen in different ways, such as **distinctions, exclusions, or restrictions**;
- (b) Use of the term, '**effect or purpose**' means it prohibits not only acts which have the intent to discriminate (purpose), but also those *resulting* in discrimination towards women (effect);
- (c) Discrimination may be related to **recognition** of the right (such as through laws), and **enjoyment and exercise** of the right; and
- (d) It prohibits discrimination in all spheres ('**or any other field**') including the private sphere of the home.

Gender equality

Gender equality refers to the equality of rights, responsibilities, and opportunities between girls and boys, and men and women. The different models of equality are formal, protectionist, and substantive.

The **formal model of equality** is based on the understanding that men and women are the same, and therefore should be treated similarly. Thus, if men can vote and contest elections for public office, so women should have the same opportunities. However, this model fails to take into account gender differences. For example, although the law may recognise that both men and women have such a right, social conventions expecting women to be confined to the private domains of home and family may act as a barrier and restrict them from participating in the public sphere.

Another example concerns women working in night shifts. Under the formal model, men and women should have equal opportunities to work night shifts. However, in cultures where social norms dictate that 'good' women stay at home after dark, very few women will be seen in public places at night, and accordingly, women working night shifts may become vulnerable to sexual harassment in the workplace as well as in public spaces such as roads and public transport.

The **protectionist model of equality** recognises the differences between the positions of men and women in society. However, to protect the interests of the latter, it uses those differences to impose restrictions against women. Taking the example of women working night shifts, the protectionist model recognises that the social environment may not be safe for women at night and in order to protect their interests, it would prohibit such work. However, the impact may be a reluctance on the part of employers to hire women as these restrictions would burden the rest of the workforce resulting in women having fewer opportunities in employment.





The **substantive model of equality** recognises that the unequal position of women is due to discriminatory policies and practices (past or present). It also recognises that gender acts as a barrier preventing women from achieving parity with men. This approach calls for the elimination of such barriers thereby creating enabling conditions to offer women practical help to achieve substantive equality with men. Thus, taking the earlier example, the substantive model would require States to enact laws requiring employers to provide safe transport facilities to women and/or post adequate numbers of security guards in the work space, etc. It might also call upon States to take steps to make public transport and roads safer during the night, such as by increasing police patrols, introducing better lighting and better connectivity in terms of public transport, etc.

Intersectionality

We all have different identities marked by gender, race, ethnicity, and religion, etc, and our experiences may be shaped by these multiple identities. The concept of intersectionality recognises that a woman, by belonging to one or more vulnerable identity groups, may face multiple threats of discrimination. For example, a woman with a disability belonging to a marginalised ethnic group may face exclusion because of her ethnicity, her status as a person with a disability, and her gender. Thus, the concept of intersectionality offers an analytical framework to understand the interconnectedness of such multiple layers of discrimination.

HANDOUT 9

The Fox and the Crane

A fox invites a crane for dinner, serving soup on two flat plates. Because of her narrow beak, the crane is unable to eat, only managing to get the tip of her beak wet.



After a few days, the crane invites the fox for dinner and serves food in a deep vase. Because of his short and wide face, he too is left hungry.



Question: What do you think of this story?

Picture from <https://hubpages.com/family/The-fox-and-the-stork>

HANDOUT 10

Case Studies (CEDAW)

Some example case studies are given below. Ask students to reflect upon the following questions:

- Does the case study highlight any form of discrimination against women?
- If yes, explain the nature of discrimination.
- Also discuss the measures States should take to eliminate such discrimination.

Case Study 1

In Country C, a set of rules known as *Rules for Girls* explain what society expects of women. For example, a woman should: serve her husband and bow to his desires; be quiet and polite; refrain from sharing what happens in the domestic sphere with others; realise that familial happiness is dependent on her; and a woman's poor character results in others looking down upon her husband.

By contrast, the code of conduct for men called *Rules for Boys* promotes leadership amongst men and includes such attributes as strength, preparedness, being organized and responsible, respectfulness towards one's teachers and elders, and taking care of one's family.

The rules for girls are considered so important, they are included in the curricula of primary and secondary schools where students are taught to follow and memorize them.

Case Study 2

In Country M, the labour laws, which prescribe regulations relating to the minimum wage, working hours, public holidays, sick leave, annual leave, etc, are applicable only to industrial units employing 10 or more workers. It excludes domestic workers who are mostly women. Also, a large percentage of women are employed in home-based production units employing less than 10 workers.

Case Study 3

In 2015, women comprised 54.1% of the labour force. When women outside the labour force were interviewed, 60% pointed to the burden of 'housework' as the main reason. In order to address this problem, the government initiated a public campaign to encourage employers to offer women part-time and flexible work arrangements.

Case Study 4

In Country A, the government leases out vast tracts of forest land to companies for palm oil plantations. Previously, these forest lands were governed by customary tenure and were cultivated by ethnic populations who were dependant on the land for their livelihoods. Under the customary system, women were allowed to inherit land from their parents on an equal footing with men. Custom also dictated whichever child cared for his or her parents inherited the most land. Women carried out subsistence agriculture and gathered forest produce to both supplement their family's nutritional needs and to sell at market. However, women were not able to participate in formal politics. When the government initiates discussions regarding the leasing of land to companies, they hold consultations with the community to discuss compensation schemes – these are mostly attended by men. The State and company's resulting scheme registers households as small holders of land who will be given credit for cultivating the plots. The husbands are declared heads of the households.

Case Study 5

The Domestic Violence Protection Act contains provisions for settling legal cases at every stage of the proceedings. Thus, at every stage, it asks parties to go through mediation to encourage reconciliation. In this country, it is acceptable for a husband to beat his wife. Women are expected to take care of the household and maintain peace and harmony.

Key to HANDOUT 9

Responses to the case studies

Case Study 1

The Rules for Girls and the Rules for Boys are social constructs which, when taught in schools, are reinforced by society. By laying down how girls should behave, they restrict the capacity of women to make choices. For example, women who are taught to serve their husbands and be quiet and polite will rarely speak out when faced with domestic violence. Rather, she will choose to face the abuse silently. Similarly, as girls are taught to be homemakers, education and career will take a back seat. As a result, women will often not possess the technical skills to earn a proper living and at time of economic need, will instead be pushed towards unskilled low-paying jobs.

Thus, although these rules do not directly discriminate between men and women, their impact results in discrimination against women. To redress the balance, the State should therefore, first, not include these rules in the curricula of primary and secondary schools. Next, it should take appropriate steps to create awareness in society and attempt to change such social constructs.

Case Study 2

These labour laws are gender neutral as they apply to both men and women. However, they ignore the fact that a large percentage of women are employed in home-based production units employing less than ten workers. In addition, the law excludes domestic workers from its protection.

Moreover, the legislation indirectly discriminates against women by excluding categories of work (such as domestic workers or home-based production) from its protection.

The State should therefore enact appropriate laws to protect the rights of women engaged in such work.

Case Study 3

Women find it difficult to work outside the home because of social norms requiring them to shoulder the burden of housework. In order to address this problem, the government launched a campaign encouraging employers to offer part time and flexible work arrangements to women in line with the protection model of equality. As such, the law tries to protect women from the double burden of working outside as well as inside the home by encouraging flexible work arrangements.

However, one could argue such a campaign simply increases the burden on women who may have to work both inside and outside the home. Further, the policy would limit women's opportunities to find regular employment. Thus, it indirectly discriminates against them. Instead, the State should raise awareness about the need for men to share the burden of housework. Additionally, it could organise consultations with women regarding the support services they would need to join the regular workforce.

Case Study 4

This State policy discriminates against women in several ways. First, it fails to recognise that women enjoyed customary rights over the land. As such, it took no steps to include women in the consultations and omitted their rights and concerns from the decision-making process. Second, the compensation scheme only recognises males as heads of households and the plots of land were therefore only registered in their names ignoring women's customary rights. Accordingly, after the land was leased out, women were effectively dispossessed, making them dependent on men.

In other words, although the State's actions and eventual policy appears to be gender neutral, it indirectly discriminates against women. The State should have taken measures to understand the system of customary land rights in the area, ensured the participation of women at all stages of the decision-making process, and designed a more appropriate compensation scheme.

Case Study 5

Given the social values present in the country, social sanctions against domestic violence appear few and far between.

In this case, the law is neutral in its application and is based on a protectionist model. Whilst giving recognition to the social norm that women should remain within a marriage, it also tries to provide for mediation at every step to enable spouses to reconcile their differences.

However, this can have the negative impact of restricting women from taking legal action against their abusers. Further, because of existing social norms that insist the responsibility of keeping families together is a woman's duty, in the case of mediation, the pressure to reconcile will therefore be placed firmly on women. A woman usually only resorts to legal action when the abusive relationship becomes untenable. If she is forced to enter into reconciliation proceedings at every stage, she may lose the courage to break free from her abusive relationship. Thus, the effect of the law will be to restrict women from taking legal action in cases of domestic violence.

The State must amend this law to protect women against their abusers, e.g. by providing for the issuance of restraint orders. Once the woman is safe from violence, she can take time to decide about the various options available to her. Of course, she may choose to reconcile in which case it will be her decision and not the State coercing her. Such a scheme would be based on the substantive model of equality.

7.4.4 Contemporary issues and challenges

Specific objective	Enabling objectives
To evaluate achievements towards the goal of gender equality	<ul style="list-style-type: none"> Reflecting on progress towards the goal of gender equality including the challenges



Steps

- Critically discuss issues of contemporary concern such as violence against women, women at work, and women's participation in politics, etc.

TEACHING NOTES

Contemporary Issues and Challenges

Some suggestions for topics and questions to explore follow:

Violence against women

CEDAW does not have a specific article on violence against women. However, General Recommendation 19 is dedicated to it. The Recommendation recognises gender-based violence as a form of discrimination that seriously inhibits a woman's ability to enjoy her rights and freedoms. It further calls upon States to take effective measures to overcome all forms of gender-based violence whether by public or private act.

Discuss the following:

- The different forms of gender-based violence.
- The legal framework in ASEAN Member States to address gender-based violence, e.g. domestic violence, marital rape, sexual harassment in the workplace, etc.
- The obstacles women face in claiming their rights.

Participation of women in political and public spheres

One global concern is the low participation of women in political and public spheres. General Recommendation 23 explains that participation in political and public spheres includes the exercise of political power, in particular, the exercise of legislative, judicial, executive, and administrative powers. Further, the concept also includes participation in public boards and local councils, political parties, trade unions, professional or industry associations, women's organisations, community-based organisations, and other bodies concerned with public and political life.

Discuss the following:

- The barriers faced by women as regards participation in political and public spheres.
- The challenges faced by women from minority communities.
- The nature of measures that States should adopt to eliminate such barriers and enhance participation.





Women at work

Women continue to face barriers gaining access to decent work. Inequality within the workplace is also a matter of concern.

Discuss the following:

- The nature of discrimination faced by women in the workplace.
- The challenges faced by women in the informal sector, by, e.g. migrant workers and women with disabilities.
- The measures States should adopt to eliminate such barriers and enhance participation.

A. Discussion on Difficult Questions

Maldives has a reservation to the application of Art 16 concerning the equality of men and women in all matters relating to marriage and family relations. Similar reservations have also been made by Malaysia and Singapore. Should CEDAW prevail over personal law?

Article 16 of the Convention recognises equal rights to enter into marriage and equal rights within a marriage, reproductive rights, equal rights as parents, and equal rights with regard to guardianship and adoption, etc. Some consider these rights to be in violation of personal laws or customary practices.

Recognition of equality within the private spheres of home and family is fundamental to the recognition of women's equality to men. Unless discrimination in the private sphere is addressed, the goal of gender equality cannot be achieved.

Thus, States should take measures to reform personal laws as soon as possible, and recognise the principle of equality between men and women in all spheres of life.

B. Resources

UN Women

Available at <http://www.unwomen.org/en>

UN Women is the UN organisation dedicated to gender equality and the empowerment of women. The website provides information on contemporary issues and initiatives undertaken at the global and country levels.

Some regional non-governmental organisations focussing on gender equality are:

Asia Pacific Forum on Women, Law and Development (APWLD)

Available at <http://apwld.org/>

BRIDGE

Available at <https://www.bridge.ids.ac.uk/>

A specialised gender and development research and information service based at the Institute of Development Studies in the United Kingdom.

Equality Now

Available at <https://www.equalitynow.org/>

Gender and Development

Available at <http://www.genderanddevelopment.org/>

A journal that focuses on development policy and practice for social justice and gender equality.

IWRAW Asia-Pacific

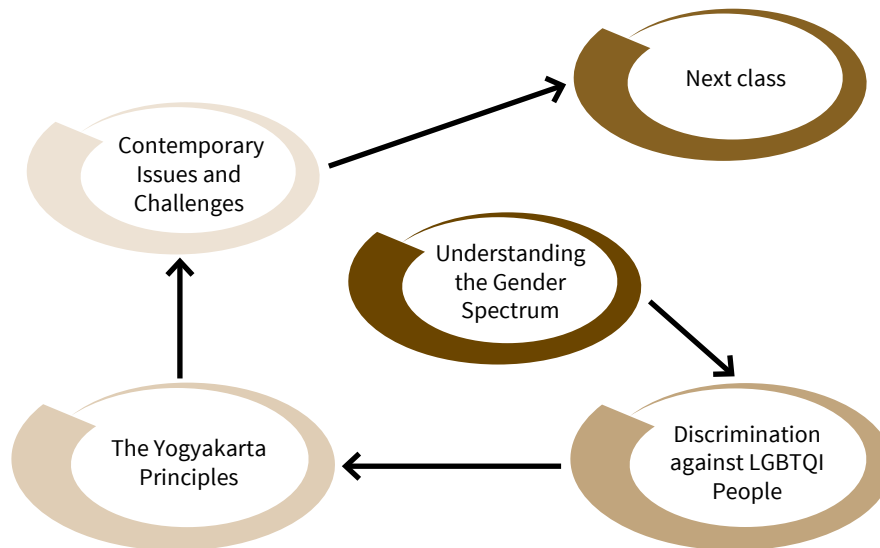
Available at <https://www.iwraw-ap.org/>

Chapter 8

Sex and Gender Diversity

8.1 Introduction

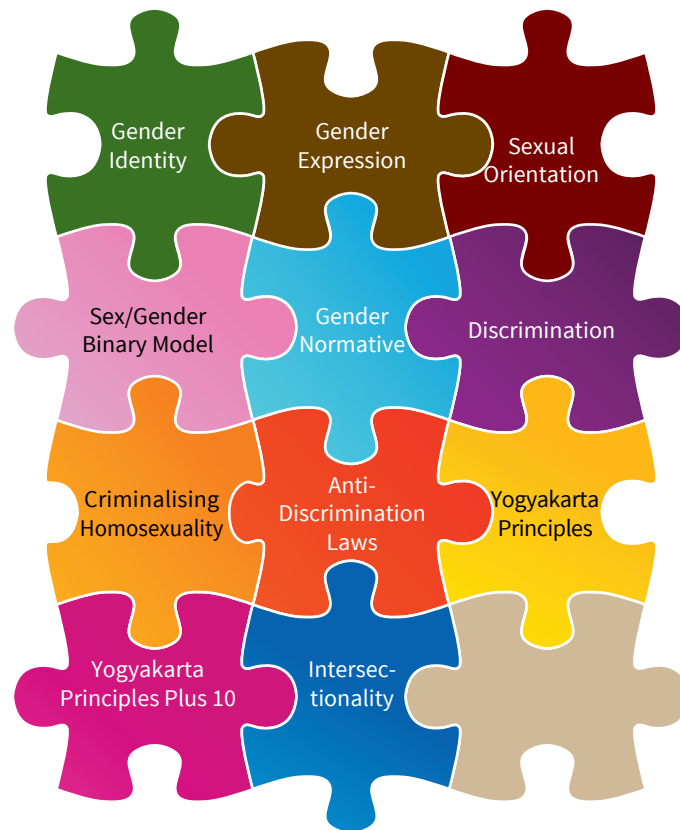
This class examines the subject of sex and gender diversity. It first discusses the importance of having conversations regarding gender diversity to break down such barriers, and next, looks at the nature of discrimination faced by LGBTQI (lesbian, gay, bisexual, transgender, queer/questioning, intersex) people. Having examined normative standards, it lastly encourages reflection on contemporary issues and challenges.



8.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Understanding the Gender Spectrum	To understand the need for recognising gender diversity	<ul style="list-style-type: none"> Evaluating the idea of gender diversity Deconstructing biases
2. Discrimination against LGBTQI People	To recognise the discrimination faced by LGBTQI people	<ul style="list-style-type: none"> Identifying the nature of discrimination faced by LGBTQI people in society
3. The Yogyakarta Principles	To summarise the standards contained in the Yogyakarta Principles	<ul style="list-style-type: none"> Identifying the rights reaffirmed in the Yogyakarta Principles and the corresponding State obligations
4. Contemporary Issues and Challenges	To evaluate progress made towards achieving the goal of equality	<ul style="list-style-type: none"> Reflecting on contemporary challenges

8.3 Key Elements



8.4 Class Structure and Design

8.4.1 Understanding the gender spectrum

Specific objective	Enabling objectives
To understand the need for recognising gender diversity	<ul style="list-style-type: none"> Evaluating the idea of gender diversity Deconstructing biases



Steps

- Discuss the terms, ‘sex’ and ‘gender.’
- Ask the question: “Do all people in society fall within the two exclusive forms of male/masculine and female/feminine identities?”
- Present the Genderbread person in HANDOUT 11. Ask students to reflect on the three aspects of gender (gender identity, gender expression, and biological sex).
- Introduce the terms:
 - » Gender identity
 - » Gender expression

- » Sexual orientation
 - » Trans
 - » Intersex
- End this section by revisiting the question: “Do all persons in society conform with the male/masculine and female/feminine identities?”

TEACHING NOTES

Understanding the Gender Spectrum

Gender identity: a person’s deeply felt internal or individual experience of gender which may or may

not correspond with the sex they were assigned at birth.

Gender expression: a person’s manifestation of their gender identity. Usually, individuals seek to match their gender expression with their gender identity, irrespective of the sex they were born with.

Sexual orientation: concerns who people are attracted to and who they want to have relationships with. Some identities associated with sexual orientation are:

- Straight or heterosexual: people attracted to others of a different gender
- Gay or homosexual: people attracted to others of the same gender
- Bisexual: people attracted to both men and women

Trans: an inclusive umbrella term referring to those whose gender identity and/or gender expression differ from the sex they were assigned at birth.

Intersex: refers to those with genetic, hormonal, and/or physical features which are neither exclusively male nor female, but are typically both at once or not clearly defined as either.

Genderbread person: an edugraphic tool that helps people to understand the different elements of gender.

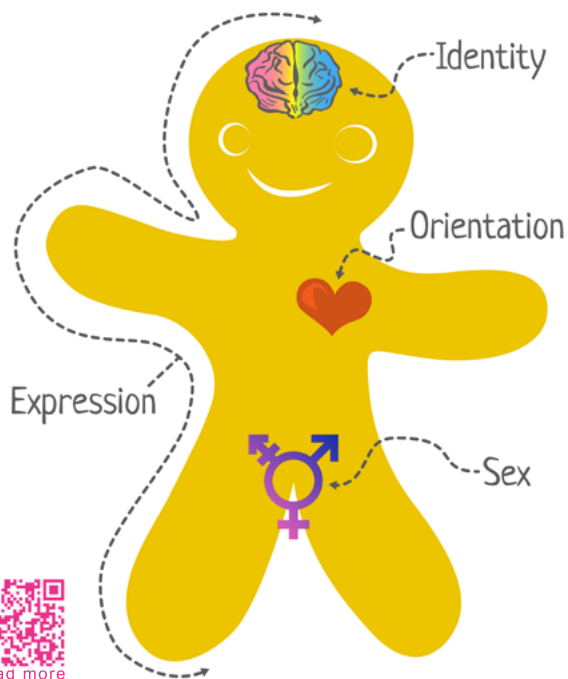


HANDOUT 11

Genderbread Person

The Genderbread Person

by www.ItsPronouncedMetrosexual.com



Gender identity is how you, in your head, think about yourself. It's the chemistry that composes you (e.g., hormonal levels) and how you interpret what that means.



