

Sub-unit 3. Mechanisms for the promotion and protection of Human Rights

1. Introduction

The lesson introduces you to the human rights enforcement mechanisms at the international and regional levels. At the international level, this lesson identifies and explains the role of different UN bodies in the protection and promotion of human rights. The lesson explains also major regional human rights enforcement mechanisms with a focus on 3 major systems: the European system, the inter-American system and the African system. The lesson ends by describing the role played by other actors in the promotion and protection of human rights mainly intergovernmental organizations and Non-Governmental Organizations (NGOs).

2. Who holds the primary responsibility for enforcing human rights?

States are the principal entities responsible for enforcing human rights. It is the primary responsibility of the State to make human rights a reality i.e. to respect, protect, fulfil and promote human rights. By becoming party to human rights treaties, a state agrees to take on the responsibility to ensure that civil, political, economic, social, and cultural rights can be fully enjoyed by all. States are tasked with enforcing human rights both between one individual and another, and between individuals and the state itself.

Countries can enforce human rights (respect, protect, fulfil and promote human rights) in several ways, with different state organs playing a variety of roles.

3. Need for Human rights enforcement mechanisms

Normally, all states would take their human rights obligations seriously, by enforcing them in a variety of ways. However, this is not always the case. Even when states know the content of human rights and are aware of their obligations to respect, protect, fulfil and promote them, they may sometimes still fail to do so. Failure to respect, protect, fulfil and promote human rights happens in many circumstances; for instance a government may be going through a difficult transition period, it may be spending its budget and political capital in other areas, or it simply may not care, or think useful or ignore the human rights of citizens and others in its territory. The national judiciary may be inadequate, partial, corrupt, or otherwise unwilling or unable to deal with complaints. In some

cases, a government may even begin to commit gross and systematic human rights abuses, for example against minority groups or political opponents.

In these cases, ***how can individuals and the international community ensure that the state continues to fulfill its human rights obligations?*** This is ensured through international, regional human rights enforcement mechanisms or other actors as we are going to develop them.

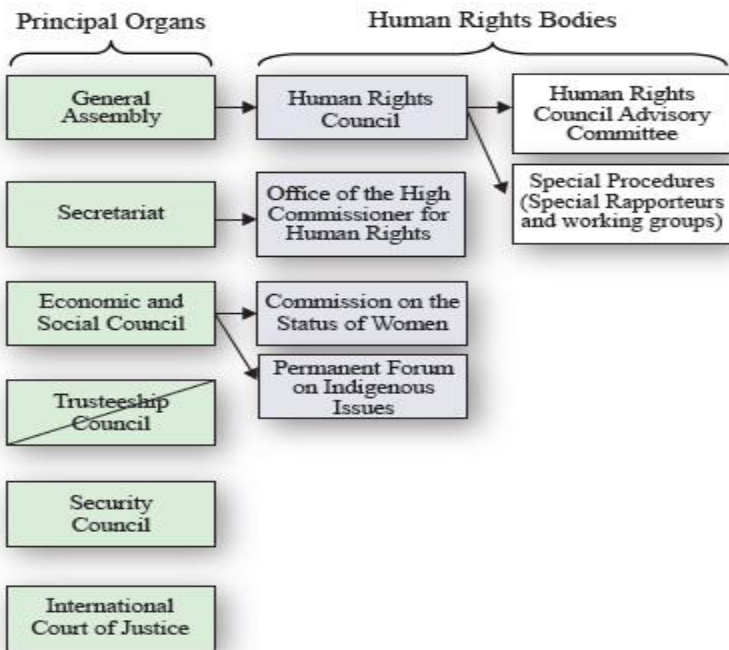
4. The UN's system for the enforcement of human rights

The UN's mechanisms for the enforcement of human rights consists of **two** different types of organs: **Charter-based organs and Treaty-based organs.**

A. Charter-based organs

Charter-based organs are organs/bodies established by the UN under the authority of the UN Charter. They include UN bodies that were either directly mandated by the UN Charter of 1945 or authorized by a body that was directly created by the UN Charter.

