

# INTERNATIONAL COVENANT on Civil and Political Rights

HUMAN



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## What are human rights?

Human rights are a concept derived from beliefs, philosophy, religious creeds, ethical and moral codes and cultures. They are based on the belief that all humans are born with the intrinsic right to life as all religions prohibit the killing of human beings. In addition, the concept has been influenced by Western culture and beliefs about the natural rights accorded to any human being. It is justifiable for a human being to try to protect one's life or to have freedom to think and believe. And despite our differences, all human beings are equally entitled to human dignity.

After World War II, the concept of human rights has become widely accepted and acknowledged around the world. The international community recognized the atrocities committed in the name of war and genocide and other deprivations against women, children and older persons by their fellow human beings. As a result of the war, international human rights law started to evolve, set forth in principles, agreements, systems and mechanisms to promote human rights. These have been universally accepted as a means for the protection of human rights of all people in the world. The idea of equal rights and dignity among all human beings is now well enshrined in various international human rights principles and laws as well as domestic laws including the constitutions of various countries which prescribe human rights.

## Universal Declaration of Human Rights – UDHR

On 10 December 1948, the U.N. General Assembly and its member states adopted and put into force the Universal Declaration of Human Rights (UDHR) as a major instrument to uphold human rights in the international arena. Though not recognized as an international treaty, the UDHR is regarded as one of the most important international human rights customary laws and countries feel obliged to respect the human rights principles set forth in the Declaration. The Declaration is also an important premise on which other international human rights treaties and laws have been developed, including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, the Declaration inspired the drafting of human rights principles in the constitution and domestic law in many countries.

The human rights referred to in the UDHR can be divided into two major aspects: (1) civil and political rights, which include the right to life, personal freedom and security, freedom from slavery and torture, equality before the law, the right to political participation, the right to freedom of thought, religion and expression etc., and (2) economic, social and cultural rights which include the right to work, the right to education, the right to food, the right to access to public health services etc.





## Unique aspects of the human rights prescribed in the UDHR include;

1. They are inherent to all human beings. It is believed that every human being is born with human rights and such rights shall not be subject to buying, selling or inheritance.



2. Rights are universal. Rights are accorded to all human beings regardless of their race, gender, religion, or social or political background. Everyone is born free and is equal in one's rights and dignity.





3. Such rights cannot be denied and are inalienable. No one can be deprived of her/his human rights. Though a nation's laws may fail to recognize human rights and rights violation may be perpetrated in the country, its people are still entitled to human rights.



4. Rights are indivisible. The human rights recognized in UDHR are composed of two major categories: civil and political rights; and economic, social and cultural rights. Both categories of rights are indivisible. Both have to be respected, protected and fulfilled to ensure that every human being is able to live with dignity.

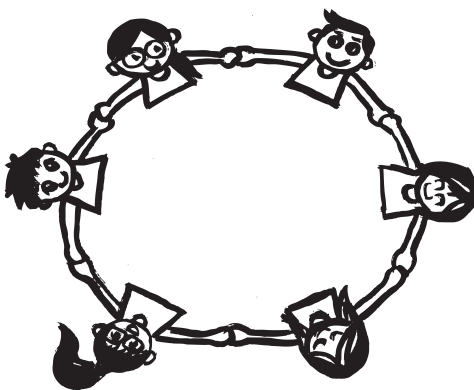
In addition, the UDHR spells out major guiding principles including the principle of equality and the principle of non-discrimination. In other words, everyone is entitled to the same rights and freedoms regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## Practical guidelines from human rights principles

Although every human being is in theory born with equal human rights, in reality such rights can be subject to deprivation or violation as we all are citizens governed by state powers. Each state has different concern of governance. The implementation of economic, social and cultural policies may infringe on the rights of certain groups of people. For example, some governments prohibit any dissenting opinions among their people. In such a case, the right to freedom of expression is impeded. Other governments implement economic development which leads to evictions of communities with no proper compensation for the affected communities. In such a case, the government is also regarded as having violated its people's human rights. Some governments fail to look after certain groups of their population including those belonging to minority racial and ethnic groups. Some ethnic minorities have been neglected and are subject to various rights violation including forced labour. Non-state actors can also be involved in violations of human rights including private companies who illegally claim rights over the farmland and houses of local villagers in order to turn them into tourist attractions or industrial complexes. Some corporations fail to provide fair wages to their employees, or simply fire pregnant women. Domestic violence is also counted as a human rights violation.

