

International human rights law

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International human rights law is a system of laws, both domestic, regional and international, designed to promote human rights. Human rights law is made up of various international human rights instruments which are binding to its parties (nation-states that have ratified the treaty).

An important concept within human rights law is that of universal jurisdiction. This concept, which is not widely accepted, is that any nation is authorized to prosecute and punish violations of human rights wherever and whenever they may have occurred. Some customary peremptory norms of human rights are also recognised, and these are considered binding on all nations, even those that have not ratified the relevant treaty.

In principle human rights law is enforced on a domestic level and nation states that ratify human rights treaties commit themselves to enact domestic human rights legislations.

In addition to international human rights law, human rights law has been created on a regional level. The three regional human rights instrument that form binding human rights law to party states are: African Charter on Human and Peoples' Rights, the American Convention on Human Rights (the Americas) and the European Convention on Human Rights.

Human rights law is related to, but not the same as International Humanitarian Law and Refugee Law. War crimes, crimes against humanity and genocide have their own treaty law.

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Universal Declaration of Human Rights

The Universal Declaration of Human Rights is a declaration that does not form binding international human rights law. Although some legal scholars cite the UDHR as evidence for customary international law and more broadly the UDHR has become an authoritative human rights reference. The UDHR has provided the basis for subsequent international human rights instruments that form binding international human rights law.

The Two Covenants

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The Universal Declaration of Human Rights (UDHR) was adopted as binding international treaty into two distinct and different covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two Covenants form treaty law, that is international human rights law, and ratifying parties (nation states) to the Covenant commit themselves to implement the contained rights in their domestic jurisdictions. Note that some states have signed but not ratified the Covenants. Both covenants came in force in 1976 when a sufficient number of countries had ratified the Covenants.^[1]

International human rights treaties

Since the adoption of the two Covenants a number of other treaties (pieces of legislation) have been adopted at the international level.

They are generally known as *human rights instruments*. Some of the most significant include:

- Convention on the Elimination of All Forms of Racial Discrimination (**CERD**) (adopted 1966, entry into force: 1969)^[2]
- Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**) (entry into force: 1981)^[3]
- United Nations Convention Against Torture (**CAT**) (adopted 1984, entry into force: 1984)^[4]
- Convention on the Rights of the Child (**CRC**) (adopted 1989, entry into force: 1989)^[5]
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (**ICRMW**) (adopted 1990)

Regional human rights instruments

There are three key regional human rights instruments which have established human rights law on a regional basis. These are:

- the African Charter on Human and Peoples' Rights for Africa (1981, in force since 1986)
- the American Convention on Human Rights for the Americas (1969, in force since 1978)
- the European Convention on Human Rights for Europe (1950, in force since 1953)

Organization of American States and Council of Europe, like UN, have also adopted (but, unlike UN, later) separate treaties (with weaker implementation mechanisms) containing catalogues of economic, social and cultural rights, as opposed to their aforementioned conventions dealing mostly with civil and political rights.

- European Social Charter for Europe (1961, in force since 1965, complaints mechanism created under 1995 Additional Protocol, in force since 1998)
- Protocol of San Salvador to the ACHR for the Americas (1988, in force since 1999)

Enforcement of human rights law

There is currently no international court to administer international human rights law, however, quasi-judicial bodies exist under some UN treaties (e.g., Human Rights Committee under ICCPR). The International Criminal Court (ICC) has jurisdiction over the crime of genocide, war crimes and crimes against humanity.

While the European Court of Human Rights, and the Inter-American Court of Human Rights enforce regional human rights law.

The United Nations Human Rights Bodies do have some quasi legal enforcement mechanisms. These include the Treaty Bodies attached to the current seven active treaties, and the Human Rights Council complaints procedures, known as the 1235 and 1503 mechanisms ^[6]

The enforcement of international human rights law is the responsibility of the Nation State, and it is the primary responsibility of the State to make human rights a reality.