Charter-based body include **principal organs** and **major human rights bodies** resulting from some of the principal organs. These organs have a broad mandate to promote awareness, encourage respect, and respond to violations of international human rights norms. Each of these charter bodies has played an important role in the promotion and protection of human rights, and all have contributed to the UN system of human rights enforcement in different ways.



The Trusteeship Council was responsible for overseeing the administration of a number of territories during their transition from colonial to independent rule. But, it has been suspended since 1994, when its work in overseeing the post-War decolonization process was successfully completed following the independence of Palau.

The principal organs and their corresponding human rights bodies

1. The General Assembly

The General Assembly (GA) is the deliberative organ of the UN. It is composed of all Member States of the UN, each of which has **an equal right to speak and vote** regardless of size, population, level of development, wealth, or any other consideration.

The UN GA performs a number of important functions with respect to human rights. The GA is empowered to:

- discuss any matters within the scope of the UN Charter and
- initiate studies and make recommendations for the purpose of assisting in the realization of human rights;
- The GA is an important body in terms of standard setting – the process of developing and explaining the content of human rights norms.

However, it cannot pass legally binding rules (except in the realm of budgetary matters), it does have the power to **issue resolutions**, which have important moral

and political force. It can also create new UN bodies to carry out various functions.

In 2006, the UN GA created **the Human Rights Council (HRC)**, an intergovernmental body within the United Nations system to replace the Commission on Human Rights, which functioned from 1946 to 2006.

The Human Rights Council is a forum empowered:

- to promote universal respect for human rights and fundamental freedoms without distinction of any kind and in a fair and equal manner,
- to protect the most vulnerable by responding to human rights emergencies;
- It is therefore responsible **for the promotion and protection of all human rights around the world.**

The Human Rights Council is supported in its work by the **Human Rights Council Advisory Body**, an expert commission that functions as a **think tank for the Council**. The Advisory Body is composed of 18 experts whose aim is to provide studies and research-based advice on the Council's request.

The primary purpose of the HRC is to address situations of widespread and systemic human rights violations and make recommendations on them. In order to fulfil its function, The Human Rights Council uses some of the following mechanisms:

- **Universal Periodic Review (UPR):** The Human Rights Council undertakes Periodic Review of the human rights records of all UN Member States once every four years.
- **Special Procedures:** The special procedures of the Human Rights Council are independent human rights experts with mandates to examine, monitor, advise and publicly report on country-specific or thematic issues in human rights protection in all parts of the world. Special procedures can be an **individual**, known as **a Special Rapporteur** or **a working group**. Special procedures may also be known as **Independent Experts, Representatives, or Special Representatives**.

In addition to investigating and reporting on situations, special procedures may carry out country visits (with the consent of the state), send appeals for urgent action asking governments to take immediate action to prevent or mitigate a violation, or send allegation letters requesting governments to

clarify an alleged human rights abuse. Sometimes, urgent appeals may be sent in response to individual communications.

As of 1 August 2017, there were 44 **thematic** (e.g. working group of experts on people of African descent established in 2002 and mandated extended in 2018, working group on arbitrary detention established in 1991 and extended in 2019, special rapporteur on the right to development established in 2016 and extended in 2019, special rapporteur on the rights of persons with disabilities established in 2014 and extended in 2017, etc) and 12 **country** mandates (e.g. Independent expert on the situation of human rights in Central African Republic established in 2013 and extended in 2019, special rapporteur on the situation of human rights in Palestinian territory occupied since 1967, established in 1993, Independent expert on the situation of human rights in Mali, established in 2013 and mandate extended in 2019, Independent expert on the situation of human rights in Somalia, established in 1993 and mandate extended in 2019, etc).

- **Complaints Procedure:** the Human Rights Council has the ability to receive complaints from individuals or groups of individuals who believe that they have suffered a human rights violation. The procedure takes place in confidence, with the only public record being a statement of the names of those countries that are currently under consideration and those cases that have been discontinued/stopped.
- **Other mechanisms:** In addition to these mechanisms, the Human Rights Council also receives advice from a **Social Forum** made up of UN and civil society groups that meet once a year to discuss a set thematic topic; a **Forum on Minority Issues** that provides advice and research on minority issues; an **Expert Mechanism on the Rights of Indigenous Peoples** that provides thematic expertise on indigenous issues; and a **number of working groups and committees** dedicated to implementing the Durban Declaration and Programme of Action, which seeks to eradicate racism, racial discrimination, xenophobia, and intolerance.