Gender expression is how you demonstrate your gender (based on traditional gender roles) through the ways you act, dress, behave, and interact.



Biological sex refers to the objectively measurable organs, hormones, and chromosomes. Female = vagina, ovaries, XX chromosomes; male = penis, testes, XY chromosomes; intersex = a combination of the two.



Sexual orientation is who you are physically, spiritually, and emotionally attracted to, based on their sex/gender in relation to your own.

8.4.2 Discrimination against LGBTQI people

Specific objective	Enabling objectives
To recognise the discrimination faced by LGBTQI people	<ul style="list-style-type: none"> Identifying the nature of discrimination faced by LGBTQI people in society



Steps

- Introduce the sex/gender binary model.
- Discuss the impact of the sex/gender binary model on LGBTQI people.
- Discuss discrimination against LGBTQI people.
- Ask students to identify countries in the region which have laws criminalising homosexuality.
- Ask students to identify countries in the region with anti-discrimination laws.

TEACHING NOTE

Discrimination Against LGBTQI People

Sex/gender binary model

This refers to a system in which sex and gender are understood as two distinct and exclusive forms of male/masculine and female/feminine identities. Legal and social norms are based on this model and only tend to recognise these two categories or the gender normative.

The impact of the sex/gender binary model: Discrimination



Any person not fitting into exclusive male and female categories are often viewed as deviant or as the image below shows, may fall between the dominant understandings of gender.

For example

- Engaging in sexual behaviour other than the accepted heterosexual sex in many countries is an offence punishable under criminal law. Thus, people with different sexual orientations are often not able to live their lives freely. Gay people, in particular, are commonly unable to access sexual and reproductive healthcare as gay sex is not recognised under law. Healthcare information is also not publicly available.





- Marriage is generally recognised as a union between two people of the opposite sex. Societies therefore may not give recognition to unions or partnerships between people of the same sex. This has several implications. A spouse in a same sex partnership would not be considered competent to give consent in cases of medical emergencies. Similarly, benefits of medical insurance may not be available to partners in same-sex partnerships in the way they would be available to spouses in heterosexual marriages. Also, couples in same sex partnerships may not be recognised as competent to adopt children.
- People who do not fall neatly into the categories of male and female face negative attitudes and stereotypes. Negative social attitudes can have an impact on many aspects of their lives such as education, employment and professional advancement opportunities, and the possibility of election to public office, etc.

As the examples show, people with different sexual orientations may fall through the cracks between the two dominant understandings of gender and as such may be denied enjoyment of their civil, political, economic, social, and cultural rights.

8.4.3 The Yogyakarta Principles

Specific objective	Enabling objectives
To summarise the standards contained in the Yogyakarta Principles	<ul style="list-style-type: none"> • Identifying the rights reaffirmed in the Yogyakarta Principles and the corresponding State obligations



Steps

- Start with the question, “Does the International Bill of Rights provide strong protection to the rights of LGBTQI people?”
- Introduce the Yogyakarta Principles and review them.

TEACHING NOTES

The Yogyakarta Principles

International Bill of Rights and LGBTQI people

While the International Bill of Rights does contain standards for the protection of civil, political, economic, social and cultural rights, it makes no specific mention of ‘sexual orientation and gender identity.’ Thus, it does not elaborate upon the specific problems faced by people of different sexual orientations and the measures that should be taken by States to address such problems.

Yogyakarta Principles

It was only in 2006 that a set of international principles relating to sexual orientation and gender identity was finally developed. These principles, known as the Yogyakarta Principles, were developed in response to well documented patterns of violations suffered by persons on grounds of sexual orientation and gender identity. The main aspects of these principles are:





Right to equality and non-discrimination

Principles 1-3 recognise the rights to equality and non-discrimination. Principle 2 provides a definition of “discrimination on the basis of sexual orientation and gender identity.” It also lists corresponding State obligations.

Right to life and security of person

Principles 4 and 5 recognise the right to life and security of the person. They elaborate on corresponding State obligations to:

- Refrain from any action that has the effect of attacking people based on their sexual orientation and gender identity;
- Decriminalise homosexuality;
- Take all necessary policing and other measures to provide protection to said groups;
- Take legislative measures to impose appropriate criminal penalties for violence against LGBTQI people; and
- Organise campaigns for awareness raising.

Right to privacy

Principle 6 recognises the right to privacy, particularly that all persons, regardless of their sexual orientation or gender identity, have the right to enjoy privacy without arbitrary and unlawful interference. The right to privacy includes the right to choice regarding disclosing one’s sexual orientation or gender identity.

Treatment by police and courts

Principles 7-10 recognise rights relating to the administration of justice, e.g. the right against arbitrary detention, the rights to a fair trial, and to be free from torture, inhuman, or degrading treatment or punishment.

Economic and social rights

Principles 12-18 recognise economic and social rights and corresponding State obligations. These rights correspond to the rights recognised in the International Covenant on Economic, Social and Cultural Rights.

Civil rights and freedoms

Articles 19-21 recognise the freedoms of conscience, religion, expression, and assembly. Principle 23 recognises the right to asylum.

Rights to effective remedies, redress, and accountability

Principle 28 recognises the right to effective remedy and redress. Principle 29 recognises that every person whose rights are violated has the right to hold those responsible accountable for their actions.

Yogyakarta Principles Plus 10

In 2017, an additional set of principles known as the Yogyakarta Principles Plus 10 were adopted to supplement the Yogyakarta Principles. They recognise the following:

- Right to State protection,
- Right to legal protection,
- Right to bodily and mental integrity,
- Right to freedom from criminalisation and sanction,
- Right to protection from poverty,
- Right to sanitation,
- Right to enjoyment of human rights in relation to information and communication technologies,
- Right to truth, and
- Right to practice, protect, preserve, and revive cultural diversity.

8.4.4 Contemporary issues and challenges

Specific objective	Enabling objectives
To evaluate progress made towards achieving the goal of equality	<ul style="list-style-type: none">• Reflecting on contemporary challenges



Steps

- Critically discuss:
 - » Issues of contemporary concern such as violence against LGBTQI people and the discrimination faced by them.
 - » Intersectionality.

TEACHING NOTES

Contemporary Issues and Challenges

Issues of contemporary concern

Discuss instances of abuse against LGBTQI people from reported news items or NGO statements on human rights. Ask students to identify barriers faced by LGBTQI communities to secure recognition and respect for their rights, and the measures that should be taken at different levels to overcome such barriers. An example of a news item is:

- Wescott, B, 'Never seen anything like this': Inside Indonesia's LGBT crackdown' CNN, 1 June 2017, available at <https://edition.cnn.com/2017/05/31/asia/indonesia-lgbt-rights/index.html>

Reports on the wave of police raids and vigilante attacks in Indonesia and calls for the criminalisation of homosexual sex in Indonesia.

Intersectionality

Screen the following video:

Hopkins, P, 'What is intersectionality?' (duration 2:49 mins), University of Newcastle, 22 April 2018, available at <https://www.youtube.com/watch?v=O1isLM0ytkE>

Merriam-Webster defines intersectionality as "the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect especially in the experiences of marginalised individuals or groups."

Thus, intersectionality is a tool for understanding and responding to the ways in which different marginalised identities such as gender, socio-economic statuses, ethnicity, disability, etc, intersect, and how such intersections create unique experiences. For example, a poor LGBTQI person may have to deal with poverty and homophobia at the same time. Their experiences may be different from the experiences of an upper class LGBTQI person.

Recognising these intersectionalities is vital to identify responses to eliminate discrimination.



A. Discussion on Difficult Questions

Some countries still have laws criminalising homosexuality. The legislature is against amending such laws, arguing that society is not ready to accept homosexuality. Do you agree with this view, that the law should only be reformed once society changes its views?

Decriminalising homosexuality is not the same as recognising it.

The impact of criminalising homosexuality is that an entire group of people is deemed 'illegal' before the eyes of the law just because of their sexual preferences. As such, they lose recognition before the eyes of the law. And because homosexuality is construed to be illegal, it becomes difficult to hold programs focussing on the needs of LGBTQI people such as health education, or health benefits for HIV AIDS patients.

Thus, States should take the initiative and amend laws to decriminalise homosexuality. Waiting for society to change its views may take years, and the basic rights of an entire group of people should not be held in abeyance until such a change is achieved.

B. Resources

The following websites provide a rich source of information on LGBTQI rights:

Human Rights Watch

Available at <https://www.hrw.org/topic/lgbt-rights>

Includes links to research reports and news from around the world.

International Commission of Jurists

Available at <https://www.icj.org/themes/sexual-orientation-and-gender-identity/>

The web page of the International Commission of Jurists on sexual orientation and gender identity contains links to news, developments at the UN, legislation, and national court decisions.

International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA)

Available at <https://ilga.org>.

A world federation of national and local organisations dedicated to achieving equal rights for lesbian, gay, bisexual, trans, and intersex people across the globe.

United Nations

Available at <https://www.ohchr.org/en/issues/discrimination/pages/lgbtunresolutions.aspx>

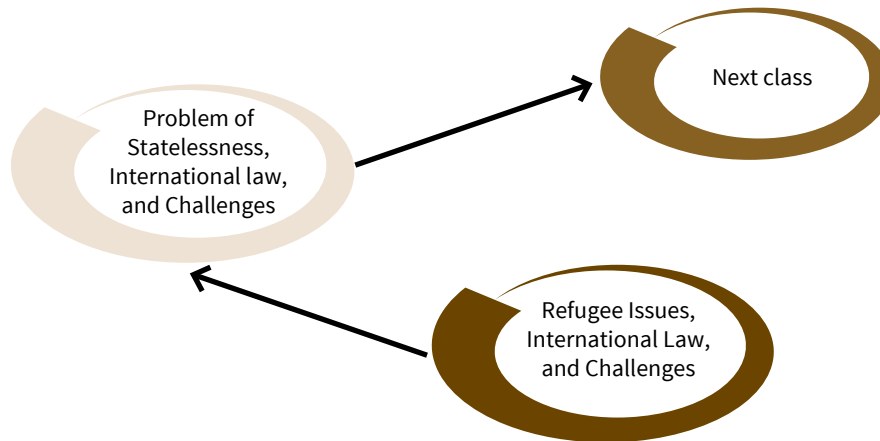
Lists developments on sexual orientation and gender identity.

Chapter 9

Rights of Non-Citizens: Refugees and the Stateless

9.1 Introduction

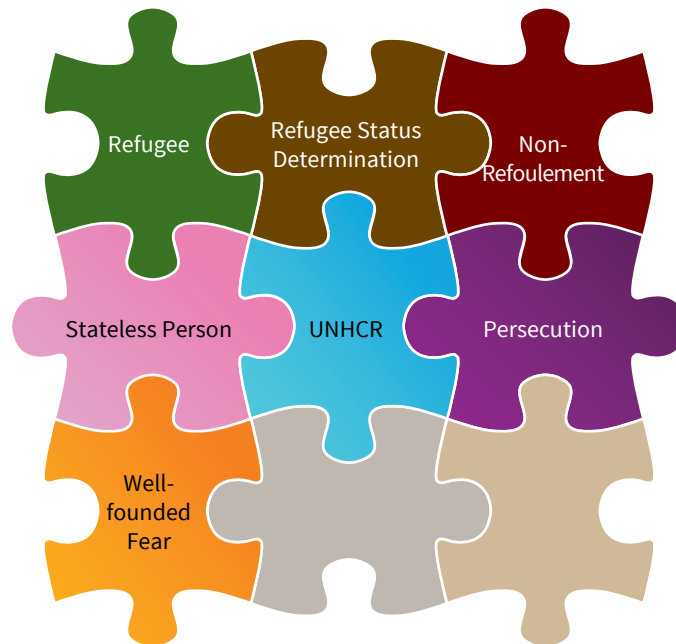
This lesson examines the issues and concerns of two vulnerable groups of people: refugees and stateless persons. It also highlights the vulnerabilities of each group, the rights specific to such vulnerabilities, applicable international standards, and the context of refugees and statelessness within the region.



9.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Refugee Issues, International Law, and Challenges	To reflect on the problem of refugees and the relevant international standards	<ul style="list-style-type: none"> Understanding the meaning of the term refugee Examining the problems faced by refugees Assessing the rights guaranteed in the refugee convention Reflecting upon contemporary challenges
2. Problem of Statelessness, International law, and Challenges	To reflect on the problem of statelessness and the relevant international standards	<ul style="list-style-type: none"> Understanding the concept of statelessness Analysing the problems faced by stateless people Examining international law related to statelessness Reflecting upon the issues of statelessness in Southeast Asia

9.3 Key Elements



9.4 Class Structure and Design

9.4.1 Refugee issues, international law, and challenges

Specific objective	Enabling objectives
To reflect on the problem of refugees and the relevant international standards	<ul style="list-style-type: none"> • Understanding the meaning of the term refugee • Examining the problems faced by refugees • Assessing the rights guaranteed in the refugee convention • Reflecting upon contemporary challenges



Steps

- Clarify understanding of the term, ‘refugee.’ A leading question can be: “Who is a refugee?” Go through the different elements of the definition as provided in the UN Convention on Refugees.
- Discuss the process of Refugee Status Determination.
- Discuss the rights of refugees as recognised in the international human rights instruments.
- Clarify meaning of the principle of Non-Refoulement.
- Discuss refugee flows in Southeast Asia.

TEACHING NOTES

Refugees. Fundamental Concepts. and Principles

Refugees

A Refugee as defined by the 1951 United Nations Convention Relating to the Status of Refugees (revised by the 1967 Protocol Relating to the Status of Refugees) is a person who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Art 1).

In order for a person to be considered a refugee, they must satisfy all the elements mentioned in the definition. This process is called **Refugee Status Determination**. The key elements are:

- **Well-founded fear:** The person must be in fear of persecution and this fear must be legitimate. Fear is established by subjective and objective elements. As per the subjective element, the person must be able to demonstrate a genuine fear of persecution. The objective element requires the establishment of reasons upon which the fear experienced by the person is grounded.
- **Persecution:** The persecution should be in the form of a serious human rights violation, such as discrimination, denial of access to basic necessities such as food, water, or healthcare, and/or threats to life, liberty, and the bodily integrity of the person.
- **Basis of persecution:** The risk of persecution must be because of race, religion, nationality, political belief, or because he/she is a member of a particular social group facing serious risk or threats.
- **Nexus:** A nexus needs to be established between the fear of persecution and at least one of the categories of race, religion, nationality, political belief, or being a member of a particular social group.
- **Alienage:** The person must be outside his or her country to claim refugee status. This is necessary, as a refugee is essentially seeking protection from another State.
- **Protection of the home State is not available:** It must be established that the person seeking refugee status because of a feeling of fear, is not able to access the protection of his/her State, or the protection of the law in their home State is unavailable to them.

What is 'Refugee Status Determination'?

As discussed above, Refugee Status Determination (RSD) is a process by which a State determines whether a person seeking protection can be considered a refugee under international, regional, or national law. States have the primary responsibility to conduct the RSD. For this purpose, it should designate an authority with relevant knowledge and expertise to undertake the process. It should also ensure adequate safeguards at all stages of the process, with mechanisms for appeal or review of the initial decision. The United National High Commissioner for Refugees has the mandate of assisting States to establish such mechanisms (UNHCR).



In cases where the State is not a party to the 1951 Refugee Convention and does not have a fair and effective national mechanism in place, the UNHCR conducts the RSD under its own mandate.

Rights of refugees

The 1951 Refugee Convention helps to establish the process under which a person fleeing persecution in one's home country can claim protection as a refugee from another country. Apart from this fundamental aspect, the Convention also guarantees certain rights, such as:

- The right not to be expelled except under certain strict conditions (Art 32);
- The right not to be punished for illegal entry into the territory of the State from whom such person is claiming protection (Art 31);
- The right to work (Arts 17-19);
- The right to housing (Art 21);
- The right to education (Art 22);
- The right to public relief and assistance (Art 23);
- The right to freedom of religion (Art 4);
- The right to access courts (Art 16);
- The right to freedom of movement within the territory (Art 26); and
- The right to be issued identity and travel documents (Art 27 and 28).

Principle of non-refoulement

The principle of non-refoulement forbids a country from removing refugees or asylum seekers from their jurisdiction when there are grounds to believe that their life or freedom would be threatened because of their race, religion, nationality, political opinion, or membership of a particular social group. The principle of non-refoulement is recognised in Art 33(1) of the 1951 Refugee Convention.

Article 33(2) provides some exceptions to this principle. In certain cases a refugee or asylum seeker cannot claim protection from expulsion or removal. These are:

- When there are reasonable grounds to believe such persons are a danger to the country in which they are presently residing; and
- When the refugee, having been convicted by final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Countries in Southeast Asia which have ratified the Refugee Convention

The list of countries which have ratified the Convention Relating to the Status of Refugees (1951) can be reviewed from the webpage of the United National Treaty Collection, available at https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en.



9.4.2 Problem of statelessness, international law, and the challenges

Specific objective	Enabling objectives
To reflect on the problem of statelessness and relevant international standards	<ul style="list-style-type: none"> • Understanding the concept of statelessness • Analysing the problems faced by stateless people • Examining international law related to statelessness • Reflecting upon the issues of statelessness in Southeast Asia



Steps

- Discuss the notion of statelessness.
- Discuss the causes of statelessness and its implications.
- Discuss the scope of the problem of statelessness in Southeast Asia.
- Discuss the international human rights instruments that provide protection to the rights of stateless people.

TEACHING NOTES

Statelessness and its Different Dimensions

Definition of statelessness

Statelessness is defined in the 1954 Convention Relating to the Status of Stateless Persons as a person

who is not considered as a national by any State under the operation of its law. Even though most stateless people live in the country where they were born, they often lack the privileges, services, and protection reserved for citizens or nationals.

Causes of statelessness or deprivation of nationality

There are several factors which cause statelessness. These include:

- (1) *Gaps in nationality laws*: Every country has laws which determine how one acquires nationality or loses it. In some cases, these laws may have gaps which create statelessness for certain groups. For example, the laws of a country may provide that a new born baby acquires the nationality of its father. In such cases, children born to sex workers are at risk of being stateless as the mother may not be able to prove the identity of the child's father.
- (2) *Emergence of new States and a change in borders*: When new States are created and borders are demarcated, some groups may be unable to show proof of their link to the country in which they are now living. Ethnic and indigenous groups who have lived in forests along the borders and who, according to their traditional ways practice shifting cultivation, find it particularly difficult to prove a historical link to their country.
- (3) *Deprivation of nationality*: People can be deprived of nationality through a targeted change in laws that discriminate against certain groups.



What are the implications of statelessness?

A person who is stateless is not able to enjoy rights as citizens in any country. These include the right to vote and participate in politics.

Stateless persons are also vulnerable to being denied equal protection of the law, the right to exercise the freedoms of speech, peaceful assembly, association, and religion, the right to secure documents such as driver licenses and passports which enable individuals to move freely and the rights to healthcare, education, housing, food, and water.

International human rights instruments on statelessness

The Convention Relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961) focusses on stateless people.

The 1954 Convention provides minimum standards of treatment for those who qualify as stateless persons. These are:

- Prohibition of discrimination against stateless persons on grounds of race, religion, or country of origin;
- The right to be treated the same as aliens such as with respect to the right of association, the right to engage in wage-earning employment, self-employment, the right to housing and education other than elementary education, and the right to freedom of movement; and
- The right to be treated like nationals with respect to freedom to practice religion and pursue religious education for their children, access to elementary education, access to courts, public relief and assistance, and social security.

The Convention on the Reduction of Statelessness (1961) focusses on stateless people and establishes safeguards against statelessness by:

- Requiring States to grant citizenship to children born in their territory, and to those born to their nationals in a foreign country if they are at risk of being stateless; and
- Prohibiting withdrawal of citizenship from nationals, if by doing so would result in statelessness.

International Covenant on Civil and Political Rights (ICCPR)

General Comment 15 (1986) of the Human Rights Committee clarifies the position of aliens or non-citizens under the ICCPR. The Committee has explained that

the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens (Paras 1 and 2).