Acts violating human rights are criminalized in countries with safeguard laws. For example, domestic law in many countries sets minimum wages; any workers paid less than this can bring a case to court. In some countries, religious or traditional practices are found to have infringed human rights, such as the painful and sometimes fatal genital mutilation of girls. Such issues are highly sensitive, and a lot of understanding is needed to create change.

In order to realize the principles of human rights, someone must bear the duty of respecting, protecting and fulfilling rights and the major duty bearers are states. Therefore, rights holders are able to demand that the state respect, protect, and fulfill their rights; at the same time, each rights holder is obliged to not violate the rights of others.





## Duties of the state to realize the principles of human rights

### *respect*

Implies that all laws, policies or initiatives of the state and their enforcement by governmental officials shall not give rise to human rights violations, directly or indirectly. For example, the state shall not pass a law that restricts the right to freedom of religion, and shall not implement any policy which commercializes basic services, including public health and education, as a result of which access to such services is impeded for low income or vulnerable groups in society.

### *protect*

Implies that the state shall develop laws, policies or measures to prevent any group or individual from violating the human rights of others. For example, measures should ensure employers' compliance with labour laws, laws and mechanisms should be developed to protect women and children against domestic or other violence.

### *fulfill*

Implies that the state shall pass laws or implement policies to ensure the realization of every human right. For example, the state shall develop policies and set aside funds to ensure that everyone receives free basic education.

## Civil and Political Rights

Civil and political rights are fundamental rights, especially for a democratic society. They are the rights that enable the people to participate equally in politics and government (political rights), and to be able to live their lives with full autonomy and safety (civil rights).

Civil rights necessitate restrictions on the state to prevent infringements on the integrity, freedom and safety of individuals. Civil rights include protection from discrimination, the right to freedom of thought and expression, and the right to freedom of religion. Political rights are those rights related to participation in political society and the political decision-making process. Full respect for these rights means that the people are able to participate in the political process effectively and equally without intimidation or restriction by the state. Political rights include the right to vote, the right to freedom of assembly and association to increase their negotiating power and the right to a fair trial.

Most civil and political rights belong to all individuals, regardless of whether or not they are legal citizens within the territory of the state. There are, however, some political rights that can only be exercised by the nationals of a state, for example, the right to vote or to be elected.



Equality and non-discrimination are the core principles of all civil and political rights. Everyone is equal before the law and cannot be discriminated against on the grounds of sex, race, color, language, religion, political or other opinions, national or social origin, property, birth or other status. Positive discrimination or affirmative action is permitted only in certain circumstances with justified grounds and in a proportionate manner. Examples of affirmative action include special measures to ensure that women and indigenous people are included in all social and political activities.

Full respect of civil and political rights requires the state not only to refrain from violations (negative obligation) but also the positive obligation to protect and promote these rights. The state has to address violations caused by other individuals, corporations or non-state actors. It also has to take measures to realize those rights, for instance, by enacting laws or formulating policy to promote civil and political rights and by making sufficient budget allocations to enforce those rights. Examples of other positive obligations include the provision of legal aid to ensure fair trials and the prevention of over-crowded prisons to ensure that prisoners are treated humanely.

### **We will now explore some key civil and political rights:**

- The right to life
- Rights in the criminal justice system
- The rights to freedom of thought and expression
- The right to freedom from slavery and forced labour
- The right to freedom of movement
- The right to participate in the political process
- The right to privacy

## 1. The right to life

The right to life is a basic human right that allows individuals to live to enjoy other rights. The right to life, therefore, is absolute and cannot be violated or limited in any situation including during an emergency.

In addition to the right to have a life and to not be killed arbitrarily, the right to life also includes individual rights to freedom and physical integrity. The state must protect the physical safety of the people and also protect them from being tortured or from being the victims of enforced disappearance, which are severe forms of violation of the right to liberty.

According to international law, torture means “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”. The right to freedom from torture also includes the right to be freed from other cruel, inhuman or degrading treatment or





punishment. Moreover, torture is not limited to acts causing physical pain or injury. It includes acts that cause mental suffering, such as threats against family or loved ones. The above definition focuses on acts committed by state officials and also includes torture committed by other persons acting in an official capacity or with official consent. The state, therefore, must protect individuals from being tortured by anybody. This obligation to protect the right to freedom from torture extends beyond the state's citizens and boundaries. The state must not extradite prisoners or repatriate refugees to places where they would be tortured or face other cruel, inhuman or degrading treatment or punishment.