The Human Rights Council remains one of the most important UN Charter-based organs for human rights.

2. The Secretariat

The Secretariat is the chief administrative body of the UN, and is led by the Secretary-General (SG). The Secretariat assists the other principal organs of the United Nations in numerous ways, administering the programs and policies that principal organs of the United Nations create. Secretary-General has several powers. With respect to human rights, **three functions** stand out.

- First, the SG administers peacekeeping missions, and can ensure that these missions include a human rights mandate.
- Second, the SG can act as a spokesperson and leader on human rights issues, supporting the High Commissioner for Human Rights in disseminating and publicizing human rights information and campaigns.
- Finally, the SG can bring urgent human rights problems directly to governments (in confidence) using the good offices mechanism.

Under the Secretary-General, there is **the Office of the High Commissioner for Human Rights (OHCHR)**, one of the most important Charter bodies acting in the field of human rights. It is the main office in the United Nations that deals with human rights and it works to ensure that human rights standards are applied in all of the UN's activities.

The Office of the High Commissioner for Human Rights (OHCHR):

- plays a central role in coordinating, monitoring, studying, and promoting human rights throughout the UN system, and
- designs and implements human rights programmes to be carried out by the Secretariat;
- The Office of the High Commissioner for Human Rights (OHCHR) works to offer the best expertise and support to the different human rights monitoring mechanisms in the United Nations system: bodies created under the UN Charter, including the Human Rights Council and its Special Procedures; and Committees set up by international human rights treaties and made up of independent experts mandated to monitor State parties' compliance with their treaty obligations.
- The High Commissioner has the power to develop programmes and focus attention on human rights priorities of her choice. The OHCHR implements its policies both through publicity campaigns and through field operations that carry out technical assistance (cooperation programs) and investigative and monitoring functions.

- It collaborates with governments to strengthen their human rights capabilities, encourages states to develop policies and institutions that are conducive to human rights, and provides advice and technical assistance to achieve these goals.

3. The Security Council

The primary responsibility of the Security Council (SC) is to maintain international peace and security. The Security Council is made up of 15 member states of the UN. There are five permanent members – China, France, Russian Federation, the United Kingdom (UK), and the United States (US) – and 10 non-permanent members elected for two-year terms and distributed across the various regions.

Decisions taken by the Security Council create binding obligations for UN Member States. With respect to human rights protection, the Security Council has played an increasingly important role in recent years.

- It has ensured the inclusion of human rights provisions in peace agreements,
- It has assisted in efforts to eliminate the use of child soldiers, and
- It has required the consideration of human rights principles by the Counter-Terrorism Committee established after the 9/11 attacks in the United States.
- It has assigned peacekeeping forces human rights mandates and authorized humanitarian intervention operations.
- It has considered gross violations of human rights that threaten international peace and security and recommended enforcement measures, and
- It has established international criminal tribunals for the prosecution of individuals responsible for serious violations of international humanitarian law during conflicts. These international criminal tribunals include the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC).

4. The Economic and Social Council

The Economic and Social Council (ECOSOC) studies, coordinates, and makes recommendations on economic and social issues at the UN. It supervises and oversees several important specialized human rights bodies, including:

- **The Commission on the Status of Women (CSW):** Established in 1946, it consists of 45 government representatives who monitor, protect, and promote women's

rights. The Commission on the Status of Women (CSW) is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. It is instrumental in promoting women's rights, documenting the reality of women's lives throughout the world, and shaping global standards on gender equality and the empowerment of women.

Since its establishment, the Commission on the Status of Women CSW has prepared numerous recommendations on urgent problems in the field of women's rights, and has developed several important declarations, proposals, and conventions that protect and promote the human rights and fundamental freedoms of women. Among these are:

- The Convention on the Political Rights of Women (1952);
- The Convention on the Nationality of Married Women (1957);
- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962); and
- The Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1965).
- The CSW's work was critical to the development of **the Convention on the Elimination of Discrimination against Women (CEDAW)** adopted in 1979 by the UN General Assembly, which is often described as an international bill of rights for women. It is **the first international women's rights treaty**.