International Covenant on Economic, Social and Cultural Rights (ICESCR)

In General Comment 20, the Committee on Economic, Social and Cultural Rights has stated that:

the ground of nationality should not bar access to Covenant rights, e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable healthcare. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers, and victims of international trafficking, regardless of legal status and documentation (Para 30).



A. Discussion on Difficult Questions

How can a person claiming refugee status prove ‘well-founded fear’ of persecution?

Proof of a ‘well-founded fear’ requires establishment of subjective (a feeling of genuine fear) and objective elements (the reasons upon which the feeling of fear is grounded). The United Nations High Commissioner for Refugees (UNHCR) considers application by a person for refugee status as evidence of the subjective element of fear. In order to establish the objective element, the UNHCR may conduct an investigation to examine if there is a real risk of persecution and whether in the past similarly situated persons were also persecuted. Such investigation may be done by seeking the opinion of credible sources (such as experts on human rights issues), reviewing media coverage, and so on.

Who are environmental refugees?

Environmental refugees refer to those persons who have had to flee their country due to drastic changes in the environment. Addressing rights of environmental refugees is a challenge, as the definition of a refugee in the Convention does not cover their particularities.

Who are urban refugees?

Urban refugees/asylum seekers are those who have settled in an urban area of the State where they have fled to, as opposed to being settled in a refugee camp. Urban refugees face particular challenges such as the need to find housing and work. They also need to have access to healthcare including mental healthcare and education for their children. Further, they often face hostility from local populations, and because of their refugee/asylum seeker status, may be reluctant to seek help from law enforcement agencies.

Country X has not ratified the 1951 Refugee Convention. Can it expel an asylum seeker from its territory?

The principle of non-refoulement is considered to be a rule of customary international law. All States have an obligation to respect this principle regardless of whether or not they have ratified the Refugee Convention.

Thus, even when Country X has not ratified the Convention, it cannot expel an asylum seeker from its territory.

B. Resources

Asia Pacific Refugee Rights Network
Available at <https://aprrn.info/>

Section on ‘Statelessness’ in UNHCR website
Available at <https://www.unhcr.org/statelessness.html>

United Nations High Commissioner for Refugees (UNHCR)
Available at <https://www.unhcr.org/>

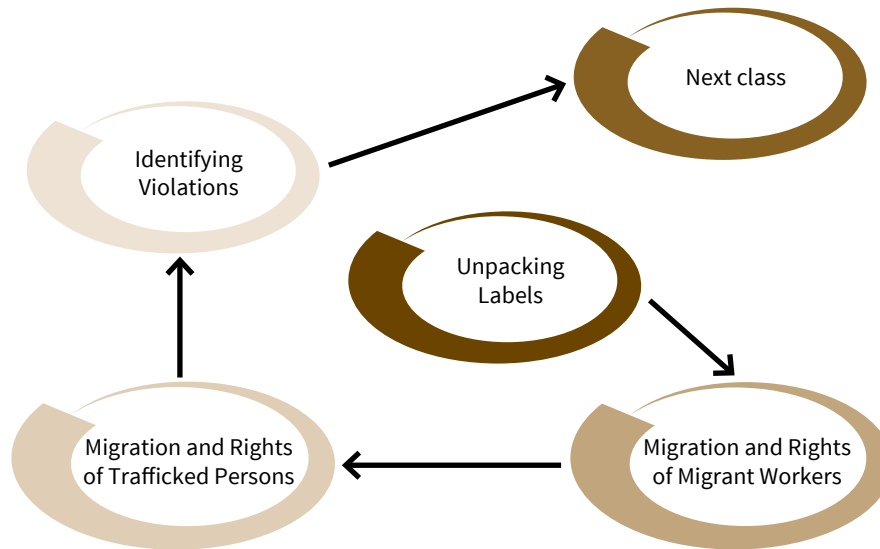
Chapter 10

The Rights of Non-Citizens: Migrant Workers & Trafficked Persons

10.1 Introduction

This class will focus on two categories of non-citizens (i.e. people living outside their State): migrants and trafficked persons. Migrant workers and trafficked persons, particularly if in the country illegally, are especially vulnerable to different forms of human rights violations. The class will examine how they are vulnerable to mistreatment, discrimination, exploitation, crime, and a range of other threats and abuses.

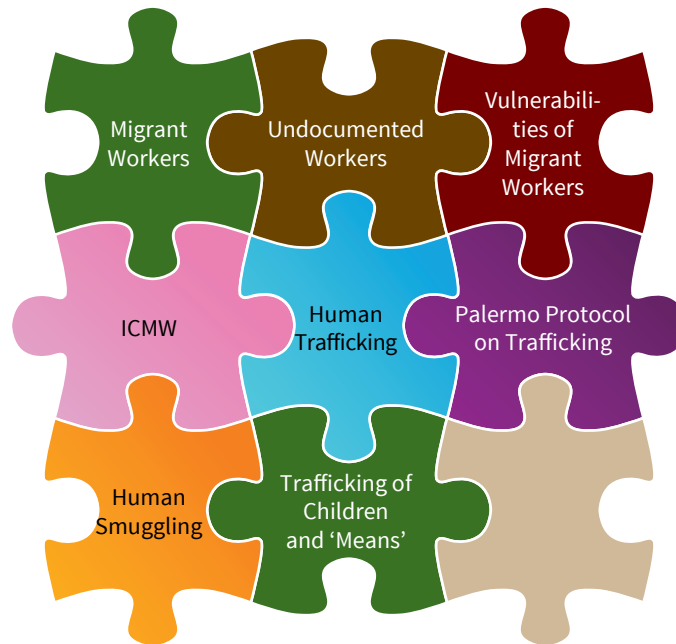
Students will learn about the international standards, mechanisms, and organisations dedicated to the protection of migrant workers and trafficked persons whilst gaining a practical understanding of the challenges in identifying and responding to some of their special rights.



10.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Unpacking Labels	To understand some of the key terms or definitions relevant to migrant workers and trafficked victims	<ul style="list-style-type: none"> Unpacking relevant terminology
2. Migration and Rights of Migrant Workers	To be able to identify the patterns of migration and understand the rights of migrant workers	<ul style="list-style-type: none"> Remembering the context of migration in Southeast Asia and related vulnerabilities to abuse and exploitation Outlining the multitude of reasons why people move/migrate Outlining the rights of migrant workers as guaranteed in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
3. Migration and Rights of Trafficked Persons	To provide an overview of the problem of trafficking and the legal mechanisms available for protecting the rights of victims of human trafficking	<ul style="list-style-type: none"> Understanding the problem of human trafficking Identifying the measures provided in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
4. Identifying Violations	To apply rights standards to identify violations	<ul style="list-style-type: none"> Applying rights standards to problems faced by migrant workers and victims of human trafficking and smuggling

10.3 Key Elements



10.4 Class Structure and Design

10.4.1 Warm up exercise: What's in a label?

Specific objective	Enabling objectives
To understand some of the key terms or definitions relevant to migrant workers and trafficked victims	<ul style="list-style-type: none"> Unpacking the relevant terminology



Steps

- Engage in a brainstorming exercise to unpack labels and definitions.
- Unpacking labels and definitions is important as it helps to:
 - » Avoid confusion about when and how a certain term should be used;
 - » Strengthen advocacy, communication, and joint efforts of human rights defenders to protect migrant workers and trafficked persons' rights; and
 - » Enable advocates to speak together with one voice to, e.g. influence laws, collect data and monitor, or develop effective responses.
- In order to facilitate such brainstorming, share Handout 11 containing a grid of words and acronyms below and ask students to select a term and explain what they think it means. Discuss other aspects of the terms' meanings in relation to migrant workers and trafficked victims.

HANDOUT 12 Unpacking Labels: Migrant Workers and Human Trafficking

Non-citizen	'Guest Worker'	Remittances
Illegal Migrant	Smuggling	Undocumented
Unsafe Migration	Exploitation	Irregular
Human Trafficking	Trafficker	Forced Labour
CoM	UASC	TIP Report
Worst Forms of Labour	IDC	Statelessness
ILO	Modern day slavery	IOM

Key to HANDOUT 12

<p>Non-citizen</p> <p>A person who is not an inhabitant or national of a particular country or town. A lawful non-citizen is a non-citizen who holds a visa and an unlawful non-citizen does not have legal documentation.</p>	<p>‘Guest Worker’</p> <p>A foreign labourer working temporarily in a host country. This term was initially used in the 1970s to describe migrant workers traveling from the Middle East to Europe.</p>	<p>Remittances</p> <p>Money or goods that migrant workers and others living outside their states, send home.</p>
<p>Illegal Migrant</p> <p>Sometimes wrongly used to describe a foreigner who has entered or resides in a country unlawfully. However, whilst an act can be illegal, a person cannot be ‘illegal.’ Entering or staying in a country in an irregular way is not a criminal activity but an infraction of administrative regulations.</p>	<p>Smuggling</p> <p>Illegal transportation of goods or people in violation of laws. Note: the smuggled person is free.</p>	<p>Undocumented</p> <p>Persons without a residence permit, work permit, passport, or other legal identity document.</p>
<p>Unsafe Migration</p> <p>Not using legal, regular migration channels.</p>	<p>Exploitation</p> <p>Abusing an individual for the benefit of a third party.</p>	<p>Irregular</p> <p>Not fulfilling the conditions of entry, stay, or residence.</p>
<p>Human Trafficking</p> <p>Recruitment, transportation, transfer, harbouring, or receipt by use of force, coercion, or deceit for the purpose of exploitation.</p>	<p>Trafficker</p> <p>A person who trades illegally in goods, drugs, arms, and/or humans.</p>	<p>Forced Labour</p> <p>Work extracted under threat or penalty, i.e. the person does not voluntarily agree to do the work.</p>
<p>CoM</p> <p>‘Children on the move’: A term used for children who move for a variety of reasons either voluntarily or involuntarily, within or between countries, and with or without their parents or other primary caregivers.</p>	<p>UASC</p> <p>Unaccompanied and separated children from both parents and other relatives who are not being cared for by an adult who, by law or custom, is responsible for doing so.</p>	<p>TIP Report</p> <p>An annual report issued by the US State Department’s Office to monitor and combat trafficking in persons. It ranks governments based on their perceived efforts to acknowledge and combat human trafficking but has been criticized for being political or insufficiently evidence-based.</p>

<p>Worst Forms of Child Labour</p> <p>Work, which by its nature or the circumstances, is likely to harm the health, safety, or morals of children.</p>	<p>IDC</p> <p>Immigration Detention Centre: A holding place where individuals suspected of visa violations or illegal entry, or those subject to deportation and removal, are detained until a decision is made by immigration authorities to grant a visa and release them into the community, or to repatriate them to their country of departure. Several Southeast Asian nations are known to detain immigrants (including children) on visa violations including victims of trafficking.</p>	<p>Statelessness</p> <p>In International law, a stateless person is someone who is “not considered as a national by any state under the operation of its law.” Here, nationality refers to the legal bond between a person and a state.</p>
<p>ILO</p> <p>The International Labour Organization (ILO) is a UN agency dealing with labour issues, particularly labour standards, social protection, and work opportunities. The ILO has adopted over 189 conventions which are considered international standards regardless of ratification.</p>	<p>Modern Day Slavery</p> <p>Different countries use different legal terminologies, but “modern day slavery” includes the crimes of human trafficking, slavery, and slavery-like practices such as servitude, forced labour, forced or servile marriage, the sale and exploitation of children, and debt bondage. Some have argued that the use of the term ‘modern day slavery’ leads to an oversimplification of the root causes, consequences, and experiences of the worst forms of labour.</p>	<p>IOM</p> <p>The International Organization for Migration (IOM) is an intergovernmental organization that provides services and advice concerning migration to governments and migrants, including internally displaced persons, refugees, and migrant workers. In September 2016, it became a related organization of the United Nations.</p>

10.4.2 Migration and the rights of migrant workers

Specific objective	Enabling objectives
To be able to identify the patterns of migration and understand the rights of migrant workers	<ul style="list-style-type: none"> Remembering the context of migration in Southeast Asia and the related vulnerabilities to abuse and exploitation Outlining the multitude of reasons why people move/migrate Outlining the rights of migrant workers as guaranteed in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families



Steps

- Present the context of migration (as particularly relevant to Southeast Asia) especially the push and pull factors.
- Discuss the vulnerabilities faced by migrants.
- Discuss the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW).

TEACHING NOTES

Migration and the Rights of Migrant Workers

The online course on Migrant Workers and Trafficking provides a useful resource on this subject.

Screen 'Section 1: Introduction' to initiate a discussion on the context of migration in Southeast Asia. After screening, facilitate the discussion by asking such leading questions as:

- Why do people migrate for work?
- Describe the nature of problems faced by migrant workers in host countries?

Screen 'Section 2: The Migrant Workers Convention' to introduce the ICMW. Facilitate a discussion on the Convention. Some leading questions are:

- How is a migrant worker defined in the Convention?
- What are the main features of the Convention?
- What three broad categories of rights are recognised in the Convention?
- Does the Convention protect the rights of undocumented migrant workers as well?
- Identify countries in the region which have ratified the Convention. Discuss reasons to ratify the treaty.



10.4.3 Trafficking in humans

Specific objective	Enabling objectives
To provide an overview of the problem of trafficking and the legal mechanisms available for protecting the rights of victims of human trafficking	<ul style="list-style-type: none"> Understanding the problem of human trafficking Identifying the measures provided in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children



Steps

- Screen Section 10 of the online course on Migrant Workers and Trafficking to initiate a discussion on trafficking and its various dimensions. Available at <http://shapesea.com/publication/online-courses-on-human-rights-in-southeast-asia/#MDGI-8bFqhQ> (duration 23:49 mins).

TEACHING NOTES

Trafficking in Humans

After screening, facilitate the discussion by asking such leading questions as:

- What is the nature of the problem of human trafficking?
- What is the definition of trafficking as provided in the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children?
- The Palermo Protocol recognises the rights of victims of trafficking. What are these rights?
- Which people are particularly vulnerable to being trafficked?
- What measures should governments adopt to prevent trafficking and protect the rights of victims?
- How is trafficking different from smuggling?

Other points to note are:

- “Trafficking in persons” is defined as “the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”
- In the case of children, there is no need to prove the ‘means.’ A child cannot consent to exploitation.
- The Protocol Against Smuggling of Migrants by Land, Sea and Air (2003) requires State parties to criminalise the smuggling of migrants. The Protocol defines smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident.”



10.4.4 Identifying violations

Specific objective	Enabling objectives
To apply rights standards to identify violations	<ul style="list-style-type: none">• Applying rights standards to problems faced by migrant workers and victims of human trafficking and smuggling



Steps

- In pairs, ask students to discuss and analyse the case studies provided in HANDOUT 13 and try to decide if the cases portray victims of trafficking. Back in plenary, ask students to share their choices and reasoning. The aim of this session is to understand what constitutes human trafficking and how it is different from smuggling. Specifically, to:
 - » Reflect on the actions involved in trafficking related to recruitment, transportation, transfer, harbouring, or receipt of persons.
 - » Learn how migrants can be coerced, abducted, or deceived by someone.
 - » Understand the definition of exploitation.

HANDOUT 13

Case Studies, Migrant Workers and Trafficking

Scenario 1

A woman meets and marries a foreigner through the internet. When she travels to his home, she finds that he expects her to work all day at his business and he also hits her. The husband considers this to be normal and something all wives should do for their husbands. Has the wife been trafficked?

Scenario 2

An 8-year-old from a neighbouring country is brought to the city to be a child beggar. The child is happy to work as a beggar as she gets fed and is able to work with friends, although she does not get paid. Has the child been trafficked?

Scenario 3

In the course of a police raid on a massage parlour in Bangkok, a middle-aged woman (the owner) and four young women are picked up. Two of the four younger women are nationals but the other two appear foreign. The four young women all appear very scared and the two who do not speak Thai have no legal documents (such as a passport or other forms of ID) on them. Two of the girls appear to be sisters with one possibly below 18 years. Are any of the women victims of trafficking?

Scenario 4

A young man travels from the north to the south of his country to look for work. A person that he meets helps him to get a job as a delivery boy for a shop selling construction materials. His job is to load the materials onto the truck and help unload as per the different orders. He works 6 days a week and is paid just below the minimum wage (although he can earn extra through overtime). His usual working hours are from 7am to 6pm. The shop provides him with free accommodation but he is not allowed to have friends over. Is this man a victim of human trafficking?

Scenario 5

A recruiter helps a migrant to get a job in the capital city. He expected the job to be a good one but it actually turns out to be a trafficking situation. Is the recruiter guilty of trafficking?

Key to HANDOUT 13

Scenario 1

This is debatable, and would only amount to trafficking if the husband deliberately used the marriage to get unpaid work from the woman (that he deceived her which proves the “means”) and he prevented her from leaving the house (thereby proving the “purpose”). If not, then his behaviour could amount to assault or domestic violence.

Scenario 2

This is trafficking. There is no need to prove “means” where a child is involved.

Scenario 3

All four young women may be victims and they should all be investigated as such. It is difficult to determine without more information how they came to work in the massage parlour. If they were coerced or deceived into this work, it is trafficking. The young woman who is possibly under 18 years of age would therefore be a child and as she cannot consent to work in such an exploitative situation, she would be automatically classified as a trafficked child victim.

Scenario 4

None of the ‘means’ (threat or use of force or other forms of coercion or deception) were used in this case so it doesn’t qualify as human trafficking. He may be a victim of labour exploitation.

Scenario 5

This is not trafficking as the recruiter did not set out to deceive the person. However, bear in mind that this is the most common excuse given by recruiters who actually are traffickers.

A. Discussion on Difficult Questions

Doesn't irregular migration contribute to unemployment and crime in the destination country?

- Irregular migrants generally work in sectors where there are labour gaps such as construction, catering, or seasonal agriculture.
- Econometric evidence suggests immigration doesn't impact on the pay or employment rates of existing citizens and in fact contribute to economic vitality.
- A large proportion of irregular work is in the informal sector, e.g. domestic workers.
- They are also largely over-represented when it comes to less pleasant or dangerous employment, part-time work, and short-term contracts.
- Ageing populations mean immigration is necessary to assure a steady level of salary contributions.
- Research has shown that irregular migrants are no more inclined to commit crimes than natives of the host country.

Wouldn't relaxed immigration laws lead to the country being inundated?

Stringent border controls have not been found to reduce the flow of migrants but have weakened their access to human rights protection, reduced their options, and made them more vulnerable to smugglers and traffickers.

Is it true that victims of human trafficking are usually physically trapped in situations of exploitation (chained, tied up, etc)?

- The concept of trafficking victims being physically trapped is easier to understand because of its visibility.
- Chains, ropes and locks are traditionally considered the only means to maintain slavery-like situations.
- The use of these tools makes it easier to understand why the victim cannot escape and how much he/she suffers (wounds, bruises, lack of food, poor hygiene, etc).
- In reality, psychological force, abuse, coercion, and manipulation are widely used to maintain control over victims.
- Often traffickers try to build a strong emotional relationship with victims to maintain emotional and economic subordination.
- The majority of victims are not actually abducted/kidnapped but deceived into leaving their country with the promise of jobs, money, etc.
- Trafficked victims are not 'materially' chained but threatened by confiscation of passports, violence, and fear of reprisals against family members who remain in the country of origin.

What about the issue of domestic/internal human trafficking?

- Internal/domestic human trafficking is frequently neglected by governments who overly focus on cross-border trafficking.
- There is often a reluctance to admit a problem exists within a country's own borders, affecting their own nationals; it's easier to highlight a problem as having a foreign influence.
- Data indicates that people are trafficked within some countries, sometimes prior to being sent abroad.
- In some countries, domestic trafficking has become more widespread than cross-border trafficking. In the last few years most effort has concentrated on cross-border trafficking, while targeted initiatives to deal with domestic trafficking are still missing and this applies to all areas of prevention, protection, and rehabilitation.

Can human trafficking really be stopped?

- Human trafficking is a very difficult issue and there are no easy solutions.
- Experts agree that raising public awareness, changing the attitudes of decision-makers, and ultimately introducing or strengthening legislation to protect migrants can make a great difference.