In practice, many human rights are very difficult to legally enforce due to the absence of consensus on the application of certain rights, the lack of relevant national legislation or of bodies empowered to take legal action to enforce them.^[7]

In over 110 countries national human rights institutions (NHRIs) have been set up to protect, promote or monitor human rights with jurisdiction in a given country.^[8] Although not all NHRIs are compliant with the Paris Principles,^[9] the number and effect of these institutions is increasing.^[10] The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris on 7-9 October 1991, and adopted by United Nations Human Rights Commission Resolution 1992/54 of 1992 and the General Assembly Resolution 48/134 of 1993. The Paris Principles list a number of responsibilities for national institutions.^[11]

Universal Jurisdiction

Universal jurisdiction is a controversial principle in international law whereby states claim criminal jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality, country of residence, or any other relation with the prosecuting country. The state backs its claim on the grounds that the crime committed is considered a crime against all, which any state is authorized to punish. The concept of universal jurisdiction is therefore closely linked to the idea that certain international norms are *erga omnes*, or owed to the entire world community, as well as the concept of *jus cogens*. In 1993 Belgium passed a *law of universal jurisdiction* to give its courts jurisdiction over crimes against humanity in other countries, and in 1998 Augusto Pinochet was arrested in London following an indictment by Spanish judge Baltasar Garzón under the universal jurisdiction principle.^[12] The principle is supported by Amnesty International and other human rights organisations as they believe certain crimes pose a threat to the international community as a whole and the community has a moral duty to act, but others, including Henry Kissinger argue that "widespread agreement that human rights violations and crimes against humanity must be prosecuted has hindered active consideration of the proper role of international courts. Universal jurisdiction risks creating universal tyranny – that of judges".^[13]

See also

- Crimes against humanity
- Customary international law
- Genocide
- Human rights
- Rule of Law in Armed Conflicts Project (RULAC)
- International law
- International humanitarian law

- International human rights instruments
- Refugee law

References

1. ^ Ball, Gready (2007) p.37
2. ^ http://www.unhchr.ch/html/menu3/b/d_icerd.htm
3. ^ <http://www.un.org/womenwatch/daw/cedaw/index.html>
4. ^ http://www.unhchr.ch/html/menu3/b/h_cat39.htm
5. ^ <http://www.unicef.org/crc>
6. ^ OHCHR. "Human Rights Council Complaint Procedure". <http://www2.ohchr.org/english/bodies/chr/complaints.htm>. Retrieved on 2009-02-06.
7. ^ See, REDRESS, Enforcement of Awards for Victims of Torture and Other International Crimes (http://www.redress.org/publications/master_enforcement%2030%20May%202006.pdf) May, 2006
8. ^ National Human Rights Institutions Forum (<http://www.nhri.net>) is the official portal for the National Human Rights Institutions and show a list of 119 institutions that can be found at [1] (<http://www.nhri.net/nationaldatalist.asp>)
9. ^ "Chart of the Status of National Institutions" (PDF). National Human Rights Institutions Forum. November 2007. http://www.nhri.net/2007/List_Accredited_NIs_Nov_2007.pdf. Retrieved on 2008-01-06.
"ACCREDITED BY THE INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS
In accordance with the Paris Principles and the ICC Sub-Committee Rules of Procedure, the following classifications for accreditation are used by the ICC: A: Compliance with the Paris Principles;
A(R): Accreditation with reserve – granted where insufficient documentation is submitted to confer A status;
B: Observer Status - Not fully in compliance with the Paris Principles or insufficient information provided to make a determination;
C: Non-compliant with the Paris Principles."
10. ^ HURIDOCS (<http://www.huridocs.org>) has developed extensive methodologies for monitoring and documenting human rights violations, and more resources can be found at Human Rights Tools (http://www.humanrightstools.org/dir/1__Monitoring_-_brown_Documentation_-_Advocacy/Monitoring_and_fact-finding_/)
11. ^ National Human Rights Institutions - Implementing Human Rights", Executive Director Morten Kjærum, The Danish Institute for Human Rights, 2003. ISBN 87-90744-72-1, page 6
12. ^ Ball, Gready (2007) p.70
13. ^ Kissinger, Henry (July/August 2001). "The Pitfall of Universal Jurisdiction". *Foreign Affairs*. <http://www.foreignaffairs.org/20010701faessay4996/henry-a-kissinger/the-pitfalls-of-universal-jurisdiction.html>.

External links

- UNHCHR (<http://www.ohchr.org>)
- A Brief Primer on International Law (http://www.burneylawfirm.com/international_law_primer.htm) With cases and commentary. Nathaniel Burney, 2007.
- Official United Nations website (<http://www.un.org>)
- Official UN website on Human Rights (<http://www.un.org/rights>)
- Official UN website on International Law (<http://www.un.org/law>)
- Official website of the International Court of Justice (<http://www.icj-cij.org/>)

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