• **The Permanent Forum on Indigenous Issues (PFII):** Established in 2000 by the Economic and Social Council, it is charged with advising the Economic and Social Council and other UN agencies on indigenous issues related to economic and social development, culture, the environment, education, health, and human rights. Since 2002, the permanent Forum has issued a number of recommendations in its six mandated areas of concern. The 15 independent experts of the PFII have been meeting for two weeks annually since 2002. More specifically, the Permanent Forum:

- provides expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through ECOSOC;
- raises awareness and promotes the integration and coordination of activities related to indigenous issues within the UN system;
- prepares and disseminates information on indigenous issues;

- promotes respect for and full application of the provisions of the UN Declaration on the Rights of Indigenous Peoples and follow up the effectiveness of this Declaration (Art. 42 UNDRIP).

The Permanent Forum is one of three UN bodies that is mandated to deal specifically with indigenous peoples' issues. The others are the **Expert Mechanism on the Rights of Indigenous Peoples** and the **Special Rapporteur on the rights of indigenous peoples**.

5. The International Court of Justice

The International Court of Justice (ICJ) is responsible for settling legal disputes between States and advising the UN on legal matters. In addition to several important early cases on human rights issues such as self-determination and genocide, the ICJ has made a number of judgments of high importance for international human rights law since the mid-1990s.

The primary importance of the ICJ for human rights lies in its ability to define and give content to standards in international human rights law. By providing its opinion on whether a violation of human rights has occurred in a given situation, the ICJ can help to elaborate the boundaries between individual and state rights. The ICJ can issue both formal decisions, which are binding on the parties to the dispute, and advisory opinions that are non-binding, but highly persuasive in terms of defining the law in a given situation.

Together, the five principal organs of the UN and their human rights bodies form one of the two sets of bodies responsible for overseeing the enforcement of human rights at the UN level.

B. The treaty-based organs

The treaty bodies are other important set of UN institutions for the promotion and protection of human rights. They include bodies that were created by human rights treaties originating in UN processes or adopted by the UN GA. Treaty bodies are international committees of independent experts created in accordance with the provisions of international human rights treaties. They function as control

mechanisms that can review and assess the progress made and difficulties encountered during treaty implementation.



Some differences between treaty- based organs and charter-based organs

- Treaty- based organs are much more limited in their mandates than Charter-based organs because they draw their legitimacy from a specific treaty;
- Their jurisdiction of treaty-based organs (what and who they are allowed to address) is limited by the terms and subject of the treaty under which they were formed, and extends only to those states that are parties to that particular treaty.

Treaty bodies have been put in place to support States parties (States who have ratified a treaty) in monitoring the implementation of all treaties they have ratified under international law.

Office of the High Commissioner for Human Rights (OHCHR) assists treaty bodies in harmonizing their working methods and reporting requirements through their secretariats.

There are **nine** human rights treaty bodies in the UN system which are attached to each of the other major international human rights treaties:

1. **The Human Rights Committee (HRC)** monitors implementation of the International Covenant on Civil and Political Rights 1966 and its optional protocols; in states parties to the covenant and additional protocols. The International Covenant on Civil and Political Rights ICCPR is supplemented by two optional protocols: The optional protocol to the ICCPR (1966), which sets up **a judicial complaints procedure for the treaty** i.e. procedures to follow for communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant; the second optional protocol to the ICCPR, aims at **the abolition of the death penalty** (1989), which, as its name suggests, moves toward abolishing the death penalty.
2. **The Committee on Economic, Social and Cultural Rights (CESCR)** monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966); it monitor state parties

fulfillment of their obligations under the International Covenant on Economic, Social and Cultural Rights;