What was the need for a separate convention on migrant workers?

- As discussed in the chapter on statelessness, the ICCPR and ICESCR are applicable to non-citizens as well.
- There are some rights which can only be enjoyed by citizens, e.g. the right to vote and the right to participate in elections. Non-citizens should be able to enjoy all other rights, apart from these specific rights.
- However, migrant workers have specific issues and concerns that are not reflected in the ICCPR and ICESCR. The treaty on migrant workers provides a definition of migrant workers and categorically notes that rights protections must be available to both documented and undocumented workers. Similarly, Art 16 of the Convention focuses on the rights to liberty and security of persons and unpacks this right in the context of the vulnerabilities faced by migrant workers. It is for these reasons, that the need for a separate convention of migrant workers was felt.

Why have so few countries ratified the convention on migrant workers?

Receiving countries are apprehensive of ratifying it as they believe it gives recognition to too many migrant worker rights. They fear if working conditions for migrant workers are too good, it would invite a flood of such persons thereby straining welfare services. There may also be pressure from business sectors on governments to allow them to hire cheap migrant labour.

B. Resources

International Organisation on Migration (IOM)

Available at <https://www.iom.int>

Migrant Forum in Asia

Available at <https://mfasia.org>

United Nations Action for Cooperation against Trafficking in Persons (UN-ACT)

Available at <http://un-act.org>

PART IV

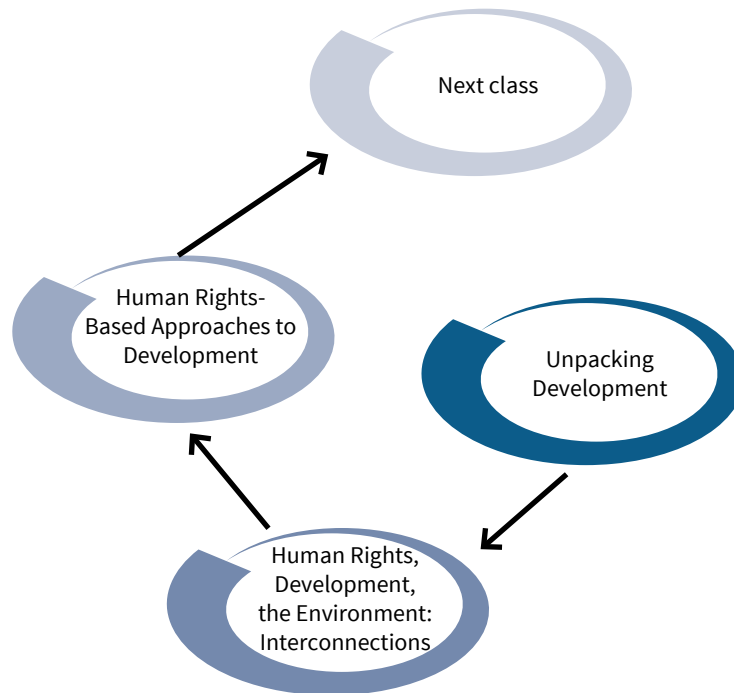
Thematic Issues

Chapter 11

Human Rights and Development

11.1 Introduction

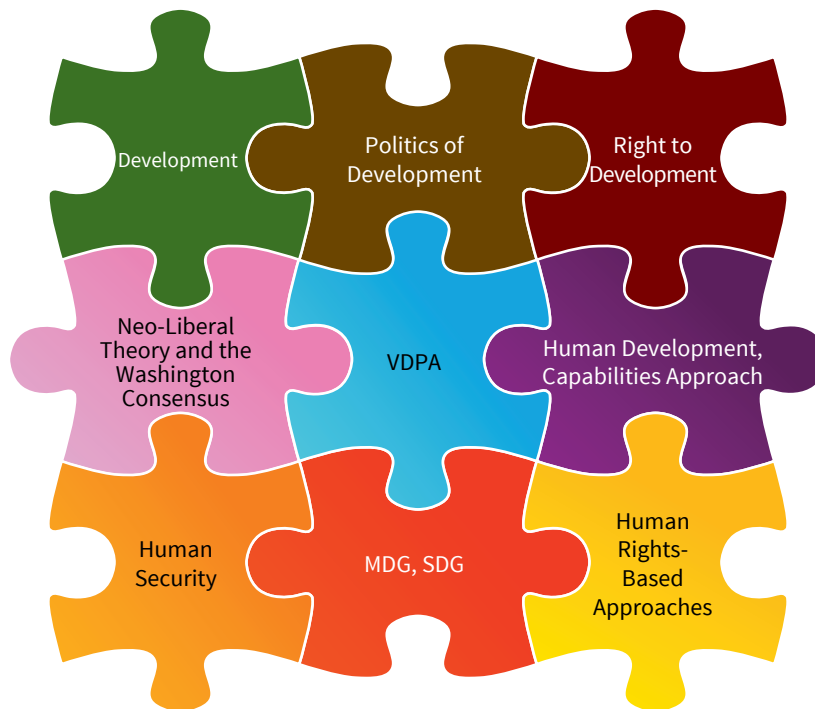
This class focusses on human rights and development. It first attempts to unpack the meaning of development. Next, it discusses the various new approaches to understanding development that have been adopted to ensure that processes are grounded in respect for human rights. Lastly, it examines the core principles of human rights-based approaches to development and their application to given cases.



11.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Unpacking Development	To understand the meaning of development	<ul style="list-style-type: none"> To examine the different meanings of development
2. Human Rights, Development the Environment: Interconnections	To evaluate the interconnections between human rights, development, and the environment	<ul style="list-style-type: none"> Reflecting on the new approaches to development To identify the linkages between human rights, development, and the environment
3. Human Rights-Based Approaches to Development	To evaluate the human rights-based approaches to development	<ul style="list-style-type: none"> Identifying the core elements of human rights-based approaches to development Applying the core principles to development problems

11.3 Key Elements



11.4 Class Structure and Design

11.4.1 Unpacking development

Specific objective	Enabling objectives
To understand the meaning of development	<ul style="list-style-type: none">To examine the different meanings of development



Steps

- Brainstorm the meaning(s) of development.
- For example, ask students to list the terms they associate with development and provide a brief explanation of such terms.
- Write these words on the board. These may include: economic growth, higher incomes, economic opportunities, wealth, equality, human development, human rights, sustainable development, etc.
- Use a case study to unpack the dynamics of development.

TEACHING NOTES

Unpacking Development

An example case study for unpacking development is provided below:

The government in Country X plans to develop a high speed train to connect two cities. The rationale is that the high speed train will facilitate business and trade, and thus will result in the creation of more jobs which will increase standards of living. However, the government will have to acquire land from farmers in order to build the railway line, thus displacing these people who depend on the land for their livelihoods. At the same time, forests lie in the route of the high speed train and environmentalists are concerned about the detrimental impact on wildlife in the area. In response to protests from affected farmers and environmentalists, the government accuses both groups of being anti-nationals who do not appreciate the big picture, but are only looking at their narrow interests. The government uses the Law on Sedition to arrest the leaders of the protest movements.

Possible questions for discussion:

- Do you agree with the government's position?
- If yes, give reasons why you think the government should go ahead with its plan.
- If not, explain your reasons.

Students agreeing with the government may cite reasons such as economic growth and an increase in employment opportunities, while students who do not agree may mention the environment and the rights of the farmers. Link these positions with the different meanings of development articulated by students at the beginning of the class.

Introduce the idea that development is a political term and is often conceptualised by governments and people in different ways. Using the case study, discuss the trajectory of development planning in Southeast Asia, where most countries have focussed on economic growth at the cost of political freedoms.

Discuss the different approaches to development, and the approaches that gained dominance at different periods in recent history.

Some suggested points for discussion are:

- Development based on communist ideologies
- Development based on capitalist ideologies
- Neo-liberal economic theory and the Washington consensus
- Trickle-down theory



11.4.2 Human rights, development, the environment: Interconnections

Specific objective	Enabling objectives
To evaluate the interconnections between human rights, development, and the environment	<ul style="list-style-type: none">• Reflecting on the new approaches to development• To identify the linkages between human rights, development, and the environment



Steps

- Introduce the milestones in linking human rights, development, and the environment, highlighting their salient features. The discussion should include:
 - » The UN Declaration on the Right to Development 1986
 - » The Vienna Declaration and Program of Action, 1993
 - » The Human Development Approach introduced in the first Human Development Report, 1990
 - » Capabilities Approach, Development as Freedom
 - » The Idea of Human Security, 1994
 - » Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs)
- Ask students to review the concepts of the right to development, human development, the capabilities approach, human security, SDGs, and to identify the interconnections, if any, with human rights and the environment. For example, are there interlinkages between the right to development and other human rights recognised in the international bill of rights? Are there interconnections with the right to a clean environment?

TEACHING NOTES

Human Rights, the Environment, and Development

Declaration on the Right to Development

Adopted by the UN General Assembly in 1986, the second paragraph of the Preamble to the Declaration recognises that:

Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom ...

The tenth paragraph of the Preamble also notes that:

... in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.

The salient points of the Declaration and its 10 articles are:

- The right to development is an inalienable human right, which also includes the full realisation of the right of peoples to self-determination.
- Humans are the central subject of development and should be active participants and beneficiaries of the right to development.
- States have the primary responsibility for the creation of national and international conditions favourable to the full realisation of the right to development.
- States have a duty to take steps, individually or collectively, to formulate international development policies so as to facilitate the full realisation of the right to development.

Vienna Declaration and Program of Action

The Vienna Declaration and Program of Action (VDPA) was adopted by the World Conference on Human Rights on 25 June 1993.

The VDPA recognised that democracy, development, and respect for human rights and fundamental freedoms were interdependent and mutually reinforcing (Para 8).

Paragraph 10 of the Declaration states:

The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.



States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.

Human development

The concept of human development was introduced in the global Human Development Report published by the United Nations Development Program (UNDP) in 1990.

As defined in the report, human development is:

... a process of enlarging people's choices. In principle, these choices can be infinite and change over time. But at all levels of development, the three essential ones are for people to lead a long and healthy life, to acquire knowledge and to have access to resources needed for a decent standard of living. If these essential choices are not available, many other opportunities remain inaccessible.

But human development does not end there. Additional choices, highly valued by many people, range from political, economic and social freedom to opportunities for being creative and productive and enjoying personal self-respect and guaranteed human rights.

Human development has two sides: the formation of human capabilities such as improved health, knowledge and skills, and the use people make of their acquired capabilities – for leisure, productive purposes or being active in cultural, social and political affairs. If the scales of human development do not finely balance the two sides, considerable human frustration may result.

According to this concept of human development, income is clearly only one option that people would like to have, albeit an important one. But it is not the sum total of their lives. Development must, therefore be more than just the expansion of income and wealth. Its focus must be people.

Development as freedoms

This concept of human development is located in Amartya Sen's work on understanding development as freedoms, and Martha Nussbaum's idea that development should improve an individual's capabilities. The main elements of this approach to development are:

- The notion of capability refers to the range of options a person has in deciding the kind of life she/he wants to lead. These options can also be understood as 'freedoms.'



- While growth of gross national product (GNP) can be an important means of expanding freedoms enjoyed by people, freedoms also depend on other determinants such as social and economic arrangements (e.g. facilities for education and healthcare) and political and civil rights (e.g. the freedom to participate in public discussions and to exercise scrutiny over government actions).
- Freedoms help in enhancing the capabilities of persons to lead the kind of lives they value. At the same time, enhanced capabilities help to strengthen the exercise of freedoms. For example, public policy on education and healthcare strengthens the capabilities of persons, who are then more equipped to participate in making public policy.
- Thus, development should aim to remove the major sources of unfreedom: poverty, poor economic opportunities, systematic social deprivation, neglect of public facilities, as well as intolerance and imposition of restrictions by repressive States.

Human security

The Human Security approach was first introduced in 1994 in the global Human Development Report published by the UNDP. Human Security was explained to have two major components: freedom from fear and freedom from want. The report listed seven interlinking elements of human security, as follows:

- Economic security requires an assured basic income, usually from productive and remunerative work, or in the last report, from publicly financed safety nets.
- Food security implies that all people at all times should have both physical and economic access to basic food. Access to food is linked to access to assets, work, and an assured income.
- Health security implies safety from chronic, infectious, and parasitic diseases which are mostly linked to poor nutrition and unsafe environments such as polluted water.
- Environmental security is related to threats posed to the environment because of degradation of local ecosystems, intensive industrialisation, and rapid population growth.
- Personal security refers to security from physical violence. Threats to personal security include: threats from the State, threats from other States, threats from other groups of people, threats directed against women, and threats directed at children based on their vulnerability and dependence.
- Community security refers to threats to traditional communities by the steady processes of modernisation. Traditional communities, such as membership in a group, or extended families provide protection and support to members in need.
- Political security implies that people should be able to live in a society that honours their basic human rights.





The report explained, that to address the growing challenge of human security, there is a need for a new paradigm of development which:

- Places people at the centre of development;
- Regards economic growth as a means and not an end;
- Protects the life opportunities of future as well as present generations; and which
- Respects the natural systems on which all life depends.

Millennium Development Goals (MDGs)

In September 2000, UN member States adopted the United Nations Millennium Declaration, and committed to a global partnership for reducing extreme poverty. Eight time-bound goals were adopted, which came to be known as the Millennium Development Goals. The goals were: (1) Eradicating extreme poverty and hunger; (2) Achieving universal primary education; (3) Promoting gender equality and empowering women; (4) Reducing child mortality; (5) Improving maternal health; (6) Combating HIV/AIDs, malaria, and other diseases; (7) Ensuring environmental sustainability; and (8) Developing a global partnership for development.

Sustainable Development Goals (SDGs)

The 2030 Agenda for Sustainable Development was adopted to build upon the achievements of the MDGs. Seventeen goals were adopted: (1) Eradicate poverty; (2) Eradicate hunger; (3) Promote good health and well-being; (4) Ensure quality education; (5) Achieve gender equality; (6) Ensure clean water and sanitation; (7) Ensure affordable and clean energy; (8) Promote economic growth and decent work for all; (9) Build and promote industry, innovation, and infrastructure; (10) Reduce inequalities; (11) Build sustainable cities and communities; (12) Ensure responsible consumption and production; (13) Act to combat climate change; (14) Conserve and sustainably use the oceans; (15) Sustainably use and manage life on land; (16) Promote peace, justice, and strong institutions; and (17) Strengthen partnership for the goals.

11.4.3 Human rights-based approach to development

Specific objective	Enabling objectives
To evaluate the human rights-based approaches to development	<ul style="list-style-type: none">• Identifying the core elements of human rights-based approaches to development• Applying the core principles to development problems



Steps

- Discuss the core principles of the human rights-based approach to development.
- Using case studies, encourage students to apply the core principles to address development problems. Example case studies are provided in HANDOUT 14.

HANDOUT 14

Core Principles and Case Studies

The details of a human rights approach will vary depending upon the nature of the issue, program, or intervention. However, some common principles have been identified, which can be summarised as PANEL:

- *Participation*: There must be space for free, active, meaningful and inclusive participation of affected people in the planning and implementation of a project.
- *Accountability*: States and other duty bearers have an obligation to abide by human rights and are answerable for the observance of human rights. When there is a failure on the part of the duty bearers, the aggrieved rights holders should be able to institute appropriate proceedings to seek redress and remedy.
- *Non-discrimination and equality*: There must be respect for the rights of equality and non-discrimination, and measures must be taken to eliminate all forms of discrimination.
- *Empowerment*: Everyone affected by a development intervention or program should be able to understand their rights, participate fully in policy decisions that affect their lives, and take steps to claim them when such rights are under threat.
- *Legality*: An intervention, policy, or program must be grounded on respect for human rights and the freedom of all persons.

Case Study 1

(taken from Human Rights Textbook, Volume 2, Chapter 12)

A government in a developing country wants to improve the education system by providing computers to a number of high schools across the country. But it turns out the cost of providing these computer rooms to distant rural areas will cost ten times more than in the city because of the need to build new rooms, provide electricity, train the teachers, and transport the computers to these remote locations. So instead, the government decides to build ten times as many computer rooms in the city, claiming that ten times as many children will get access to training computers, and city children are more likely to use computers in their jobs, study, and future work. However, opponents counter this by saying the development project will only increase the disparities that already exist in the levels of education between urban and rural children. Because rural children are not given the opportunity to become computer literate, they will have more trouble getting good jobs or getting into university.

Do you agree with the government's approach?

Case Study 2

(taken from Human Rights Textbook, Volume 2, Chapter 12)

A children's hospital needs to be built in a densely populated part of the city. The hospital has to be near where most children live and be accessible to poorer suburbs. But the hospital will displace people whose homes will be knocked down to build it. These people complain they will be forced to move from where they, and their families, have lived for as long as they can remember. They refuse to move.

What can be done? The children need a hospital (they have a right to a health service) – but in this case, it is unfeasible to build elsewhere. Can all these people be forcibly moved for the hospital? All countries have laws which allow for the forcible displacement of people (under very strict circumstances) usually requiring them to be displaced to homes with better access to services.

However, the people refuse to go because they say, quite accurately, that their community will be destroyed. Can this development go ahead? If so, what kind of compensation or provisions would the government need to enact?

Key to HANDOUT 14

Case Study 1

One of the key principles of human rights-based approaches is equality and non-discrimination. In the context of the case study, children from urban as well as rural areas should have an equal opportunity to access education and vocational training.

The government is wrong to provide computer education only to urban areas.

The government has to address the barriers of providing education in rural areas by taking measures such as building an adequate number of schools, providing training to teachers, and improving accessibility to schools by building roads.

In order to take such steps, the government needs to allocate an adequate budget towards improving the education system in rural areas.

Case Study 2

This concerns two important rights which appear to be in conflict: the right of children to adequate healthcare and the right of the community not to be forcibly evicted from their land, in addition to their rights to an adequate livelihood.

Since it is unfeasible to build the hospital elsewhere, the government needs to secure the consent of the people who would be displaced and who are protesting against the project. It can secure such consent by sharing the full details of the project and explaining to the people that establishment of the hospital is necessary to provide healthcare to children from poorer communities.

The government also has to take measures to provide the affected community with alternate land and housing and compensation so they can rehabilitate themselves. Further, it should involve the affected people in the development of such compensation and rehabilitation schemes.

Planned development projects may adversely impact some people/communities. Accordingly, governments must recognise the rights of these people and take appropriate steps to mitigate the harm and provide them with adequate remedies. While doing so, it must also respect the principles of participation and be transparent in its processes and decision-making.

In these ways, the government may be able to transform potential conflicts and secure the consent of the people.

A. Discussion on Difficult Questions

Do people have the right to say ‘no’ to a development project?

While it is recognised that people have the right to participate in decision-making on projects affecting their lives, there is still no acceptance that it includes the right to say ‘no.’

People affected by development projects such as dams, mining, energy projects, etc, are campaigning for the recognition of the right to say ‘no.’ They claim that the principle of free, prior, and informed consent (FPIC) as recognised in the United Nations Declaration on the Rights of Indigenous People, should also include the right to say ‘no.’

B. Resources

Danish Institute for Human Rights, available at <https://www.humanrights.dk/>

Contains links to interactive learning tools and other learning resources available on the internet.

HRBA Portal, available at hrbaportal.org

A rich source of information about the application of human rights-based approaches to development issues.