Enforced disappearance is another form of violation of the right to life which is often used against those who hold views different from those of the state. Similar to torture, enforced disappearance may be caused by public officials or other persons acting in an official capacity. Because of the secretive nature of enforced disappearance, it is often not acknowledged and no information about the victim's whereabouts is provided. As a result, neither disappeared individuals nor their families can access legal remedies.

Although the right to life is an absolute right that cannot be violated in any situation, there is contention about some of the aspects of the right to life. For example, there are legal and moral debates on whether the death penalty, abortion and euthanasia (mercy killing) are acceptable and, if so, under what conditions.

## *A. Death Penalty*

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The death penalty is one of the most controversial issues related to the right to life. While there is a worldwide campaign to abolish the death penalty, it is still practiced in many countries. Some countries retain the death penalty in law but no executions are in practice carried out.

International human rights law does not require states to abolish the death penalty. The International Covenant on Civil and Political Rights stipulates that in countries which have not abolished the death penalty, a death sentence may be imposed only for the most serious crimes pursuant to a final judgment rendered by a competent court in accordance with the law in force at the time of the commission of the crime. The death penalty, therefore, cannot be imposed retroactively. In addition, no death sentence can be imposed on a person below 18 years of age or on a woman while she is pregnant.

The Second Optional Protocol to the ICCPR on the abolition of death penalty stipulates that no one within the jurisdiction of a State Party to the Protocol shall be executed, except in the case of a reservation made at the time of ratification for use of the death penalty in cases of gravely serious crimes of a military nature committed during wartime. The state party must take all necessary measures to abolish the death penalty. Thailand has not ratified this Optional Protocol.

The prisoners on death row should still enjoy basic human rights. The execution method must not be cruel, inhuman or degrading. Those convicted have right to appeal and to request an amnesty.

## *B. Unborn children*

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Another controversial issue relates to the rights of unborn children. The controversy is whether the foetus should be deemed a full person who should enjoy human rights. Supporters of the reproductive rights of women advocate the woman's right to decide to have an abortion, while the others, the so-called pro-life group, argue that an unborn child is also a human being whose right to life should be protected. Abortion, in this view, is violation of human rights. There have been unsuccessful attempts to arrive at a common definition of the point in a pregnancy in which the foetus is considered a full person.

In states where abortion is legally prohibited, the state must provide support to women who have unwanted pregnancies to allow them access to medical care and education. The state should also ensure that women do not inflict self-harm.

### *C. Mercy killing*

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Mercy killing or euthanasia, is another controversial issue in human rights. The act of intentionally ending a life in order to relieve pain and suffering may be carried out by the patient her/himself with the assistance of others or by someone else as requested by the patient. There are different euthanasia laws in each country.

The protection of the right to life does not simply require the state to refrain from arbitrarily killing or injury. The state also has a positive obligation to take measures to ensure that the people enjoy a certain quality of life. Examples of measures the state should take to protect and promote the right to life include reduction of infant mortality, increase in average life expectancy, and the elimination of malnutrition and disease. In addition, the state should conduct effective investigations into cases of murder and enforced disappearance in order to bring the culprits to justice.



## 2. Rights in the criminal justice system

The right to a fair trial is related to those facing legal charges or convicted detainees.

### *The right to a fair trial*

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Everyone is to be presumed innocent until proven guilty beyond reasonable doubt. Trials must proceed in a timely manner and there must be measures to ensure that the accused is able to defend her/his case in a just manner.

Criminal charges must be heard by competent, independent and impartial tribunals established by law. Independence relates to the way that judges are appointed, the qualifications for appointment, and the cessation of their position. Tribunals must be protected from any pressure or interference from administrative and legislative bodies. The court must also be impartial and have no conflict of interest in the cases over which it presides.

The accused must be informed at a very early stage of the accusation. She/he has the right to adequate time and facilities for the preparation of her/his defence and to communicate with counsel of her/his own choosing, or to be provided legal aid if she/he cannot afford a legal representative. The defendant has the right to question the main witnesses against her/himself and to call witnesses of her/his own. In cases in which the court uses a language that the defendant does not understand, the defendant has the right to have the free assistance of an interpreter. The accused shall be tried without undue delay and only under the law(s) effective at the time. No trial can have retroactive effect.

To ensure a fair trial, a court hearing must be open to the general public. The public may be excluded from a trial only for reasons of morals, public order or national security in a democratic society, or when needed in the interest of the privacy of the parties, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. The judgment of the court must also be made public unless necessary for the protection of children or juveniles, or when the case concerns a custodial dispute involving children. It should be noted that even in cases in which the public is excluded from the trial, the judgment must, with certain strictly defined exceptions, be made public.