3. **The Committee on the Elimination of Discrimination Against Women**, which oversees the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979;
4. **Committee on the Elimination of Racial Discrimination**, which oversees the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965;
5. **The Committee against Torture** (CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment 1984; (additionally, the Optional Protocol to the Convention against Torture (OPCAT) has a **Subcommittee on Prevention of Torture**);
6. **Committee on the Rights of the Child**, which oversees the implementation of the Convention on the Rights of the Child (CRC); 1989 and its two optional protocols (2000): The first concerns **the recruitment and involvement of children in armed conflicts**. The second is the optional protocol **on the Sale of Children, Child Prostitution and Child Pornography**. Under the second Optional Protocol, State parties must ensure that the sale of children, child prostitution, and child pornography are criminalized both within and outside of their territories. It also requires states to either prosecute or extradite any offenders found within their borders, and establishes extensive enforcement jurisdiction, allowing State parties to prosecute persons who violate these laws whenever the offense was committed in the state's territory, by a national of the state, or against a victim who is a national of the state. The second optional protocol also requires the confiscation of materials and assets that were involved in crimes against children and allows for protective measures to be taken on behalf of victims.
7. **Committee on Migrant Workers (CMW)**, which oversees the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) 1990;
8. **Committee on the Rights of Persons with Disabilities**, which oversees the implementation of the Convention on the Rights of Persons with

Disabilities (CRPD); and its optional protocol of 2006 which establishes an individual complaints mechanism and inquiry procedure for state parties.

9. Committee on Enforced Disappearances, which oversees the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance of 2006.

Treaty bodies are made up of independent experts who, after examining reports from States, will give their recommendations. In some cases, individual complaints will also be considered. Treaty bodies usually meet in session twice a year in Geneva, with the exception of the Human Rights Committee which additionally meets once a year in New York.

The treaty bodies perform a number of different functions, as permitted by the treaty under which they were created. These functions include:

Issuing general comments: treaty bodies are empowered to issue general comments that clarify and interpret the content of human rights provisions.

Considering state parties' reports: In order to monitor whether states are fulfilling their obligations to respect, protect, promote and fulfill the human rights within the ratified treaties, the core human rights treaties require states to submit periodic reports on the state of human rights in their territory. These reports are given to the treaty bodies, which read them and comment on the states' compliance with the treaty. In addition to the state party's report, the treaty body may also consider information on the country's human rights situation received from other sources, such as non-governmental organizations (NGOs), UN agencies, other intergovernmental organizations, academic institutions, or the media.

Conducting inquiries: Several of the treaty bodies (including the CEDAW Committee, the CAT Committee, the CRPD Committee, and the Committee on Enforced Disappearances) can make inquiries into suspected cases of serious human rights abuses. These bodies may conduct inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions. After conducting an inquiry, the treaty body's findings, comments, and recommendations are transmitted to the state for action and/or response. The findings of the inquiry procedure are confidential.

Receiving individual communications; most of the human rights treaty bodies can receive and consider individual complaints, known as communications, by or on behalf of individuals who claim that their rights have been violated.

Receiving state-to-state complaints: Several of the treaties (including the ICCPR, CERD, CAT, CEDAW, and the CMW) also make provision for states to submit human rights complaints against other states.

Conclusion

In this part of the lesson, we examined the two sets of mechanisms established by the UN: the Charter-based bodies and the treaty-based bodies, and we explored the different types of enforcement strategies available under these organs. **For more details on charter-based bodies and treaty-based bodies, and their roles in the protection and promotion of human rights, you can visit their websites.**

In the following part of the lesson, we will examine a few other sets of human rights enforcement mechanisms: the regional bodies set up in Europe, the Americas, and Africa.

5. Regional human right enforcements mechanisms

There are three major regional human rights enforcement systems: the European system, the Inter-American system, and the African system. When learning about these regional groupings, you will notice many similarities with the UN mechanisms that we studied in the previous part of the lesson. At the same time, however, each of the major regional human rights enforcement systems also has its own unique set of structures and norms.

1. the European System

The European System is the most extensive of the three major regional systems, and its enforcement mechanisms are even older than their UN counterparts. After the World War II, the European countries formed several institutions:

- **The Council of Europe** (1949): responsible for promoting the rule of law, human rights, and democracy;
- **The European Coal and Steel Community** which was replaced by the **European Union (EU)** (1952): responsible for economic integration; and
- **The Conference on Security and Cooperation in Europe** which became the **Organization for Security and Cooperation in Europe (OSCE)** (1975): responsible for maintaining peace and military security in Europe.