Piron, L-H, ‘The right to development’ Overseas Development Institute (ODI), April 2002, available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2317.pdf>

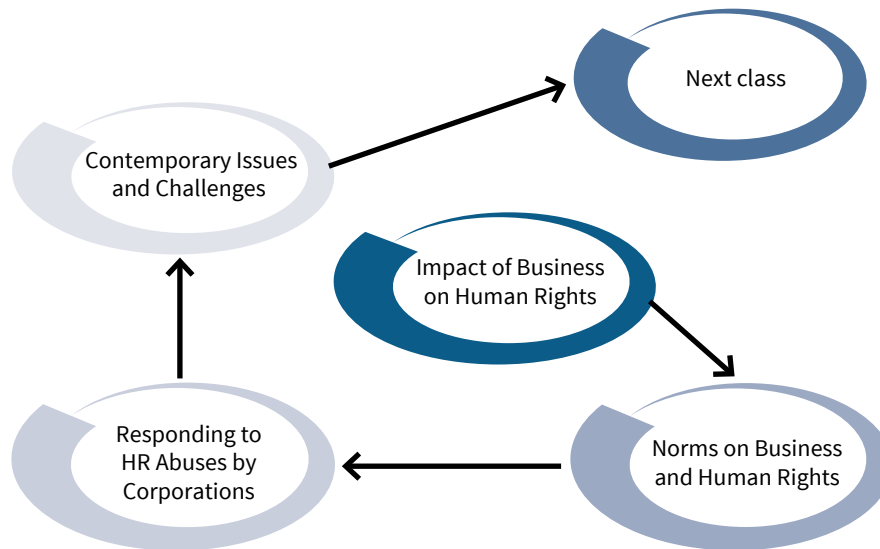
Provides an overview of the historical background to the right to development and related political debates.

Chapter 12

Business and Human Rights

12.1 Introduction

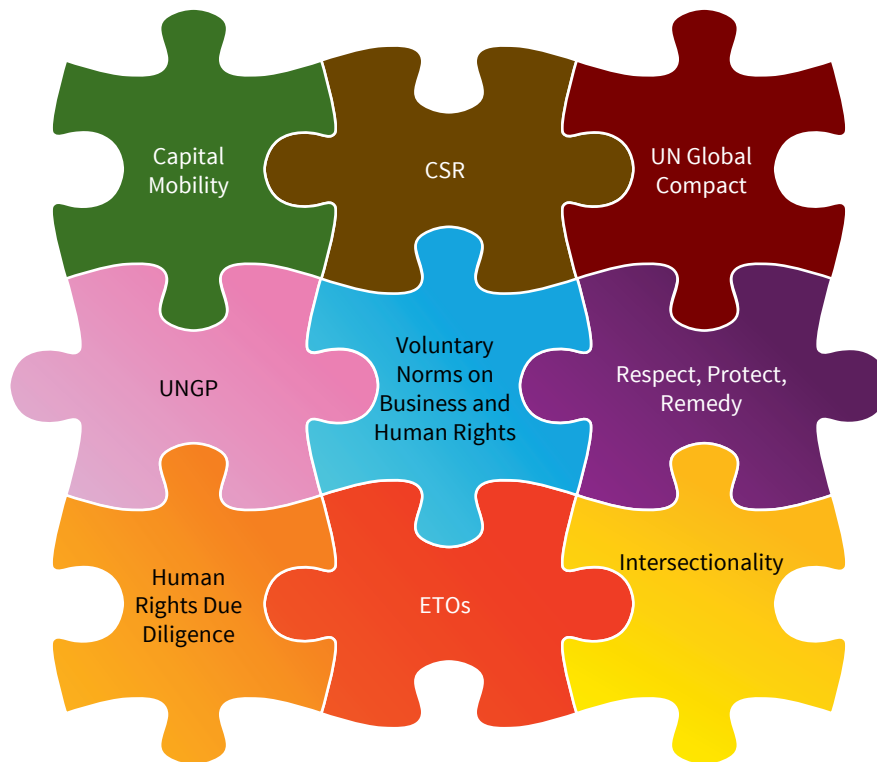
This class examines the landscape on business and human rights. It discusses the impact that business can have on the enjoyment of human rights, identifies the normative framework, and discusses the strategies that are being used to make businesses accountable. Lastly, it discusses some of the contemporary issues and challenges involved in making corporations accountable for their human rights duties.



12.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Impact of Business on Human Rights	To understand how businesses can impact human rights	<ul style="list-style-type: none"> Reflecting on ways in which business impacts human rights
2. Norms on Business and Human Rights	To remember the norms relating to business and human rights	<ul style="list-style-type: none"> Identifying the norms related to business and human rights
3. Responding to HR Abuses by Corporations	To evaluate the strategies used to hold businesses accountable for human rights	<ul style="list-style-type: none"> Identifying different strategies used to respond to infringements on human rights by business Reflecting on the strengths and weaknesses of the different strategies
4. Contemporary Issues and Challenges	To evaluate achievements towards making business accountable for human rights	<ul style="list-style-type: none"> Reflecting on contemporary issues and challenges

12.3 Key Elements



12.4 Class Structure and Design

12.4.1 Impact of business on human rights

Specific objective	Enabling objectives
To understand how businesses can impact upon human rights	<ul style="list-style-type: none">Reflecting on ways in which business impacts human rights



Steps

- Initiate a discussion on the ways in which business impacts human rights and the actors and factors involved.
- Use case studies to facilitate the discussion (see HANDOUT 15).

HANDOUT 15

Case Study Analysis, Impact of Business on Human Rights

In the case studies below, identify the different interests and actors involved. Also identify the ways in which human rights could be impacted.

Case Study 1: Cambodia's Garment Manufacturing Industry

(taken from Dean Shira and Associates, 'Cambodia's Garment Manufacturing Industry' ASEAN Briefing, available at <https://www.aseanbriefing.com/news/2017/11/08/cambodias-garment-manufacturing-industry.html>, accessed on 5 December 2019)

Cambodia is strategically located in the heart of Southeast Asia. The country is popular for providing a low-cost manufacturing base for several industries. Among the many advantages that the country offers to investors are duty-free access to some large and developed markets, a stable economy, and several government incentives. Additionally, there are several special economic zones exclusively established to promote manufacturing across the country.

Cambodia's garment manufacturing industry is largely export oriented and highly integrated into global supply chains. The European Union (EU) represents the largest market for Cambodian garment exports, accounting for approximately 40 percent of the total manufacturing, followed by the United States (30%), Canada (9%), and Japan (4%). Many companies in the country operate as contract manufacturers for major multinational brands such as Adidas, GAP, H&M, Marks & Spencer, and UNIQLO.

The garment industry is essentially dominated by foreign-owned firms, mainly from neighbouring countries such as China, Hong Kong, Singapore, Malaysia and the Republic of Korea. Further, it is based on low-skilled, labour-intensive activities. A significant proportion of Cambodia's population lives below the poverty line with low levels of education. As a result, the country has a large pool of low-cost and low-skilled workers. The vast majority of workers employed in the garment factories are women with minimum skills.

Case Study 2: Xayaburi Dam

In 2010, the Thai and Lao governments decided to build a massive dam on the Mekong river in Xayaburi province for the purpose of generating hydro-electric power. The project is being built by one of Thailand's largest construction companies and is financed by several commercial banks in Thailand. The Electricity Generating Authority of Thailand (EGAT), managed by the Ministry of Energy, has also agreed to purchase the electricity that is to be produced. The life and livelihood of many communities in Laos, Vietnam, Cambodia, and Thailand are connected to the Mekong river, over which the dam is to be built.

Key to HANDOUT 15

Case Study 1

Some of the different interests at stake are the country's economic growth, the business interests of investors, and the poor who want employment opportunities. The actors involved are the State, the European Union, multinational corporations, the poor, and especially poor unskilled women.

The impact on human rights may include labour being employed in the industries at less than minimum wages and unsafe working conditions.

Case Study 2

The interests involved are economic benefits to Lao and investors in Thailand and Thailand's energy requirements. The actors include the governments of Laos and Thailand, investors in Thailand, the company constructing the dam, and the people whose lives will be affected.

The human rights impacts include acquisition of land used by the people for cultivation and housing, dispossession and forced evictions, and loss of livelihoods and control over the means of sustenance such as the river and land with which such livelihoods are integrally connected.

12.4.2 Norms on business and human rights

Specific objective	Enabling objectives
To remember the norms relating to business and human rights	<ul style="list-style-type: none">Identifying the norms relating to business and human rights



Steps

- Examine the challenges involved in enforcing human rights standards impacted by business.
- Introduce the voluntary norms on business and human rights by describing:
 - » The concept of Corporate Social Responsibility (CSR)
 - » The United Nations Global Compact. Screen the short video on the UN Global Compact to facilitate discussion: Global Initiatives, 'UN Global Compact' (duration 4:05 mins), available at <https://www.youtube.com/watch?v=MQLXA1Nhjuo>
- Introduce the UN Guiding Principles on Business and Human Rights. Screen the short video to assist the discussion: Baab, M, 'The UN Guiding Principles on Business and Human Rights: An introduction' (duration 3.36 mins), Danish Institute for Human Rights, 14 January 2015, available at <https://www.youtube.com/watch?v=BCoL6JVZHRa>
- Introduce the concept of Due Diligence as prescribed in the UN Guiding Principles. Screen the short video to assist the discussion: Danish Institute for Human Rights, 'Due diligence: Business and human rights' (duration 3.41 mins), available at <https://www.youtube.com/watch?v=pQaW3ZqPizU&t=96s>
- Discuss developments with regard to a binding treaty on business and human rights.

TEACHING NOTES

Norms on Business and Human Rights

Challenges in enforcing rights

(refers to the case studies discussed in 12.4.1 on Cambodia's garment manufacturing industry and the Xayaburi Dam)

Existing human rights treaties provide a framework to make business accountable for human rights. Some aspects are:

- **Business as duty bearers:** Articles 29 and 30 of the Universal Declaration of Human Rights provide that no State, group, or person can infringe upon human rights. Thus, business enterprises have a duty to respect the human rights of others.
- **State obligation to protect:** It has been recognised that all States have an obligation to protect individuals from the actions of non-state actors infringing upon their rights. Thus, States have to take appropriate measures (judicial, legislative, and administrative) to protect individuals from the actions of business entities. Some examples are measures to control and prevent pollution by industries or violations of labour rights.
- **Labour rights:** In the area of work, these rights are recognised by the ICESCR. They are also recognised by the different Conventions adopted by the International Labour Organisation (ILO). The ILO has a tripartite governance structure with representatives from government, employers, and labourers, and it engages in dialogue with all these actors to strengthen the recognition and protection of such rights.
- In 2017, the Committee on Economic, Social and Cultural Rights adopted General Comment 24, which elaborates upon State obligations to respect, protect, and fulfil in the context of business activities.

Challenges in making businesses accountable

- Often, as in the case study of Cambodia above, other dynamics are involved such as capital mobility. Businesses move to States offering them the most attractive conditions such as low levels of labour protection or which have weak regulatory frameworks. States in need of such business investments are therefore caught in this dilemma.
- Further, as in the case of the garment industry in Cambodia, big businesses distance themselves from manufacturing units by outsourcing the work to contractors and sub-contractors. Thus, it is difficult to trace the supply chain and seek accountability.
- Though infrastructure projects have an adverse impact on the lives of the people living in project areas, it is difficult to challenge these projects as they are undertaken for 'public purposes.' The laws in most countries give States the authority to acquire land through due process for 'public purposes' such as to build power plants and dams, and to construct roads, etc. However, information about these projects is often not freely available, and thus people are unable to effectively participate in the due process mechanisms established such as social impact assessments, environmental impact assessments, or public hearings, etc.

Standards on business and human rights

Noting the power that business entities enjoy, there has been pressure on them to adopt human rights standards and integrate them within their practices. This is also in accordance with the principle that every entity has a duty to respect the rights of others living in society.



For these reasons, over the years, businesses have embraced self-regulation in the form of ‘**corporate social responsibility**’ or **CSR**. Simply, it means that companies acknowledge their responsibility to the community and adopt programs accordingly. CSR may be discharged by companies in different forms, e.g. abiding by labour standards or engaging in charity work.

Another voluntary initiative has been the adoption of the **United Nations Global Compact in 2000**. The Global Compact is a commitment by businesses to integrate the fundamental principles of human rights, labour, the environment, and anti-corruption in their strategies and operations. Companies who sign on to the Global Compact have to submit statements regarding the actions taken by them to implement the principles and the achieved outcomes. These documents are open to the public for review. The ten principles of the UN Global Compact are:

Human rights

Principle 1: Business should support and respect the protection of internationally proclaimed human rights; and

Principle 2: Ensure they are not complicit in human rights abuses.

Labour

Principle 3: Business should uphold freedom of association and effective recognition of the right to collective bargaining;

Principle 4: Elimination of all forms of forced and compulsory labour;

Principle 5: Effective abolition of child labour; and

Principle 6: Elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Business should support a precautionary approach to environmental challenges;

Principle 8: Undertake initiatives to promote greater environmental responsibility; and

Principle 9: Encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Business should work against corruption in all its forms, including extortion and bribery.

United Nations Guiding Principles (UNGP) on Business and Human Rights

In 2011, the Human Rights Council adopted the UN Guiding Principles. Developed by John Ruggie, the Special Representative of the Secretary General on the issue of transnational corporations and business enterprises, these are not new standards. Rather, they are an elaboration upon the implications of existing standards that have been recognised under the core human rights treaties.

The three pillars of the Guiding Principles are: (1) corporate responsibility to respect human rights (Respect); (2) State duty to protect against human rights abuses by third parties (Protect); and (3) the duty to provide an effective access to remedies (Remedy). Also known as the ‘Respect, Protect, Remedy Framework,’ the principles clarify how States and business entities should comprehend and implement their human rights obligations. The three pillars of the Guiding Principle are explained below.



Guiding Principle 1: Protect

States must protect against human rights abuse by third parties within their territory and jurisdiction.

The Guiding Principles also elaborate upon measures States should take in order to operationalise the Obligation to Protect. These include:

- Strengthening the general State regulatory and policy framework governing the possible human rights impact of operations of business enterprises;
- Addressing the State-business nexus, by taking appropriate steps to protect against human rights abuses by business enterprises that are owned or controlled by the State or which receive substantial support from the State, or which provide services which impact on the enjoyment of the human rights of people;
- Supporting business respect for human rights in conflict affected areas; and
- Ensuring policy coherence.

Guiding Principle 2: Respect

Business enterprises should respect human rights. This implies that business enterprises should refrain from infringing upon human rights and address the adverse impact of their operations on human rights.

The operational principles with regard to the obligation on business to respect human rights include:

- Policy commitment by business enterprises towards human rights;
- Conducting human rights due diligence; and
- Providing or co-operating in remediation of the adverse impacts caused by business activities.

Guiding Principle 3: Access to Remedy

As part of their duty to protect, States must take appropriate steps to ensure through judicial, legislative, administrative, and other appropriate means, that affected people have access to effective remedies. The operational principles with regard to the obligation on business to respect human rights include:

- Ensuring the effectiveness of domestic judicial mechanisms when addressing business related human rights abuses;
- Providing effective and appropriate non-judicial grievance mechanisms alongside judicial mechanisms; and
- Facilitating access to effective non state-based grievance mechanisms.

Human rights due diligence

This is a process of assessing actual and potential human rights impacts, acting upon the findings of such assessments, tracking the responses, and communicating how the adverse impacts have been addressed. The different aspects of human rights due diligence are elaborated upon in Principles 17-21 of the Guiding Principles. The same principles would also be applicable to businesses controlled by the State or which receive considerable support from it.





Non-State based grievance mechanisms

Non-State based grievance mechanisms include those which are administered by business alone or together with stakeholders. Such mechanisms may use adjudicative, dialogue-based, or other compatible processes. Guiding Principle 31 identifies the fundamental requirements for the effectiveness of such mechanisms. As per this principle, such mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights compatible, and a source for continuous learning.

A UN Working Group on Business and Human Rights has been established to monitor the implementation of the Guiding Principles. The Working Group strongly urged States to develop national action plans on business and human rights to implement the Guiding Principles and has developed strategies to assist in this process.

Binding treaty

In 2014, the UN Human Rights Council adopted a resolution to consider a legally binding treaty on human rights and transnational corporations and other businesses. Since then, a draft of such a treaty has been prepared and consultations are being held at different levels.

12.4.3 Responding to human rights abuses by corporations

Specific objective	Enabling objectives
To evaluate the strategies used to hold businesses accountable for human rights	<ul style="list-style-type: none">Identifying different strategies used to respond to infringements on human rights by businessReflecting on the strengths and weaknesses of the different strategies



Steps

- Critically discuss the different strategies used by civil society groups, social movements, and human rights organisations to address the adverse impact of business operations on human rights.
- List some of the strategies for responding to human rights abuses by business. Assign a strategy to a group of students and ask them to research and present a report. Examples of strategies with leading questions to guide research are given below.

TEACHING NOTES

Responding to HR Abuses by Corporations



Legal actions against businesses

One of the strategies is to take legal action against businesses by filing cases in courts of law. The possibility of such an action depends upon a State's legal framework.

- Ask students to identify litigation filed by members of the public against businesses and analyse the problem by identifying the issues, the actors, and the claims made, in addition to examining the arguments of the business, and the court's decision.

Consumer activism

- Discuss the different forms of consumer activism, such as consumer boycotts, campaigns, etc.
- Ask students to identify examples of different forms of consumer activism.
- Critically reflect on the effectiveness of such strategies.

Multi-stakeholder initiatives

- Multi-stakeholder initiatives refer to initiatives where different stakeholders come together to engage in dialogue and discuss how human rights abuses within an industry can be addressed.
- The 'Seafood Task Force' and the 'Ship to Shore Rights Project' of the International Labour Organisation (ILO) are examples of multi-stakeholder initiatives in Thailand.
- Ask the group to research either one or both of these initiatives and present a short report regarding the stakeholders involved, the focus of the issues, and the nature of their activities.

12.4.4 Contemporary issues and challenges

Specific objective	Enabling objectives
To evaluate achievements towards making business accountable to human rights	<ul style="list-style-type: none"> • Reflecting on contemporary issues and challenges



Steps

- Critically discuss issues of contemporary concern such as extra-territorial obligations, international trade and human rights, and the intersectionality of gender with business and human rights.

International Trade and Human Rights

The Regional Comprehensive Economic Partnership (RCEP) is a trade agreement between ASEAN and six trading partners (China, India, Japan, South Korea, Australia, and New Zealand).

- » Screen the following video: APWLD, 'No RCEP campaign: Thai women's groups reject RCEP' (duration 1:38 mins), July 2018, available at <https://www.youtube.com/watch?v=bsHO-FOqsLE>.

- » Ask students to identify the issues and the concerns raised by women's groups in Thailand.
- » Ask students to research whether civil society in other countries also raised similar concerns.
- » Introduce the concept of intersectionality. Ask students to do exploratory research and identify other cases where business initiatives have had a disproportionate impact on women and present a short report on the issue.

Extra-Territorial Obligations (ETOs)

- » Ask students to identify the issues discussed in the press statement (see HANDOUT 16) and to summarise the Thai government's demands.
- » Discuss the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights.

TEACHING NOTES

Contemporary Issues and Challenges

Intersectionality, gender business, and human rights

Women and girls experience the impact of business in different ways than men and are often impacted disproportionately. Women may also face multiple forms of discrimination and additional barriers in seeking access to remedies for business-related human rights abuses. Building on existing standards, the UN Working Group on Business and Human Rights therefore developed a Gender Framework that provides gender guidance for all the 31 principles stated in the UNGPs. See, OHCHR, 'Gender lens to the UNGPs' available at <https://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx>, accessed on 5 December 2019.

Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (referred to as the Maastricht Principles)

In 2011, a meeting of international experts deliberated upon gaps in the human rights protection system in the context of globalisation that had been highlighted through research and the experience of civil society organisations. At this meeting, the Maastricht Principles were adopted to respond to:

- The lack of human rights regulation and accountability of transnational corporations;
- The absence of human rights accountability of intergovernmental organisations (IGOs), in particular international financial corporations (IFCs);
- The ineffective application of human rights law to investment and trade laws, policies and disputes; and
- The lack of implementation of duties to protect and fulfil economic, social, and cultural rights abroad, *inter alia* through the obligations of international cooperation and assistance.