The right to a fair trial goes beyond matters properly dealt with in a court hearing. The entire legal process, including police investigation, must also follow the same fair trial principles.



### *The rights of detainees*

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The right to liberty and freedom does not imply that no one can be arrested or detained, but is a guarantee against arbitrary or unlawful arrest and detention. There can be no arbitrary arrest or detention. The arrested must be duly informed of the reason for the arrest and the legal charge(s) against her/him. Pre-trial detention must be kept to a minimum and the case against the accused must proceed to a court trial as soon as possible. Any person unlawfully arrested or detained has the right to receive remedy and compensation.

Upon being found guilty, the prisoner, despite her/his right to the freedom of movement being limited, shall be treated with respect for their inherent human dignity. Persons awaiting trial shall be separated from convicted prisoners and shall receive separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons are to be separated from adults. Prisoners shall have access to health services without discrimination on grounds of their legal situation.

### ***3. The rights to freedom of thought and expression***

#### ***The right to freedom of thought, conscience and religion***

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The right to freedom of thought, conscience and religion includes the freedom to adopt a religion or belief of one's choice, and the freedom to manifest one's religion or belief. No one can be coerced into adopting or changing their religion or belief. Any restriction on the right to freedom of thought, conscience and religion can only be done as is prescribed by law and is necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

#### ***The right to freedom of expression***

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Freedom of expression is an essential right in a democratic system. Only when the people have free access to information and are able to express their views and information freely, can they effectively exercise their right to vote and to participate in public decision-making. The right to freedom of expression includes the freedom to seek, receive and disseminate information and ideas through different channels, and freedom of the press.

The right to freedom of expression must be exercised with responsibility. It can be limited only when needed for the protection of other human rights. Examples include the prohibition of "hate speech" that ignites hatred towards a certain race, ethnic group, sexuality or religion and defamatory speech that causes a false or unjustified injury to the reputation of another.



#### ***4. The right to freedom from slavery and forced labour***

Everyone has the right to freedom from slavery which means that no one can exercise the right of ownership of other people. In addition to the more commonly known condition of serfdom, in which a person is bound to live and work on land belonging to another person and render services to this other person and is not free to change his status, slavery also includes similar practices such as trafficking and the exploitation of children, debt bondage (the requirement to work as repayment of a loan, where usually the value of the work is greater than the original debt), and servile forms of marriage (forced marriage that places a woman under the ownership of the husband and his family).

The right to freedom from slavery also includes the freedom from forced labour. Forced labour is defined as a condition in which a person is forced to provide labour or services against her/his will under the threat of some form of punishment. Some forms of forced labour, however, are excluded from this definition, namely labour performed pursuant to a sentence of imprisonment imposed by a court, service of a military character, service required in a time of emergency or work or service under normal civil obligations.

## ***5. The right to freedom of movement***

The right to freedom of movement includes the right to move freely and reside within a country, the right to leave any country and the right to enter a country of which you are a citizen. Freedom of movement within a country also applies to any person who legally enters and lives in that country. No one can be expelled from a country unless by virtue of a decision taken in accordance with the law. The right to freedom of movement, however, does not imply that anyone can freely enter another country of which the person is not a citizen. While everyone has the right to return to their own country of citizenship, the state may impose conditions on the entry of aliens.

The state has an obligation to protect the right to freedom of movement from interference by both the state and private sectors. This responsibility is particularly relevant in the case of women whose right to freedom of movement may be restricted by law, customs, her relatives, or other individuals.

Freedom of movement within a country may be limited only when the security of a nation or an entire group of people is at stake, for example, confinement as part of the attempt to control contagious diseases.

Related to the right to freedom of movement is the right to asylum. Everyone who has a well-founded fear of persecution has the right to asylum in a country where they will be safe. The state cannot expel a person to a country in which she/he would be at risk of torture or persecution.

## ***6. The right to participate in the political process***

In a democratic society, every citizen has political rights to participate in the public decision-making process and to organize to negotiate with the state.

These rights guarantee the positive liberty of contributing to the process of governing the affairs of the society in which one lives. Political rights presume that government processes should be structured so as to provide opportunities for the political participation of all eligible citizens.

### ***The right to vote and to be elected***

Every citizen has the right to vote and to be elected in elections that are organised periodically. By voting, citizens have the opportunity to take part in the conduct of public affairs, directly or through their chosen representatives. The right to vote and to be elected may be limited only on legitimate grounds, i.e., a minimum age for eligible voters, but cannot be limited on the grounds of physical disability, education or property.