Each of these three institutions is made up of a different set of states and has a different set of competences. None of the three is concerned exclusively with human rights, but all play a role in the promotion and protection of human rights and fundamental freedoms in Europe.

Council of Europe

The Council of Europe was formed in 1949 by a group of 10 states. Its purpose was the promotion of democracy, the rule of law, and greater unity in Western Europe. Today, the purpose of the Council has changed. Its membership expanded greatly after the fall of the Soviet Union, and the Council now counts 47 member states, including nearly all of Western and Eastern Europe, much of the former Soviet Union (including Russia), and Turkey. In keeping with its new formation, the Council of Europe developed a new set of principal aims, among which is **the protection and promotion of human rights in Europe.**

The primary human rights document of the Council of Europe and the European system in general, is **the European Convention for the Protection of Human Rights and Fundamental Freedoms**, more commonly known as **the European Convention on Human Rights (ECHR)** adopted in 1950. It is particularly significant to human rights law because it was the first comprehensive, legally binding human rights document to enter into force. It established the **first international court and complaints procedure** for hearing human rights disputes. Since that time, the European system has generated an extensive jurisprudence, and remains the most highly developed of the regional human rights systems

It focuses primarily on **civil and political rights**, and is modeled on the civil and political rights provisions of the UDHR. The text of the ECHR is similar to that of the ICCPR, with a few important differences:

- (1) The European Convention on Human Rights (ECHR) contains no provisions relating to self-determination or minorities;
- (2) The European Convention on Human Rights (ECHR) requires limitations on rights to be “necessary in a democratic society”; and
- (3) The European Convention on Human Rights (ECHR) contains a different set of non-derogable rights.

Full text of the European Convention on Human Rights available on the Council of Europe’s website at <http://www.eycb.coe.int/compass/en/pdf/6_8.pdf>.

Although economic, social, and cultural rights were included in the post-war constitutions of Western European states like France, Germany, and Italy, they were not included in the European Convention on Human Rights ECHR. This was because the drafters felt that it was first necessary "to guarantee political democracy in the European Union and then to co-ordinate our economies, before undertaking the generalization of social democracy". Instead, states agreed to deal with economic, social, and cultural rights and other outstanding issues through **optional protocols** and **separate agreements** containing additional provisions. Since 1952, a further **14 optional protocols to the** European Convention on Human Rights **ECHR** have been adopted. The majority of these deal with procedural matters. A few, however, grant additional protections for human rights. These include:

- **Protocol 1 (1952):** protecting the right to property; the right to education; and the obligation to hold free elections;
- **Protocol 4 (1963):** ensuring freedom from imprisonment for civil debts; freedom of movement and residence; freedom to leave any country; freedom from exile; the right to enter the country of which one is a national; and the prohibition of collective expulsion of aliens;
- **Protocol 6 (1983):** mandating the abolition of the death penalty;
- **Protocol 7 (1984):** affirming the right of an alien not to be expelled without due process; the right to appeal; the right to compensation for a miscarriage of justice; immunity from double prosecution for the same offence; and quality of rights and responsibility of spouses; and
- **Protocol 12 (2000):** elaborating on the prohibition of discrimination.

The European Convention on Human Rights (ECHR) assigns the primary responsibility for enforcing member states' obligations to **the European Court of Human Rights (ECtHR)**, established in 1959. The Court can give advisory opinions (an assessment of the legality of a law or action given in response to a request rather than as part of a contentious case) and hear individual complaints (brought by an individual against the state) as well as inter-state complaints (by one state against another), although the latter type of proceeding has rarely been used. The decisions of the European Court of Human Rights are binding on all state parties to the European Convention on Human Rights ECHR. The European Court of Human Rights is considered to be among the most effective international human rights enforcement bodies. Its decisions have a fairly high rate of compliance among Member States, with **the Committee of Ministers of the**

Council of Europe supervising the execution of its judgments. While the Committee of Ministers cannot impose sanctions for non-compliance, political pressure has thus far been an objectively successful means of ensuring that states comply with the Court's judgments.