HANDOUT 16

Extra-Territorial Obligations

Thailand Must Act on its Commitments to Business and Human Rights for Thai Investments Abroad

(A statement submitted by Extraterritorial Obligations-Watch (ETOs Watch) on behalf of affected communities from Thai investments in Cambodia, Lao PDR, Myanmar, and Thailand: available at <https://earthrights.org/media/thailand-must-act-on-its-commitments-to-business-and-human-rights-for-thai-investments-abroad/>, accessed on 5 December 2019)

March 26th, 2018, Bangkok – We, non-governmental organizations, ETOs-Watch members and partners representing communities who are directly affected by Thai investments abroad, including over eight mega-projects in Cambodia, Lao PDR, and Myanmar, have been monitoring Thai outbound investments in Myanmar, Cambodia, and Lao PDR. These include: the Koh Kong and Oddar Meanchey sugar plantations in Cambodia; the Xayaburi dam and the Hongsa coal mine and power plant in Lao PDR; and the Dawei Special Economic Zone, Banchaung coal mine, Heinda tin mine, and Hatgyi dam in Myanmar. Communities affected by Thai outbound investment demanded compensation and remedy caused by Thai investments. We, ETOs-Watch Coalition, call for the Thai government to take proactive steps to protect the rights of communities that have already been or may be affected by Thai outbound investments. We call for Thai investors to conduct due diligence and to comply with the United Nations Guiding Principles on Business and Human Rights (UNGPs) and other international human rights best practices and standards.

Across ASEAN countries, there is growing concern over a lack of accountability for human rights violations associated with Thai outbound investments. Negative environmental and social impacts of these investments commonly include destruction of livelihoods, land grabs, and forced evictions. Since 2014, communities affected by Thai investments abroad have voiced their complaints and sought remedies through litigation and non-judicial channels, including the National Human Rights Commission of Thailand (NHRCT).

The NHRCT started to investigate Thailand's outbound investments and developed guiding recommendations to concretize the extraterritorial human rights obligations of Thai state and non-state actors. Based on its investigations, the NHRCT issued policy recommendations to the Thai government for ensuring adherence to the UNGPs. The investigations and the NHRCT's policy recommendations have resulted in the Cabinet Resolutions in May 2016 and May 2017 that endorsed the UNGPs.

On May 31st, 2017, at a United Nations meeting on business and human rights in Bangkok, Thai Prime Minister General Prayuth Chan-Ocha affirmed the Thai government's commitment to implement the UNGPs in his opening speech. He stipulated that businesses are responsible for upholding human rights and guaranteeing dignity, safety, equality, equal opportunity, access to government services, and fair treatment. The Prime Minister also presided over the signing of a memorandum of cooperation to take concrete steps based on the UNGPs and to seek greater commitments from businesses actors to comply with human rights norms and laws. This memorandum was signed by key agencies responsible for advancing the NAP, as outlined in the Cabinet Resolutions. These government agencies, including the Ministries of Justice, Foreign Affairs, and Commerce, were officially assigned to act on and respond to these Cabinet Resolutions.

We reaffirm the main recommendations made from the NHRCT, which include establishing a grievance mechanism to ensure that the private sector respects

fundamental human rights, in compliance with the UNGPs. To prevent human rights violations and ensure access to effective remedies, both human rights due diligence and effective grievance mechanisms are necessary. We call on Thai investors operating abroad, especially in the Mekong region and Myanmar, to conduct due diligence in assessing the potential and existing human rights impacts of all projects.

We hereby urge the Thai government and all relevant agencies to undertake actual implementation of laws and norms based on these Cabinet Resolutions, while also humbly requesting the UN Working Group to follow the Thai government's progress and provide instructions and recommendations during this visit and in the future.

In the case of litigation, Thailand's legislation allows victims of abuse to seek legal remedy and compensation. These legal remedies may be supported by Thailand's Civil and Commercial Code Section 420, which suggests: "A person who, wilfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore."

In the case of abuses that happen as a result of outbound investment, citing Thailand's Conflict of Law Act B.E. 2481 Sections 7 and 15 offer the best support for remediation. Section 7 reads: "In case of conflict as to the nationality of a juristic person, the nationality of such person is that of the country where it has its principal office or establishment." Section 15 reads: "An obligation arising out of a wrongful act is governed by the law of the place where the facts constituting such wrongful act have taken place. The foregoing provision does not apply to facts which, having taken place in a foreign country, are not wrongful according to Thai law. In no case can the injured party claim compensation or remedies other than those allowed by Thai law."

Specifically, the Thai government should:

- Take proactive steps to protect the rights of communities that have already been or may be affected by Thai outbound investment and to monitor, prevent, investigate, punish and redress abuses and infringements on human rights.
- Ensure the development of the NAP to begin implementing the UNGPs and to lay out key regulations to improve the accountability of Thai investors abroad, including in relation to extraterritorial obligations and outbound investments.
- Enforce a mechanism to ensure that Thai business conduct due diligence, comply with the UNGPs and establish company-level grievance procedures that are accessible to communities affected by their operations.

Specifically, Thai investors operating abroad should:

- Identify, address, and act to prevent human rights violations resulting from Thai investments abroad.
- Engage communities affected by a project in meaningful public participation and consultation regarding project impacts.
- Conduct transboundary impact assessments and human rights assessments based on these consultations with local communities who will be affected by the project. A transboundary impact assessment and a human rights impacts assessment should be done before the decision is made to undertake a project.
- Establish company-level grievance mechanisms for communities who may be impacted by a project to allow them to raise their concerns and to facilitate their participation in external or community-driven grievance mechanisms.
- Provide compensation to the affected communities and support the communities to obtain the compensation and remedies they need throughout the remediation process.

A. Discussion on Difficult Questions

In many countries, law enforcement is weak. There may be laws to regulate business, such as laws on pollution control, however the mechanisms to regulate such acts are weak. Therefore, should businesses apply higher standards on their own or should they continue to take advantage of weak enforcement and not pay heed to rights that may be impacted by their operations?

Businesses have an obligation to respect human rights including their workers and those impacted by their business activities. Thus, even though a State may be negligent in enforcing its laws, businesses as a matter of good practice, should put in place policies and systems respecting rights.

Viewed from another perspective, incorporating human rights standards in business practices does involve expenditures that would lower profits. However, on the other hand, having a human rights sensitive policy gives the business a clean image in the market, saving it from being the target of human rights advocates and consumer groups. Thus, in the long run, it is profitable for companies to apply higher standards.

What is the difference between CSR, the UN Global Compact, and the UNGP?

CSR and the UN Global Compact are both voluntary initiatives adopted by businesses. However, there is a significant difference between the two.

There is no particular definition of ‘Corporate Social Responsibility.’ Each business may define it differently, but in general it is about corporate responsibility to society. Corporations may discharge this responsibility through different approaches, such as by giving donations to the needy, opening schools, cleaning beaches, etc.

The voluntariness of the UN Global Compact is informed by ten principles on human rights, labour, the environment, and anti-corruption. The principles on human rights, labour, and the environment reflect human rights standards recognised in the international human rights instruments. Thus, the UN Global Compact is informed by human rights standards.

The UNGPs or the United Nations Guiding Principles elaborate upon the general obligations of States under the international human rights framework to respect, protect, and provide remedies. The Guiding Principles provide a framework for State, business, civil society, and other actors such as financial institutions to work together to establish mechanisms to strengthen implementation and enforcement of existing standards.

What is SLAPP? Can you give an example?

‘Strategic lawsuits against public participation’ are often filed by the State or business enterprises against activists or human rights defenders speaking out against exploitative business practices or State abuse of power. Put simply, SLAPPs are used as tools of intimidation and harassment. One such example is the criminal defamation suits filed by the Thammakaset Company in Thailand against a Thai human rights defender and a former employee, a migrant worker from Myanmar. The human rights defender and former employee had raised concerns about working conditions in its chicken farms.

B. Resources

Business and Human Rights Resource Centre

Available at <https://www.business-humanrights.org>

Provides information about issues in different countries, the actions taken, judicial decisions, and developments at the UN level, etc.

Global Business Initiative on Human Rights

Available at <https://gbihr.org/>

A global business-led initiative that advances corporate respect for human rights through peer learning and by strengthening business practice.

Responsible Business Alliance (RBA)

Available at <http://www.responsiblebusiness.org/>

An industry coalition dedicated to promoting responsible business conduct in supply chains.

United Nations Global Compact

Available at <https://www.unglobalcompact.org/>

Facilitates understanding about how the UN Global Compact works and new developments with regard to it.

UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises

Available at <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

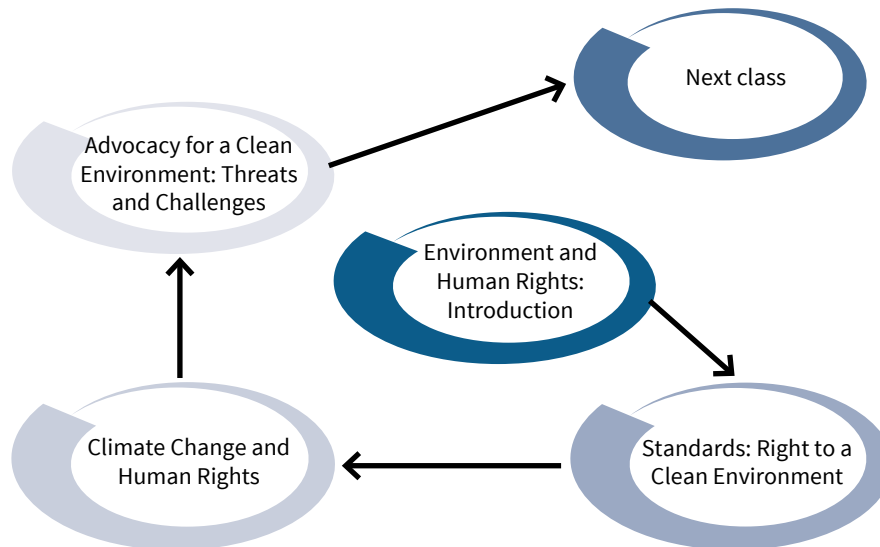
A rich source of information regarding developments at the UN level.

Chapter 13

The Environment and Human Rights

13.1 Introduction

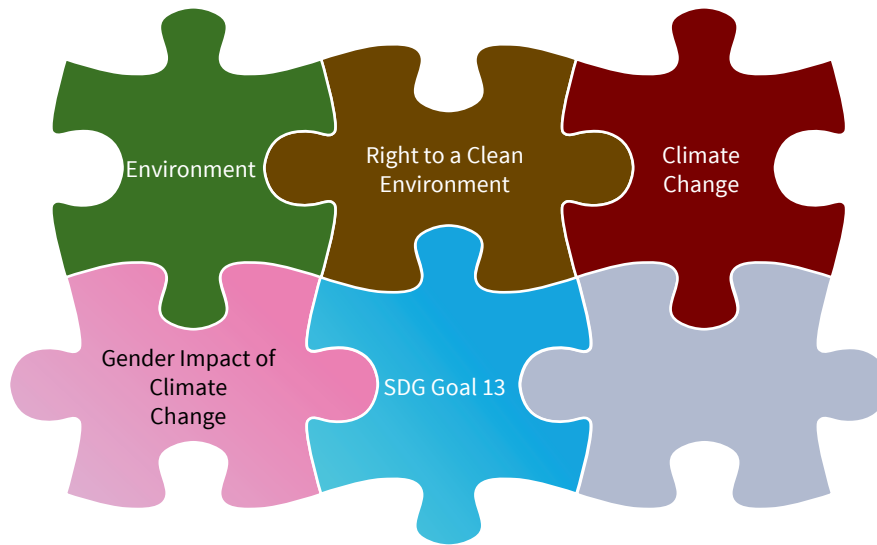
This class examines the connect between the environment, climate change, and human rights. It provides an overview of the human rights standards on the environment and examines the challenges and threats faced by activists engaged in advocacy for a clean environment.



13.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Environment and Human Rights: Introduction	To understand the ways in which the environment can adversely impact human rights	<ul style="list-style-type: none"> Reflecting on the connect between the environment and human rights
2. Standards: Right to a Clean Environment	To summarise the standards relating to the right to a clean environment	<ul style="list-style-type: none"> Identifying the standards relating to the right to a clean environment
3. Climate Change and Human Rights	To understand the impact of climate change on human rights	<ul style="list-style-type: none"> Reflecting on the impact of climate change on human rights Reflecting on the gender impact of climate change
4. Advocacy for a Clean Environment: Threats and Challenges	To evaluate the threats and challenges faced by environmental activists	<ul style="list-style-type: none"> Reflecting on the threats and challenges faced by environmental activists

13.3 Key Elements



13.4 Class Structure and Design

13.4.1 The environment and human rights: Introduction

Specific objective	Enabling objectives
To understand the ways in which the environment can adversely impact human rights	<ul style="list-style-type: none">Reflecting on the connect between the environment and human rights



Steps

- Ask students to critically reflect on how they perceive the environment. Leading questions include: “What elements make up the environment?” The responses may include air, water, pollution, uncontaminated food, etc.
- Facilitate a discussion on the interconnections between the environment and human rights. Leading questions may include:
 - » Name some major environmental disasters or environment concerns in the region.
 - » Have these disasters impacted human rights, or do such environmental concerns impact human rights? If yes, in what ways?

TEACHING NOTES

Environment and Human Rights



Screen the following videos to facilitate discussion on interconnections between the environment and human rights:

- Caravanos, J, 'Minamata disease, Japan' (duration 5:04 mins), CUNY School of Public Health, 6 April 2012, available at <https://www.youtube.com/watch?v=18s89XTyAl8>
- Mint, 'Bhopal gas tragedy: A chemical plant manager recounts the horrific tale' (duration 4:14 mins), 2 December 2016, available at https://www.youtube.com/watch?v=F__YLKnoe9o

13.4.2 Standards: Right to a clean environment

Specific objective	Enabling objectives
To summarise the standards relating to the right to a clean environment	<ul style="list-style-type: none"> • Identifying the standards relating to the right to a clean environment



Steps

- Having already identified the connection between the environment and human rights in section 13.4.1, ask students to identify the substantive and procedural rights to a clean environment and the corresponding standards in international, regional human rights law, and domestic legal systems.
- Suggestions for leading questions are:
 - » Which human rights guarantee the right to a clean environment?
 - » Which rights help to protect the right to a clean environment?
 - » What are the different levels of State obligations?
 - » In which instruments are the rights recognised (international and regional human rights systems)?
 - » What protection is available in domestic legal systems?
 - » Ask students to examine a protest by an environmental group. Identify the claims of the protestors and the response of the State. Reflect on the measures that can be adopted by States to respond to the claims of protestors.

TEACHING NOTES

Standards – Right to a Clean Environment

Substantive rights to a clean environment

Refers to those rights guaranteeing the elements that make up the right to a clean environment. These include the right to a clean healthy environment as recognised in Art 12(2)(b) of the ICESCR, the right to clean water and uncontaminated food as recognised in Art 11 of the ICESCR.

Procedural rights to a clean environment

Principle 10 of the Rio Declaration on Environment and Development elaborates upon procedural rights to a clean environment. It states:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Thus, it identifies three elements of procedural rights:

- The right to access information;
- The right to participate in meaningful decision-making processes; and
- The right to access redress and remedy.

Where are these rights recognised?

International system

Although no specific guarantees of the right to a clean environment exist in the core human rights treaties, as discussed above, some elements of the substantive right to a clean environment are guaranteed in the ICESCR.

Elements of the procedural right to a clean environment are guaranteed in the ICCPR including: the rights to information, freedom of speech and expression (Art 19), the right to peaceful assembly (Art 21), the right to freedom of association (Art 22), the right to participate in the conduct of public affairs (Art 25), and the right to equal protection of the law (Art 26).

ASEAN regional system

At the ASEAN level, Art 35 of the ASEAN Human Rights Declaration states that in executing this right, developmental and environmental needs of future generations should be given due consideration.

National or domestic systems

At the national level, most legal systems have laws to prevent air and water pollution, as well as plans and policies governing sanitation, town planning, ground water management, and food contamination, etc. Some countries also have legislation governing access to information, such as the Freedom of Information laws in Indonesia and Thailand. At the same time, these laws, policies, and plans provide mechanisms for people to voice their concerns regarding any action by State or non-state actors that may affect their lives.



These may include public hearings and the right to participate in environmental impact assessments which business enterprises (both State owned or private) must hold before setting up manufacturing units.

In addition, an aggrieved person may approach the judiciary to seek enforcement of such laws and the rights guaranteed by the constitution. For example, in India, the Supreme Court has interpreted the right to life as guaranteed by Art 21 of the Constitution to include the right to live in a clean environment. Thus, any person complaining their right to clean air has been infringed because the authorities set up under the Air (Prevention and Control of Pollution) Act 1981 were negligent in their duties, can approach the Supreme Court of India for appropriate remedy.

Obligations

The State is the principal duty bearer. In cases where destruction to the environment is caused by private actors such as a business, it has an obligation to protect people from the harmful impact of its actions. State obligations can also be categorised into the respect, protect, and fulfil framework. Some examples are:

- **Obligation to respect:** States must not take any action that may cause harm to the environment. For example, countries should refrain from using plastic water bottles in government offices, and State enterprises should exercise due diligence and comply with existing laws whilst also addressing the adverse impact of their operations on the environment.
- **Obligation to protect:** States must strengthen the mechanisms established to regulate air and water pollution. For example, inspection systems established under the law must be effective and mechanisms must be established to facilitate access to redress and remedy.
- **Obligation to fulfil:** States must strengthen their public transport systems so they function on clean energy, ensure an adequate number of buses are available on all routes, and the system is economically affordable and physically accessible to people with disabilities.

United Nations instruments on climate change

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted at the Rio Earth Summit in 1992 primarily to stabilise greenhouse gas concentrations at levels that would prevent dangerous human induced interference with the climate. The Convention puts the onus on industrialised countries to reduce emissions in their own territories. Further, industrialised nations also agreed to provide financial support to initiatives addressing climate change in developing countries and share appropriate technology with these States too.

Similarly, in 1995, the Kyoto Protocol was adopted to legally bind State Parties to reach reduced emission targets. 192 States are now party to it. The first target period it established ran from 2008-2012, the second encompassed the years, 2013-2020.

In 2016, parties to the UNFCCC signed the Paris Agreement under which they agreed to strengthen the global response to climate change by keeping the rise in global temperatures to below 2°C above pre-industrial levels. They also agreed to continue efforts to limit the temperature increase even further to 1.5°C.

In addition, Goal 13 of the Sustainable Development Goals focuses on climate action. The global targets are:

- To strengthen alliance and adaptive capacity to climate-related hazards and natural disasters in all countries;
- To integrate climate change measures into national policies, strategies, and planning;





- To improve education, awareness raising, and human and institutional capacity on climate change mitigation, adaptation, impact reduction, and early warning;
- To implement the commitment undertaken by developed country parties to the UNFCCC to a goal of jointly mobilising \$100 billion annually to address the needs of developing countries in the context of meaningful mitigation actions and operationalise the Green Climate Fund; and
- To promote mechanisms to raise capacity for effective climate change-related planning and management in less developed countries and developing small island States, including focussing on women, youth, and local and marginalised communities.

13.4.3 Climate change and human rights

Specific objective	Enabling objectives
To understand the impact of climate change on human rights	<ul style="list-style-type: none">• Reflecting on the impact of climate change on human rights• Reflecting on the gender impact of climate change



Steps

- Critically discuss climate change and its impact on human rights. Leading questions may include:
 - » How does climate change manifest itself?
 - » How are the rights of people impacted? What is the impact on women?
 - » Review Goal 13 of the 2030 Agenda for Sustainable Development focussing on climate change.
 - » Summarise the discussion by screening the following video: Spring Creek Project, 'The human right to a healthy environment by John Knox' (duration 20:52 mins), 5 June 2018, available at <https://www.youtube.com/watch?v=tIBmg0I7NPE&t=468s>

13.4.4 Advocacy for a clean environment: Threats and challenges

Specific objective	Enabling objectives
To evaluate the threats and challenges faced by environmental activists	<ul style="list-style-type: none">• Reflecting on the threats and challenges faced by environmental activists



Steps

- Facilitate a discussion on the threats and challenges faced by environmental activists. The most common threats are extra-judicial killings, enforced disappearances, or judicial harassment.
- Ask the students to work in groups to identify a case in which an activist has faced threats from State or non-state actors for raising concerns related to the environment. Ask the students to present a short report on:
 - » The nature of the interests involved;
 - » The different actors involved;
 - » The issues raised by the environmental activists and the actions taken by them to voice their concerns or assert their claims; and
 - » The responses of the State.

