

# UN HUMAN RIGHTS LAW AND CIVIL SOCIETY PERSPECTIVE IN PROMOTING GLOBAL JUSTICE AND INTERNATIONAL LAW

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6. Implementation: Prospects, obstacles...
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“All human beings are born free and equal in dignity and rights.”

Article 1 - Universal Declaration of Human Rights  
UN-General Assembly, December 10, 1948



# 1. Human Rights, Law, International System

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- Human Rights, as substance: fundamental rights of the individual vis-à-vis the state (if there is a, functioning, state). Rights and duty bearers
- Law: Legal standards, rule of law, as an instrument for development (political, economic, cultural...)
- International system: no state that guarantees implementation but two or three levels (international / regional, state). Issues of political will, capacity, resources and extension of state power
- In the International system counter trends emerge: Globalization with its uncertainties leads various states to re-assert traditional concepts of national sovereignty and claim autonomous development paths, which include more authoritarian political models (more power to the state instead of democratic control of state action) and weakens civil society participation

## 2. Civil and Political Rights

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Examples for standards on the international, regional and national level (UN: ICCPR):

- Elections
- Judicial Guarantees
- Torture
- Death penalty /extrajudicial executions
- War, humanitarian law & human rights
- Slavery
- Data Protection

## 3. Economic, Social and Cultural Rights

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### *ESC Covenant: 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.
- Some issues: justiciability, respective role of the state and the private sector, what is a violation?
- Approach: To respect, protect and fulfill

## (Cont'd)

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Examples for standards on the international, regional and national level (UN: ICESCR):

- Right to food
- Right to education
- Right to health
- Right of enjoyment of just and favourable conditions of work
- Right of everyone to social security, including social insurance

## 4. Special, vulnerable groups

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- Women
- Children
- Displaced persons
- Refugees
- Indigenous peoples
- Minorities
- Disabled people
- ...

## 5. The Human Rights-Based Approach in Development

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- Developed at United Nations, OHCHR
- Emphasis on rights holder (...instead of beneficiaries)
- Non-discrimination and equality of opportunities
- Participation and empowerment
- Transparency and accountability

For example, criteria for the right to education:

- Availability
- Accessibility
- Acceptability
- Adaptability



## 6. Implementation: Prospects, obstacles...

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How is respect for human rights monitored?

- State reports ...and recommendations by expert bodies (true for all the following instruments)
- Individual complaints
- Inquiries
- International commissions of investigation
- Public debate
- Confidential procedures
- Visits of countries, of specific institutions (and public reporting)

## 7. Strategies to improve the human rights situation

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- Recommendations by expert bodies, National Human Rights Institutions, NGOs
- Diplomacy (bilateral, multilateral)
- Public statements
- International conferences
- International bodies: UN Security Council, UN Human Rights Council, Council of Europe (European Court of Human Rights) etc.
- International Criminal Courts
- Important role for media reporting
- Sanctions (by the Security Council; human rights bodies have no power of sanctions)
- Military action, concept of responsibility to protect (R2P)

# Countertrends

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- Human rights violating (HRV) countries are defended by other countries / certain media
- Sanctions are not always respected, thereby pressure on HRV countries is diminished
- Human rights tend to be assessed against national interest and political world views (Israel vs Palestine, Saudi Arabia vs Iran, Russia vs United States, West vs South etc.). What is the place of human rights in foreign and security, development, economic policies of a country ?
- States tend not criticise other states from „their“ group / friends
- Human rights violations are explained away (invoking other traditions, the historical past, an emergency situation, etc.; the argument being that not the state is responsible but some „bad apples“ in the state institution)
- Increasing importance of non state actors, i.e. rebels, militia, Islamic state. Are they bound by human rights, how, to what degree?

## 8. Conclusion

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- Human Rights as a legal-political, *secular* concept promises a lot: peaceful development, non-discrimination, justice, strengthening of the weak, democracy, rule of law...
- Implementation almost always takes place through the national state (if there is no temporary international administration as government, such as UNMIK in Kosovo)
- In many countries, the population feels close to national, cultural, religious values...(challenges emerge)
- The legal approach has big advantages ... and weaknesses
- In many conflict situations, relevant actors care little about law, human rights, humanitarian values... This trend seems to grow stronger in a number of countries
- There are big problems to respond to massive human rights violations because they are often intertwined with international security problems and interests

Finally let me say a few words about my institution:

# German Institute for Human Rights

## Protecting and promoting human rights

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- The German Institute for Human Rights is Germany's independent National Human Rights Institution (NHRI) according to United Nations standards (Paris principles).
- It contributes to protecting and promoting human rights.
- Founded in 2001

# Protecting and promoting human rights

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- The Institute promotes the integration of human rights into domestic and foreign policy decisions and monitors the implementation of international human rights treaties by Germany.

# What areas does the Institute focus on?

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Protection from discrimination

Prohibition of torture Rights of the elderly

Rights to water, sanitation and food

Women's rights Human trafficking

Protection from racism Migration and integration

Business and human rights Rights of people with  
disabilities

Human rights in development policy

Refugees and asylum seekers

Security policy and human rights

Children's rights Right to education

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# What does the Institute do in practice?

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## The Institute

- advises the German Federal Parliament (Deutscher Bundestag), State Parliaments, the Federal and State Governments and civil society on human rights topics
- publishes studies, statements, recommendations and educational material on human rights-related questions
- organizes expert discussions, seminars, conferences and other events



# What does the Institute do in practice?

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## The Institute

- prepares advisory opinions for courts in selected cases (*amicus curiae*)
- offers education seminars for journalists, teaching staff, members of parliaments, authorities, justice departments, the police and the armed forces

# National Human Rights Institutions

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- The institute collaborates closely with UN human rights bodies, the Council of Europe and the European Union Agency for Fundamental Rights (FRA).

# Contact

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