The second human rights treaty adopted by the Council of Europe is **the European Social Charter** (adopted in 1961, revised in 1996), which protects economic, social, and cultural rights in Europe. The European Social Charter is administered by **the European Committee of Social Rights**, which functions like many of the UN treaty bodies. It is charged with carrying out advisory and monitoring functions, reviewing state reports and issuing conclusions, and deciding on collective complaints from organizations (but not individuals).

A number of other treaties provide additional protection for human rights in Europe. Among these, we have **the European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, which was agreed upon in 1987. The Convention established **a Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**, which is empowered to conduct visits to all "places of detention" in the member states of the Council and Europe. The committee visits may take place at any time, and governments are required to give the committee unlimited access to any place where persons are deprived of their liberty. The CPT uses these visits to inspect and report on conditions of imprisonment and treatment of detainees with the aim of preventing torture and other forms of cruel, inhuman, or degrading treatment. CPT reports are confidential and rely on the cooperation of national governments to protect persons deprived of their liberty. However, if a country fails to cooperate with the CPT, the Committee may decide to make a public statement on the matter.

In addition, in 1999 the Council of Europe established **a Commissioner for Human Rights**. The Commissioner promotes the observance of human rights, assists member states in the implementation of Council of Europe standards, promotes human rights education, identifies potential shortcomings in human rights law and practice, assists national human rights bodies, and provides advice and information concerning human rights to all countries in the region. The Commissioner also conducts country visits and engages in dialogue with member states, makes thematic recommendations on various human rights issues, and organizes assistance for national human rights structures.

Organization for Security and Cooperation in Europe (OSCE)

It also plays a role in the protection and promotion of human rights. The OSCE, created in 1994 after the Cold War, replaced the Conference on Security and Cooperation in Europe (CSCE) opened in 1973. The mission of the organization for Security and Cooperation in Europe (OSCE) is to promote democracy, protect human and minority rights, and encourage military reform. It deals with “three dimensions of security”: the politico-military dimension, the economic and environmental dimension, and the human dimension.

Under the heading of the “human dimension”, the organization for Security and Cooperation in Europe OSCE engages in a number of human rights activities, including monitoring the human rights situation in member states, providing human rights training and education, and contributing to the development of human rights content by issuing non-binding standards. Its activities in recent years have focused on issues of human trafficking, democratization, education, elections, gender equality, media freedom, minority rights, the rule of law, and non-discrimination. The organization for Security and Cooperation in Europe has developed several mechanisms for promoting and protecting human rights, including the creation of:

- an Office for Democratic Institutions and Human Rights,
- a Representative on Freedom of the Media, and
- an Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, and
- it has deployed field missions to perform a range of activities, including monitoring borders, observing elections, and supporting schools.

One of the most evident human rights mechanisms developed by the organization for Security and Cooperation in Europe OSCE is its **High Commissioner on National Minorities**. The organization for Security and Cooperation in Europe OSCE is unique in focusing on the status of national minorities. The High Commissioner cannot receive individual or state communications, and performs a diplomatic, rather than a judicial, function. To this end, the High Commissioner for National Minorities has been particularly influential in developing the “**quiet diplomacy**” **method**, in which the organization for Security and Cooperation in Europe OSCE acts as a neutral broker between opposing political actors.

European Union (EU)

The third of the three major institutions in the European system is the European Union (EU) which replaced the European Coal and Steel Community, a six-nation agreement that sought to integrate the economies of France and West Germany. From this beginning, the project of European economic integration continued to progressively expand, and now covers a broad range of competences and stretches to 27 nations in Western and Eastern Europe.

The European Union has **a judicial body: The European Court of Justice** which developed some laws on human rights, particularly in the context of violations by the EU governing bodies. The EU promotes human rights outside the region by engaging in dialogue and providing technical and financial assistance to third states. Various monitoring and advising experts assist the EU bodies on human rights topics. All members of the EU are also parties to the European Convention on Human Rights ECHR.