TEACHING NOTES

Advocacy for a Clean Environment

Klity Creek Case, Thailand

The water in Klity Creek in the Kanchanaburi province of Thailand was polluted by lead released from a nearby factory.

A useful snapshot of the case is provided by the following video: Human Rights Watch, 'Thailand: Toxic water, tainted justice' (duration 12:18 mins), 15 December 2014, available at <https://www.youtube.com/watch?v=1-2Gxp6Wdj0&t=7s>

In 2017, the Supreme Court upheld a lower court decision to award THB36 million in damages to 151 Thai- Karen villagers. The struggle of the Klity Creek villagers reflects the challenges people face in securing justice for such misdeeds.



A. Discussion on Difficult Questions

Every development project, be it the construction of roads or a power plant, damages the natural environment to a certain extent. Does this imply all development projects are bad and must be abandoned?

No. Infrastructure projects are needed to sustain economic growth in every society. However, certain basic principles must be followed. For example, impact assessment studies must be carried out prior to execution of the project. These necessarily involve conducting public hearings, identifying adverse impacts, and considering how such impacts may be mitigated. Moreover, action needs to be taken based on the recommendations of such studies.

The Sustainable Development Goals provide a blueprint for balancing competing interests and addressing the interconnected challenges related to eliminating poverty, reducing inequalities, addressing environmental degradation and climate change, and achieving prosperity, peace, and justice.

B. Resources

Centre for International Sustainable Development Law

Available at <http://www.cisdsl.org>

A useful resource for developing understanding on sustainable development goals, their implementation and interconnectedness with trade, investment and finance, human rights, natural resources, peace, and climate change, etc.

Greenpeace

Available at <https://www.greenpeace.org/international/>

Information about campaigns relating to the protection of the environment can be found here.

Stockholm Environment Institute

Available at <https://www.sei.org>

A non-profit independent research and policy institute specialising in sustainable development and environmental issues.

United Nations Environment Program

Available at <https://www.unenvironment.org>

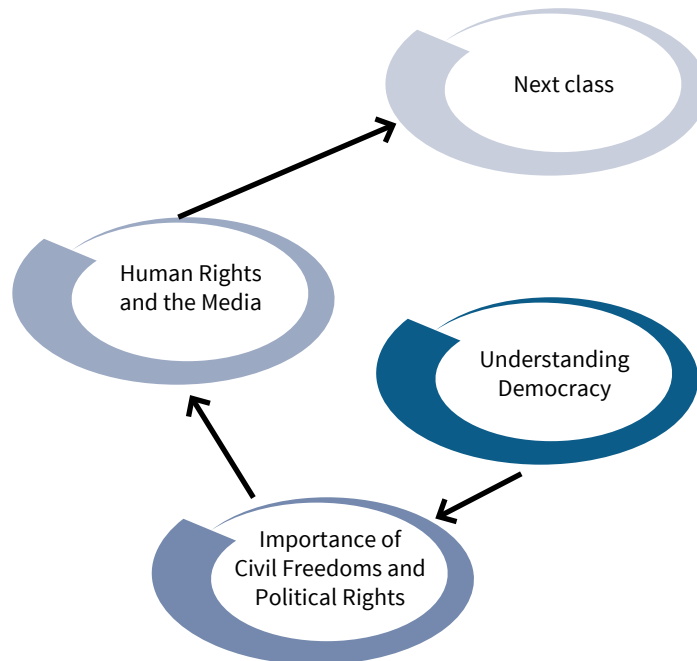
A valuable source of information on the environment and current developments in standard setting.

Chapter 14

Political Rights, Democracy, and the Media in Southeast Asia

14.1 Introduction

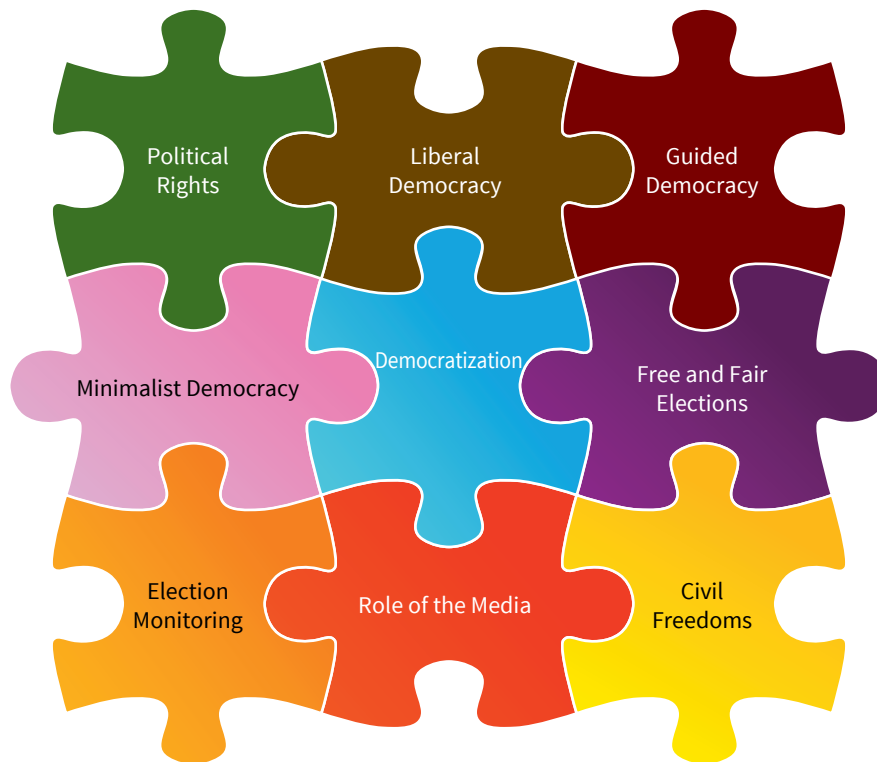
This class examines the landscape of political rights, democracy, and media in Southeast Asia. In particular, it discusses the meaning of democracy, the scope and content of political rights, and the importance of the media in the promotion and protection of human rights.



14.2 Expected Learning Outcomes

	Specific objectives	Enabling objectives
1. Understanding Democracy	To understand the meaning of democracy	<ul style="list-style-type: none"> Identifying the divergent nature of democracies in Southeast Asia Reflecting on the elements of functioning democracies and the process of democratization Clarifying elements of the right to vote
2. Importance of Civil Freedoms and Political Rights	To examine the importance of civil freedoms and political rights	<ul style="list-style-type: none"> Reflecting on the relationship between respect for civil freedoms and political rights, and the robustness of democracy
3. Human Rights and the Media	To understand the linkages between human rights and the media	<ul style="list-style-type: none"> Reflecting on the importance of freedom of the press

14.3 Key Elements



14.4 Class Structure and Design

14.4.1 Understanding democracy

Specific objective	Enabling objectives
To understand the meaning of democracy	<ul style="list-style-type: none">• Identifying the divergent nature of democracies in Southeast Asia• Reflecting on the elements of functioning democracies and the process of democratization• Clarifying elements of the right to vote



Steps

- Ask students to review HANDOUT 17 in groups and present reports on:
 - » What is a democracy?
 - » What is a liberal constitutional order?
 - » The rule of law
 - » Linkages between constitutionalism and democracy
 - » Elements of a functional democracy
- Initiate a discussion with students on the nature of democracies in Southeast Asia. How democratic are they?

HANDOUT 17

Democracy and its Functional Elements

(taken from, Beetham, D, and Boyle, K, *Introducing Democracy: 80 Questions and Answers*, Paris: UNESCO Publishing, 1995)

What is democracy?

Throughout our lives, we are members of different groups or associations, from families, neighbourhoods, club and work units to nations and States. In all such associations, from the smallest to the largest, decisions have to be taken for the association as a whole: about the goals to be pursued, about the rules to be followed, about the distribution of responsibilities and benefits between members. These can be called *collective* decisions, in contrast to *individual* decisions taken by people on behalf of themselves. Democracy belongs to this sphere of collective decision-making. It embodies the idea that such decisions, affecting an association as a whole, should be taken by all its members, and that they should each have equal rights to take part in such decisions. Democracy, in other words, entails the twin principles of *popular control* over decision-making and *equality of rights* in the exercise of that control. To the extent that these principles are realised in the decision-making of any association, we can call it democratic.

Democracy a relative concept

[D]emocracy is not an all-or nothing affair which associations possess either in full or not at all. It is rather a matter of degree: of the extent to which the principles of popular control and political equality are realised; and of greater or lesser approximation towards the idea of equal participation in collective decision-making. Conventionally, we have come to call a state 'democratic' if its government is accountable to the people through competitive election to public office, where all adults have an equal right to vote and stand for election, and where civil and political rights are legally guaranteed. However, no such State in practice realises the two principles of popular control and political equality as fully as it might. To that extent, the work of democratisation is never-ending; and democrats everywhere are involved in struggles to consolidate and extend the realisation of democratic principles, whatever regime or political system they happen to live under.

What is a liberal constitutional order? What is its linkage to democracy?

Most western States became liberal before they became democratic. That is to say they achieved a liberal constitutional order before they granted universal suffrage or developed mass political parties. The most important features of such orders were: the subordination of government or executive to the laws approved by an elected parliament (the 'rule of law'); guaranteed rights of the individual to due legal process and to the freedoms of speech, assembly, and movement; and a judiciary which is sufficiently independent of both parliament and executive to act as guardians of the law and of these individual rights. Historically, the democracies in which the suffrage was extended and mass political parties developed without the prior consolidation of these liberal constitutional features proved very insecure.

The rule of law

A government in a modern State has enormous powers at its disposal. Whatever its popularity, if it is not kept subject to the law like everyone else, or if it is not required to seek approval for legislation from parliament according to established procedures, or if it does not respect the liberties of its citizens, however unpopular on occasion their exercise may be, then people will rapidly lose the capacity to control it. Democracy is not a system that gives the people whatever they demand at a given moment, or in the shortest possible time, but one that secures the conditions for their influence

and control over their government on an ongoing basis. And among these conditions have proved to be the basic elements of liberal constitutionalism, the rule of law, the separation of powers between the executive, legislation, and the judiciary, and the guarantee of individual rights and liberties.

Constitutionalism and democracy

[T]he component elements of democracy are best protected in a written constitution in which the rights and duties of citizens, and of different organs of State are explicitly defined and publicly known. The special position of the constitution is recognised when public officials are required to swear loyalty to it above party or sectional interest, and by the fact that it requires special measures, such as qualified majorities or referenda, to alter it. Yet in practice, a written constitution is only secure to the extent that an independent judiciary has the authority and determination to enforce it and that the public at large is vigilant in its defence.

What are the chief components of a functioning democracy?

There are four main components or building blocks of a functioning democracy. These are free and fair elections; open and accountable government; civil and political rights; and a democratic or civil society.

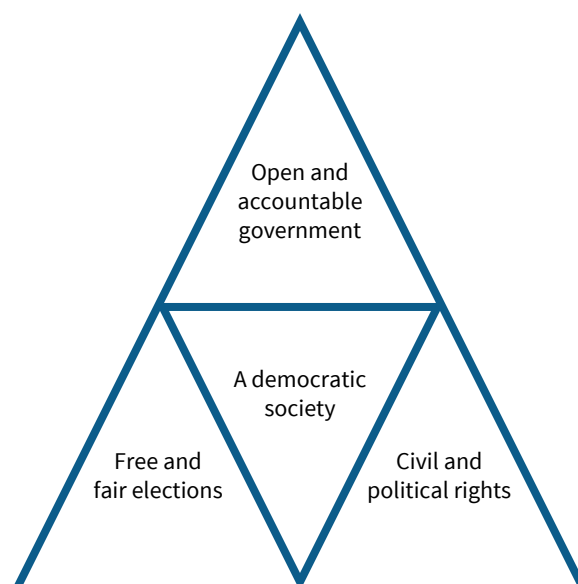


Figure 1. The democratic pyramid

Free and fair elections

Competitive elections are the main device whereby public officials are rendered accountable and subject to popular control. They also constitute an important arena for ensuring political equality between citizens, both in access to public office and in the value of their votes. The criteria of 'free and fair elections' embraces in the first place the electoral system, i.e. the laws governing the offices that are electable, who may stand for them, when elections are to be held, who may vote, how constituencies are to be defined, how votes are to be aggregated to select the winners and so on. Second, is the electoral process, i.e. how individual elections are conducted in practice, from the initial registration of voters, through the campaign, to the counting of the ballots, to ensure that the law is strictly and impartially applied and that there is no malpractice to throw the result into questions.

Open and accountable government

In a democracy, the accountability of the government to the public has two aspects:

- Legal accountability: to the courts for the observance of the law by all public officials (the ‘rule of law’), and
- Political accountability: to parliament and the public for the justifiability of government policy and actions.

This accountability depends upon the independence of the courts in their power to defend the Constitution, to determine guilt and to punish offences, and independence of the parliament in its powers of legislation, taxation and scrutiny of government.

Besides being accountable, democratic government should also be responsive, both through formal requirements of consultation and through its openness to the expression of public opinion in its various forms.

Civil and political rights

Civil and political rights encompass those freedoms—of expression, association, movement and so on—which are a necessary condition for people to act politically, whether in terms of self-organisation within civil society or to bring influence to bear upon government. Although these rights are properly guaranteed to individuals, as a part of human rights more generally, their values lies in the context of collective action: joining with others for common ends, campaigning, influencing public opinion, etc. It is thus mistaken to see individual rights as necessarily antithetical to collective purposes, or to the processes of collective decision-making and their popular control, for which they constitute rather the necessary foundation.

A democratic or ‘civil’ society

The idea of a ‘civil society’ indicates that democracy needs to have social associations of both kinds that are organised independently of the State. Only in this way can the power of the State be limited, can public opinion be articulated from below rather than managed from above, and can society achieve the self-confidence to resist arbitrary rule. The principle that such associations should be not only independent but also internally democratic embodies the idea that democracy at the level of the State will only be weakly rooted if the test of society is run on autocratic lines. If people are conditioned to authoritarianism in the family, the school and the church, and if they have no experience of self-organisation or co-determination in the workplace, the neighbourhood and voluntary associations, they are unlikely to be active citizens or feel any responsibility for the condition of their society at large.

14.4.2 Civil freedoms in democracy

Specific objective	Enabling objectives
To examine the importance of civil freedoms and political rights	<ul style="list-style-type: none">• Reflecting on the relationship between respect for civil freedoms and political rights and the robustness of a democracy



Steps

- Facilitate a discussion on the importance of political rights in a democracy.
- Suggestions for leading questions are:
 - » What are the political rights and civil freedoms in a democracy?
 - » How are these rights important to a democracy?
- Read the case studies in HANDOUT 18 and discuss the impact of the measures adopted by the State on the robustness of democracies.

TEACHING NOTES

Political Rights, Civil Freedoms

Freedom of speech and expression

Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and

Political Rights recognise the right to freedom of speech and expression. The elements of this right are:

- (1) Everyone has the right to hold opinions without interference;
- (2) Everyone has the right to freedom of expression;
- (3) Freedom of expression includes the right to seek, receive, and impart information and ideas of all kinds;
- (4) Expression may be communicated orally, in writing, in print, through a form of art, or any other media of one's choice; but
- (5) Freedom of expression is not absolute. The State may impose restrictions on the exercise of this freedom as are necessary to respect the rights and reputations of others, and protect the interests of national security, public order, and public health or morals.

Freedom of assembly

Article 21 of the ICCPR recognises the right to peaceful assembly. Exercise of such a right enables people to meet and discuss about politics, public affairs, advocate for specific issues, or organise cultural events.





Freedom of association

Article 22 of the ICCPR recognises that every person has the right to freedom of association with others. This includes the right to form political parties. In recent times, some countries in Southeast Asia have enacted/proposed laws making it difficult to establish and operate associations. Such laws may require associations to seek prior permission from the State to conduct certain activities or may place excessive burdens on, for example, reporting.

Right to take part in the conduct of public affairs

Article 25 of the ICCPR provides that every citizen has the right, subject to reasonable restrictions:

- (a) To take part in the conduct of public affairs in the country;
- (b) To cast their vote in genuine and periodic elections;
- (c) To stand as a candidate in genuine and periodic elections; and
- (d) To have access to public services in the country.

Permissible restrictions

The rights to freedom of speech and expression, freedom of assembly, freedom of association, and to participate in the conduct of public affairs are not absolute. The State may impose restrictions on the exercise of these rights. However, such restrictions must:

- (a) Be provided by law, and
- (b) Be necessary to:
 - (i) Protect the rights and freedoms of others (and the reputation of others as regards rights to freedom of expression), or
 - (ii) Protect the interests of national security, public order, or public health and morals.

HANDOUT 18

Importance of Civil Freedoms and Political Rights

With reference to the case studies below, discuss the impact of the measures adopted by the State on the robustness of democracy.

Case Study 1

The Sedition Act of Country X defines it as creating “hatred or contempt or to excite disaffection” against the government. Violations against the Act carry a punishment of three to five years’ imprisonment and/or fines. Over the years, the law has been used against activists criticising the government.

Case Study 2

Country Y has enacted a law governing associations. Under the law, every group has to register. However, the authorities have the discretion to deny such applications as they think fit. Further, no activity in a public space can be held by any group that has not registered.

Key to HANDOUT 18

Case Study 1

Criticism of a government should not be restricted in a democracy. Criticism of government policies and actions helps to keep a check on administrations. When criticism is barred in the name of 'sedition,' it creates a situation where only voices praising the government will be heard. Over time this will stifle public debate and undermine the quality of democracy. Thus, enforcement of the law on sedition against activists is not reasonable in a democracy.

Case Study 2

In Country Y, the authorities have discretion to deny grant of registration to any group they think fit. By denying registration, authorities are able to control the nature of activities held in public spaces. In other words, they can control the kinds of issues that get public attention and thus can steer public opinion in certain ways. Citizens in a democratic country should have the right to form associations and freely conduct activities as a collective as long as they do not engage in unlawful acts. Thus, giving wide discretion to authorities to deny registration is not reasonable in a democratic country.

14.4.3 Human rights and the media

Specific objective	Enabling objectives
To understand the linkages between human rights and the media	<ul style="list-style-type: none">• Reflecting on the importance of freedom of the press



Steps

- Critically discuss the importance of press freedom in a democracy.
- Discuss contemporary challenges such as the impact of fake news with reference to HANDOUT 19.

HANDOUT 19

Fake News

‘Fake news,’ the law, and self-censorship in Southeast Asia

(Ong, E, and Chew, I, ‘Fake news,’ the law, and self-censorship in Southeast Asia’ University of British Columbia, East Asia Forum, 2 August 2019, available at <https://www.eastasiaforum.org/2019/08/02/fake-news-the-law-and-self-censorship-in-southeast-asia/>, accessed on 5 December 2019)

In recent years, Southeast Asian governments have been actively enacting new laws governing the spread of online disinformation and misinformation, also known as ‘fake news.’ What are their stated reasons for doing so? What are the new legislations’ potential consequences for freedom of expression in the region?

On 25 June 2019, Singapore’s Protection from Online Falsehoods and Manipulation Act (POFMA) was gazetted into law. The law empowers any Singaporean government minister to issue a range of corrective directions against online ‘falsehoods’ deemed to be against the public interest.

This new law follows closely on the back of Malaysia’s 2018 Anti-Fake News Act enacted under the previously long-ruling Barisan Nasional (BN) regime. Although the newly victorious Pakatan Harapan (PH) alliance moved to repeal the legislation soon after being elected into government in May 2018, the repeal effort was blocked by Malaysia’s upper house of parliament, which is still dominated by BN-appointees.

Beyond these two countries, other Southeast Asian states have also implemented novel ‘fake news’ legislation. Thailand adopted the Computer-Related Crime Act in 2016, a law that equips the government with the ability to clamp down on anyone propagating information it deems ‘false.’ In the Philippines, an anti-‘fake news’ bill was proposed in 2017 in the Senate. This was eventually incorporated into an updated version of the Penal Code where it is now “unlawful for any person to maliciously offer, publish, distribute, circulate or spread false news and information.”