### ***The right to freedom of assembly and association***

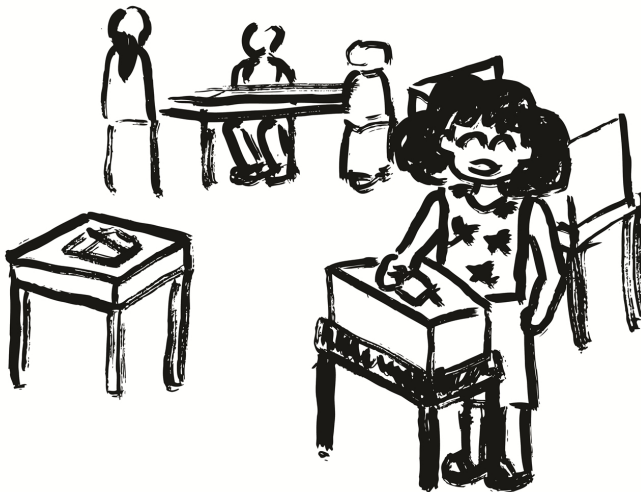
Freedom of assembly, sometimes used interchangeably with the freedom of association, is the right to come together and collectively express, promote, pursue and defend common interests.

Everyone has the right to peaceful public demonstration and to organize an association, i.e., a club, political party, non-governmental organization or company, to protect the interest of its members.

The right to form groups, to organise and to assemble together with the aim of addressing issues of common concern, is a human right. The ability to organise is an important means by which citizens can influence their governments and leaders.

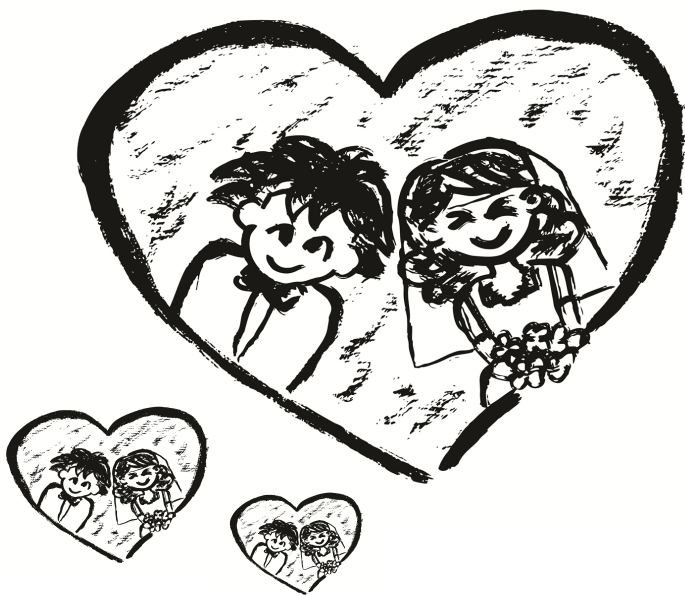
Workers have the right to form and to voluntarily join organized unions. The unions represent the workers in negotiation with employers in the workers' interests. Unions must have freedom in the administration of their affairs and in setting their own regulations. Unions may decide to strike as part of their negotiations to protect workers' rights.

The people have the right to peaceful assembly which should not be denied except to safeguard national security or public safety.



## 7. The right to privacy

The right to privacy is a crucial right for the protection of human dignity. The right to privacy includes non-intervention by the state in a person's private life, for example personal details, gender, address, family life or private correspondence.



## Derogation

Some of the rights discussed above may be derogated in certain situations. Under international law, a state may temporarily violate or fail to protect certain rights but only at a time of public emergency which threatens the life of the nation. The emergency must be officially proclaimed. The derogation of rights must be to the extent strictly required by the exigencies of the situation. In addition, the state must immediately inform other State Parties to the ICCPR of the provisions to be derogated and of the reasons.

Some rights are absolute and cannot be derogated even during an emergency. These rights are the rights to freedom from arbitrary killing, to freedom from torture and slavery, and to freedom from imprisonment merely on the ground of inability to fulfill a contractual obligation, the right to recognition everywhere as a person before the law, the right to freedom of thought, conscience and religion, and the right to a fair trial





# HUMAN



The human rights referred to in the UDHR can be divided into two major aspects: civil and political rights, which include the right to life, personal freedom and security, freedom from slavery and torture, equality before the law, the right to political participation, the right to freedom of thought, religion and expression etc., and economic, social and cultural rights which include the right to work, the right to education, the right to food, the right to access to public health services etc.

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