

Human Rights 101

**Using International Instruments to
Work for Economic, Social and
Cultural Rights**

Preamble to the UN Charter

- **WE THE PEOPLES OF THE UNITED NATIONS DETERMINED**
- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

FDR's Four Freedoms

- The first is freedom of speech and expression -- everywhere in the world.
- The second is freedom of every person to worship God in his own way -- everywhere in the world.
- The third is freedom from want, which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants -- everywhere in the world.
- The fourth is freedom from fear, which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor -- anywhere in the world.

Preamble to the Universal Declaration of Human Rights

- Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
- Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
- Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Preamble to the UDHR

- Whereas it is essential to promote the development of friendly relations between nations,
- Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Preamble to the UDHR

- Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,
- Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

UDHR Article 1

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

UDHR Article 7

- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

UDHR Article 3

- Everyone has the right to life, liberty and security of person.

UDHR Article 25

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
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UDHR Article 22

- Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

UDHR Article 23.

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

UDHR Article 28

- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

UDHR Article 29

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Key Concepts in the UDHR

- 1) All human rights have both negative and positive components (i.e. they address both what government should and should not do);
- 2) Human rights include the economic and social sphere, in particular issues of education, housing health, work, food and social security;
- 3) Rights are universal, transcending national borders, and their legitimacy is no longer dependent on national recognition;
- 4) Prohibitions on discrimination in the protection of human rights extend both to the purpose and the effect of government action and inaction; and
- 5) Human rights are interdependent and cannot be viewed in isolation.

Duty to Publicize the UDHR

- When the General Assembly adopted the UDHR its resolution called upon all Member countries to publicize the text of the Declaration, and “to cause it to be displayed, read and expounded principally in schools and other educational institutions without distinction based on political status of countries or territories”.

ICESCR Preamble

- Preamble
- The States Parties to the present Covenant,
- Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
- Recognizing that these rights derive from the inherent dignity of the human person,

ICESCR Preamble

- Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,
- Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

ICESCR Preamble

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

– Agree upon the following articles:

ICESCR Article 1

- All peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic social and cultural development

ICESCR Article 2.1

- Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

ICESCR Article 2.2

- Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICESCR Article 6

- 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
- 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

ICESCR Article 7

- The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

ICESCR Article 7

- (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

ICESCR Article 8

- 1. The States Parties to the present Covenant undertake to ensure:
- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

ICESCR Article 8

- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
- 2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

ICESCR Article 8

- 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

ICESCR Article 9

- The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance

ICESCR Article 10

- The States Parties to the present Covenant recognize that:
- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

ICESCR Article 10

- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

ICESCR Article 11

- The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
- 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

ICESCR Article 11

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Right to Housing

General Comment 4

- "the right to live somewhere in security, peace and dignity.". It requires "adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost".

The Right to Housing

General Comment 7

- Parties must ensure security of tenure and that access is free of discrimination, and progressively work to eliminate homelessness. Forced evictions, defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection", are a prima facie violation of the Covenant.

ICESCR Article 12

- The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

ICESCR Article 12

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Right to Health

General Comment 14

- "Health" is understood not just as a right to be healthy, but as a right to control one's own health and body (including reproduction), and be free from interference such as torture or medical experimentation. States must protect this right by ensuring that everyone within their jurisdiction has access to the underlying determinants of health, such as clean water, sanitation, food, nutrition and housing, and through a comprehensive system of healthcare, which is available to everyone without discrimination, and economically accessible to all. See General Comment 14

Right to Health

General Comment 14

- The right to health is interpreted as requiring parties to respect women's' reproductive rights by not limiting access to contraception or "censoring, withholding or intentionally misrepresenting" information about sexual health.. They must also ensure that women are protected from harmful traditional practices such as female genital mutilation.

ICESCR Article 13

- The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
- 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

ICESCR Article 13

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive

- introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

ICESCR Article 13

- 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

ICESCR Article 13

- 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

ICESCR Article 15

- . The States Parties to the present Covenant recognize the right of everyone:
- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

ICESCR Article 15

- 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
- 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

ICESCR Article 15

- 4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

International Covenant on Civil & Political Rights (ICCPR)

- Civil and political rights counterpart to the ICESCR. While not focusing on economic and social rights per se, the ICCPR is important because rights protected by the ICCPR—such as the prohibition of discrimination in the protection of *any* right—can be invoked to protect economic and social rights.

Convention on the Rights of the Child (CRC)

- Principal human rights treaty on the rights of children, which includes extensive economic and social rights provisions.
- For example, Article 4 States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.
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Convention on the Rights of the Child

CRC

- **Article 32 States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful** to the child's health or physical, mental, spiritual, moral or social development.
- 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

Convention on the Rights of the Child

CRC

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

CEDAW

- Principal human rights treaty on sex discrimination, which provides for women's equal access to—and equal opportunities in—private, political and public life, including education, health and employment

CERD

- Principal human rights treaty on racial discrimination. Specifically prohibits discrimination in the areas of education, health, housing, property, social security, and employment.

Charter of the OAS

- **The Charter of the Organization of American States (OAS Charter) and the American Declaration on the Rights and Duties of Man:**
The OAS Charter and American Declaration together create obligations to guarantee all of the fundamental economic and social rights (including the right to education, housing, healthcare, food, work and social security).

American Convention on Human Rights

- **American Convention on Human Rights:** The American Convention codifies the OAS Charter. While the Convention focuses primarily on civil and political rights, it generally recognizes their interdependency with economic and social rights, and Article 26 specifically recognizes states' duties to progressively realization of those rights.

ILO Conventions

- The International Labor Organization has promulgated many conventions dealing with a broad array of conditions at work. The Core Labor Standards include Conventions 87 and 98 which protect the rights of workers to organize and to bargain collectively. The Committee on Freedom of Association at the ILO interprets these conventions. The other core conventions prohibit forced labor, child labor and discrimination in employment.

Actions

- Using International Instruments to Work for Economic, Social and Cultural Rights
 - Advocacy- Making the Invisible Visible
 - Using Human Rights Framework in advocacy work and legal discourse
 - Models: US HRN, NESRI, Maryland Legal Aid Bureau
 - Work on the Universal Periodic Review

Human Rights Law as Customary International Law

- Customary International Law: That law which has become so universally accepted that compliance is a matter of legal not moral duty

Customary International Law

- Customary International Law can be based on:
 - Treaties
 - State Practice
 - Work of Scholars
 - Decisions of the International Court of Justice
 - Some combination of the above
- ICESCR is treaty based, 168 countries have either signed or ratified that Covenant

Legal Strategies

- Customary law ICESCR etc binding on US
- Pacta Sunt Servanda
- Interpretation of US law consistent with international obligations

Next Steps

Publicity for Human Rights framework.

Ongoing efforts to argue for economic rights as human rights

Push government for job creation, Humphrey Hawkins act.

Work with IC committee to form national economic rights committee