Southeast Asian governments have justified these new laws in the name of preserving national security. They maintain that such laws help citizens learn ‘correct’ information, preserve societal stability, and guard against foreign intervention in domestic politics. Indeed, in a region where so much of the population receive their news through social media networks such as Facebook, the spread of disinformation or misinformation has had drastic consequences. Recent analyses suggest that clearly false and misleading social media posts have played a part in inciting ethnic cleansing in Myanmar and violent riots in Indonesia.

But critics of these laws argue that a secondary—and more pernicious—effect of such legislation is to bolster a government’s censorship toolkit while increasing self-censorship among the public. They argue that Singapore’s POFMA, for example, over-invests power in the executive by allowing it to determine what a falsehood is and what is contrary to the public interest. Citizens are less likely to express their political opinions online when they are uncertain about how or whether their particular instance of political expression contravenes the law.

Can new legislation regulate disinformation and misinformation without negative consequences for freedom of speech? In theory, a pragmatic balance can be struck if robust limits to the governments’ powers are written into the law.

But a close examination of recent developments in Southeast Asia suggests reasons to be pessimistic. Even existing legislation is already being used to narrow freedom of speech.

In Myanmar for instance, an entire collection of existing laws, including the colonial-era 1923 Official Secrets Act, have been used against journalists. The December 2017 arrest and imprisonment of *Reuters* journalists Wa Lone and Kyaw Soe Oo is just one high profile example.

While the journalists were released in May 2019 through presidential pardons, new criminal charges have since been levelled at other news outlets. The independent news outlet *The Irrawaddy* has been charged for its alleged violation of the Unlawful Associations Act, and Nanda, a reporter for the privately-owned *Myanmar Times*, was arrested under the Penal Code for allegedly participating in a protest in Mandalay.

These events have resulted in what Human Rights Watch reports as “a climate of fear among local journalists.”

Similarly, in the Philippines, Maria Ressa, an internationally-esteemed reporter and founder of *Rappler*—an independent online news platform consistently critical of the Duterte administration—was arrested on tax fraud charges in November 2018. In February 2019, both Ressa and *Rappler* were slapped with new charges of cyber libel for a report that was published before the libel law came into effect. Philippine President Rodrigo Duterte himself has made no secret of his dislike for *Rappler*, publicly accusing the platform of being owned by investors from the United States and for carrying ‘fake news.’

Such examples foreshadow an emerging ‘catch-all’ landscape of legislation with little room for dissenting journalists and ordinary citizens. It is worth recalling that, with the exception of Timor-Leste, all other Southeast Asian countries have fallen into the bottom half of the 2019 *World Press Freedom Index*.

With press freedoms already on the decline in the region, the enactment of new anti-‘fake news’ laws can only signal that expanding and safeguarding freedom of expression in Southeast Asia continues to be a Sisyphean task.

A. Discussion on Difficult Questions

To protest against the increasing burden of farm loans and low crop prices, farmers march to the capital city. As they reach their destination, traffic on the major roads comes to a standstill. The farmers set up near government offices in the city, again causing major traffic jams. Should these kinds of protests be allowed? Would the government be justified in imposing limits on such protests?

People organise rallies and protests to voice their concerns and to catch the attention of decision-makers. This is a form of non-violent action that is available to all. Thus, it is vital that people should be free to organise such protests.

However, it is also true that protests may cause discomfort to others in society. It is therefore up to the protestors themselves to mobilise public opinion by, e.g. conducting themselves properly and presenting their issues effectively.

Although States can impose some restrictions on protests in relation to crowd management, its actions should not reduce the substantive components of the right to organise peaceful assemblies.

Is there a human right to democracy?

There is no simple answer to this question.

Article 21(3) of the Universal Declaration of Human Rights states that: “The will of the people shall be the basis of the authority of government.” This encompasses a number of ideas including that people should be able to: select their governments (right to vote); influence their governments (rights to freedom of speech and expression, information, association, and peaceful assembly); and that people should have the capability to make informed decisions (rights to education, health, housing, food, security of life, and liberty).

Thus, it can be said that in systems where respect for human rights endures, democracy is able to flourish and work effectively. Respect for human rights is linked to other aspects of political systems as well such as respect for the rule of law, separation of powers, and the existence of an independent judiciary.

In other words, all these principles and standards are inter-linked. Adherence to these standards and principles reflects upon the democratic nature of countries and helps to answer the question, “How democratic are we?”

B. Resources

Article 19

Available at <https://www.article19.org>

An international NGO focussing on the freedoms of expression and information and related issues in countries across the globe.

Freedom House

Available at <https://freedomhouse.org/>

An international NGO that works to defend human rights and promote democratic change with a focus on political rights and civil liberties. It issues an annual report each year titled, 'Freedom in the World' and links the findings with the state of democracy in different countries.

International Institute for Democracy and Election Assistance (IDEA)

Available at <https://www.idea.int/data-tools/tools/global-state-democracy-indices>

Developed 'The Global State of Democracy Indices' which depicts democratic trends at the country, regional, and global levels across 28 aspects of democracy.

United Nations

Available at <http://www.un.org/en/sections/issues-depth/democracy/>

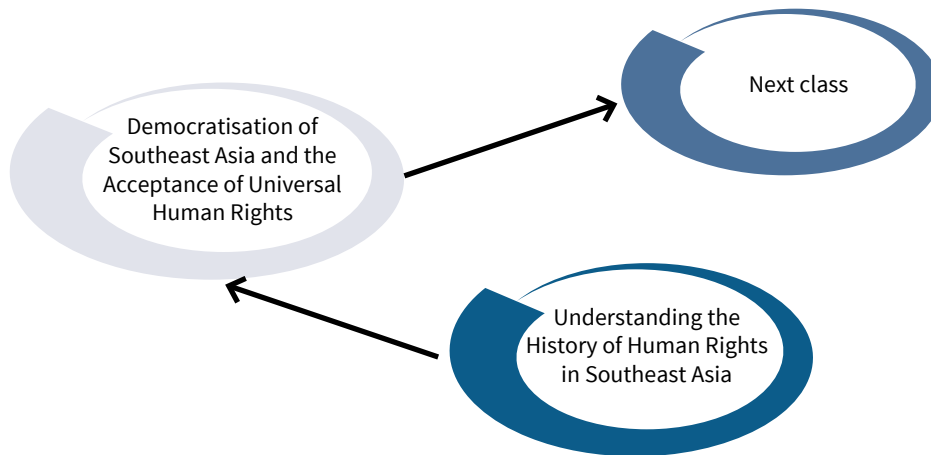
A useful resource to help understand the different elements of democracy and the interlinkages between them.

Chapter 15

Human Rights in Southeast Asian History

15.1 Introduction

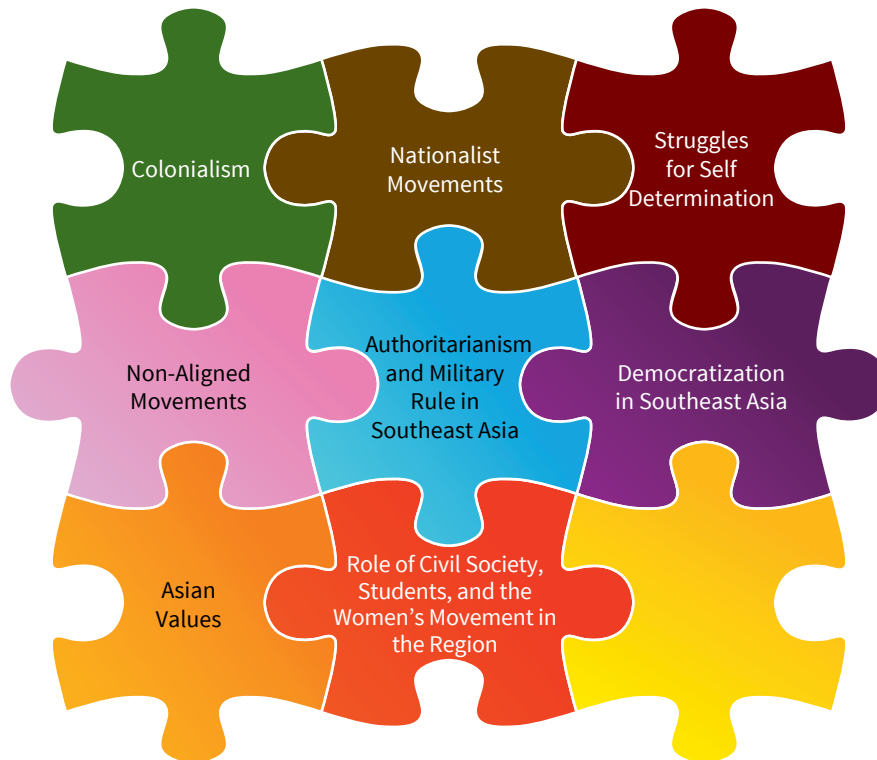
This class examines the history of the idea of human rights in Southeast Asia. In so doing, it notes popular uprisings against colonisers, dictators, and other authoritarian forces. It also examines State responses to the international human rights regime and the dynamics facilitating their acceptance of human rights standards and obligations.



15.2 Expected Learning Outcomes

	Specific objective	Enabling objectives
Understanding the History of Human Rights in Southeast Asia	To evaluate the history of human rights in Southeast Asia	<ul style="list-style-type: none"> Identifying elements of the idea of human rights in Southeast Asia Distinguishing the factors that contributed to the recognition of human rights in the region

15.3 Key Elements



15.4 Class Structure and Design

15.4.1 Understanding the history of human rights in Southeast Asia



Steps

- Discuss the history of human rights in Southeast Asia. In so doing, consider the concept of rights that were prevalent in:
 - » Pre-colonial history;
 - » Nationalist movements in Southeast Asia;
 - » The post-independence period;
 - » The period of authoritarianism and military rule; and
 - » The democratisation of Southeast Asia.

15.4.2 Democratisation of Southeast Asia and the acceptance of universal human rights



Steps

- Discuss the wave of democratisation in Southeast Asia and the emergence of the idea of universal human rights. In particular, examine:
 - » The role of social movements and civil society at the national level and the role of international human rights organisations; and
 - » The establishment of the AICHR and the adoption of the ASEAN Human Rights Declaration.

15.4.3 Contribution of civil society



Steps

- Distribute HANDOUT 20.
- Discuss the role of civil society in promoting acceptance of universal human rights.

HANDOUT 20

Contribution of Civil Society

Five Success Stories of the Working Group for ASEAN Human Rights Mechanism

(‘Five success stories of the Working Group for ASEAN Human Rights Mechanism’ Friedrich Naumann Stiftung, 8 April 2017, available at <https://asia.fnst.org/content/five-success-stories-working-group-asean-human-rights-mechanism>, accessed on 5 December 2019)

ASEAN has struggled with its own human rights issues even amidst rapid economic growth and development in the region. While the subject of human rights is viewed as a grey area in many policy debates and discussions, countries in the region have taken steps to establish human rights institutions to progress human rights for ASEAN. These institutions play an important role in not just building awareness on the importance of addressing human rights issues in ASEAN but also to implement various policies and mechanisms that lead to greater protection of human rights. The Working Group for an ASEAN Human Rights Mechanism is one such group that has been working to make strides in human rights protection for the region.

(1) Consistent Engagement of ASEAN with the Working Group for an ASEAN Human Rights Mechanism

Since 1998 to 2008, the Working Group for an ASEAN Human Rights Mechanism (Working Group) has been consistently mentioned in the Joint Communiqué’s of the ASEAN Ministerial Meeting due to its engagement with the ASEAN Senior Officials Meeting in order to discuss the establishment and development of human rights mechanisms in ASEAN. These engagements led to the organization of workshops that shaped the development of human rights goals within ASEAN as reflected later on in the Vientiane Action Programme. Subsequently, these were further institutionalized in the ASEAN Community Blueprints.

(2) Signing of a Declaration of Cooperation among the National Human Rights Institutions in ASEAN

The Working Group recognized way back in 2001 that establishing human rights mechanisms in ASEAN may take time. But in the meantime, some human rights violations happen across borders. It is for this reason that the Working Group convinced the NHRIs in ASEAN of the benefit of working together for cross-border human rights issues and provided the platform for such discussion. The existing NHRIs then (Malaysia, Philippines, Indonesia, and Thailand) agreed to cooperate and signed a Declaration of Cooperation in Bali, Indonesia in 2007, witnessed by the Working Group Co-Chairperson at that time.

(3) ASEAN recognized the Working Group in the ASEAN Charter as an Entity Associated with ASEAN

The Working Group is the only human rights organization listed in the ASEAN Charter. The Working Group never requested for the status, but because the Working Group has been cooperating with ASEAN and supporting its human rights endeavours since 1996, ASEAN included them in the annex two of the ASEAN Charter under the ‘entities associated with ASEAN.’ The adoption of the ASEAN Charter is a huge step forward for ASEAN, transforming itself into a rules-based, legal entity. It is also clearly stated that ASEAN is governed by “the principles of democracy, the rule of law and good governance” and where there is “respect for and protection of human rights and fundamental freedoms.” The incorporation of a human rights body as an organ of ASEAN (Article 14, ASEAN Charter) is a breakthrough for human rights in the region.

(4) *The establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009*

The AICHR was set up in compliance with Article 14 of the ASEAN Charter which states that ASEAN shall establish an ASEAN human rights body to promote and protect the human rights and fundamental freedoms of the people in the region. The Working Group was instrumental in the birth of the AICHR. Indeed, they made submissions to ASEAN senior officials, on the Draft Agreement for the Establishment of the ASEAN Human Rights Commission.

(5) *The establishment of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in 2010 and the ASEAN Committee to Implement the Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007*

The Working Group had been meeting with ASEAN, through the ASEAN Foreign Ministries, since 1996. Aside from meeting with ASEAN, the Working Group started co-organizing Workshops on the ASEAN Regional Human Rights Mechanism involving participants representing ASEAN Member States, National Human Rights Institutions (NHRIs), the academe and some NGOs. The conclusions and recommendations of the workshops were then formally submitted by the Working Group to ASEAN for its consideration. Through these workshops, ASEAN had been able to discuss human rights issues at a regional level, though in an informal setting. Some of the issues tackled included women, children and migrant workers' rights, as well as human rights education. The workshops have harvested concrete proposals on progressing towards the establishment of an ASEAN regional mechanism on human rights. In fact, the terms such as "establishment of an ASEAN commission on the promotion and protection of the rights of women and children" and the "elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers" were culled verbatim from these workshops.

ASEAN itself has a few groups that are focused on progressing human rights for the region. It's important that these groups are supported so that human rights issues are addressed effectively and that public policy also includes human rights considerations. While the subject may continue to be challenging for policy makers in some countries to take onboard given that the region still struggles with some poverty and other social/economic issues, groups like the Working Group help ensure that the human rights agenda is given due representation.

A. Discussion on Difficult Questions

Human rights violations keep occurring in ASEAN countries. Is a culture of human rights even possible there?

As mentioned previously, the journey to secure acceptance of human rights is rarely smooth. However, strong civil society organisations in the region worked hard to strengthen recognition for democratic values and human rights. ASEAN itself has made numerous commitments to human rights, showing that governments in the region have also accepted human rights values. Yes, the commitments of some do seem empty as they are not backed by action. Yet ASEAN has come a long way since the 1990s when the notion of Asian Values was used by some States to counter the idea of universal human rights. Thus, securing recognition of human rights is an ongoing journey.

B. Resources

The resources presented under different chapters of this manual are also relevant to understand the trajectory of human rights in Southeast Asia.

Journal of Southeast Asian Studies

Available at <https://www.cambridge.org/core/journals/journal-of-southeast-asian-studies>

JSTOR

Available at <https://www.jstor.org>

JSTOR is a highly selective digital library of academic content in many formats and disciplines. The collections include top peer-reviewed scholarly journals as well as respected literary journals, academic monographs, research reports from trusted institutes, and primary sources.

Human Rights Law Research Guide: South East Asian

Available at http://unimelb.libguides.com/human_rights_law/regional/asean



ASEAN University Network **Human Rights Education (AUN-HRE)**

About AUN-HRE

Realizing that human rights and fundamental freedoms are key principles for ASEAN community-building, the ASEAN University Network–Human Rights Education theme (AUN-HRE) was formally established in 2009 by the ASEAN University Network Board of Trustees to promote research opportunities in the area of human rights, serve as a platform for collaboration and capacity-building amongst member institutions, and to strengthen existing cooperation and enhance human rights education in the ASEAN region.

Mahidol University was appointed as the focal point for the theme. The Institute of Human Rights and Peace Studies has been assigned to coordinate the network and implement relevant activities in cooperation with its members.

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About SHAPE-SEA

The Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA) was launched in February 2015 in Bangkok, Thailand. It is a collaboration between the ASEAN University Network–Human Rights Education (AUN-HRE) which has thirty member-universities and the Southeast Asian Human Rights Studies Network (SEAHRN) which has twenty-two members.

The overall aim of SHAPE-SEA is to contribute to the improvement of the human rights and peace situation in ASEAN/Southeast Asia through applied research and education. The core themes of the Programme are: (1) ASEAN and Human Rights, (2) Business Accountability, (3) Peace and Security, (4) Governance and Justice, and (5) Academic Freedom.

Its main areas of work are Research, Education, Capacity-Building and Outreach, and Publications and Public Relations.

The Programme focuses on supporting research on innovative and critical human rights and peace projects and on exploring ways this knowledge can be made accessible to university students throughout Southeast Asia/ASEAN. As such, it is directly involved and engaged with universities in the Region to play a more significant role in the sustainability of human rights protection by contributing research, increasing knowledge on human rights and peace, and by incorporating these issues into university education. The Programme also creates spaces for knowledge-building and dissemination through the production and publication of research amongst the academic community and other human rights and peace stakeholders.

SHAPE-SEA Secretariat is hosted by the Institute of Human Rights and Peace Studies (IHRP) at Mahidol University. The programme is supported by the Swedish International Development Cooperation Agency (SIDA), and the Norwegian Centre for Human Rights (NCHR).

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Institute of Human Rights
and Peace Studies
Mahidol University

About IHRP

The Institute of Human Rights and Peace Studies (IHRP) is the result of a merger between Mahidol University's Center for Human Rights Studies and Social Development (established in 1998) and the Research Center for Peacebuilding (established in 2004). The IHRP therefore combines the experience and perspective of both centers. Moreover, it is uniquely interdisciplinary and is redefining the fields of peace, conflict, justice, and human rights studies in the Asian Pacific region and beyond.

The Center for Human Rights Studies and Social Development (CHRSD, formerly called the Office of Human Rights Studies and Social Development) was established in 1998. For more than ten years, it served as an academic institution specializing in human rights, with a track record of providing postgraduate education as well as offering training programs to students, human rights workers, human rights defenders, members of civil society organizations, and government officials. The MA in Human Rights started by the CHRSD is the longest-running graduate degree program in human rights in Asia.

The Research Center for Peacebuilding was founded in November 2004 to be part of a peaceful solution to conflicts in Thailand especially in the three southernmost provinces of Pattani, Yala, and Narathiwat. As such, the Center has developed and implemented action plans and participated in research projects to reduce the violence and identify the needs of affected communities. These projects focused on facilitating cooperative efforts to handle the conflicts by opening space for dialogue at all levels. Further, they provide input to new public policies with the aim of transforming conflicts and building a more just and peaceful society.

Our focus remains on social and political realities at the community, national, and international levels. The IHRP is committed to the advancement of human rights and peace by educating human rights and peace practitioners, promoting outreach programs to community and international organizations, and conducting cutting edge research on important issues.

Vision: The Institute of Human Rights and Peace Studies plays a leading role in academic enquiry and offers practical wisdom on human rights and peace-building.

Mission: To promote learning excellence in human rights and peace and engage communities in the transformation towards peace.

Programmes offered:

- Master of Arts in Human Rights (International Programme)
- Master of Arts in Human Rights and Democratization (International Programme)
- Master of Arts in Human Rights and Peace Studies (Thai Programme)
- Doctor of Philosophy in Human Rights and Peace Studies (International Programme)

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