A Charter of Fundamental Rights of the European Union that protects all of the rights contained in the European Convention on Human Rights ECHR and the Social Charter; into the governing documents of the EU was adopted by the EU governing bodies in 2000, and entered into force in December 2009. The Charter makes a broad set of civil, political, economic, and social rights – including some new rights like “the prohibition of the reproductive cloning of human beings” – a legally binding feature of the European Union.

2. The inter-American system

Although the American system theoretically applies to the whole region of North, Central, and South America, it has been predominantly a Latin American system, with the United States and Canada making only occasional appearances.

The Inter-American system of human rights protection is the second long-standing regional system for the monitoring and enforcement of human rights. The Inter-American system is primarily based on **two treaties (the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights)** administered by **the Organization of American States (OAS), the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights (IACtHR).**

The Organization of American States (OAS) was established in 1948 for the purposes of strengthening peace and security in the Americas, promoting democracy, settling inter-state disputes, and supporting development.

The establishment of the Organization of American States (OAS) was preceded by the adoption of **The American Declaration on the Rights and Duties of Man**, the founding human rights document in the American system, and the oldest general international human rights treaty (predating the UDHR by several months). The rights contained in the Declaration are similar to those in the UDHR, and include **civil and political as well as economic, social, and cultural provisions**. It is unique, however, in that it includes ten “duties of the citizen” in addition to rights:

- The duty of the individual to conduct himself in relation to others that each and every one may fully form and develop his personality;
- The duty to aid, support, educate, and protect children and to honor, aid, support, and protect parents;
- The duty to receive education;
- The duty to vote;
- The duty to obey the law;
- The duty to serve the community and the nation;
- The duty to respect social security and welfare;
- The duty to pay taxes;
- The duty to work; and
- The duty to refrain from political activities in a foreign country.

Like the UDHR, this early treaty had significant moral and political force, at the time of its adoption was not a binding legal document and contained no enforcement mechanisms. **The American Convention on Human Rights**, which translated the American Declaration into a binding legal document, was adopted in 1969 and entered into force in 1978. The American Convention is similar in structure to the ICCPR, and focuses primarily on **civil and political rights**. It differs somewhat from the ICCPR, however, in that it contains **no protection for minorities**, and includes **five additional protections for the rights of reply, the right to property, freedom from exile, the right to asylum, and the prohibition of the collective expulsion of aliens**. Rather than creating a separate treaty for economic, social, and cultural rights, the American Convention includes a general provision instructing state parties to implement them.

An **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador)** was

adopted in 1988 and went into effect in 1999. The Protocol obliges parties to adopt measures for the progressive achievement of a list of rights similar to those in the ICESCR, and a few additional rights such as the right to a healthy environment, the right to special protection in old age, and the rights of persons with disabilities. Specific individual and groups rights are granted further protection under **several additional conventions**, including:

- Inter-American Convention on the Granting of Civil Rights to Women (1948);
- Inter-American Convention on the Granting of Political Rights to Women (1948);
- Inter-American Convention to Prevent and Punish Torture (1985);
- Inter-American Convention on International Traffic in Minors (1994);
- Inter-American Convention on the Forced Disappearance of Persons (1994);
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the Convention of Belém do Pará) (1994); and
- Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999).

These treaties are supported by a **number of Inter-American organizations** that address human rights issues, including **the Inter-American Commission of Women, the Inter-American Children's Institute, the Inter-American Indian Institute, and the Inter-American Institute of Human Rights.**

Two bodies have been given the primary responsibility for overseeing the implementation of **the American Declaration and American Convention: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.** The Inter-American Commission on Human Rights is a treaty body set up in 1959 to oversee the implementation of the American Declaration on the Rights and Duties of Man. The Inter-American Commission monitors and investigates human rights situations, receives and comments on country reports, makes country visits (an important power that has no equivalent in the European system), and serves as the first destination for all individual complaints, some of which it sends on to the Inter-American Court of Human Rights. Today the **Commission also serves as the treaty body for the American Convention.** The Commission can hear individual complaints as well as inter-state complaints under both the Declaration and the Convention.

The Inter-American Court of Human Rights (IACtHR) was established in 1979 to enforce the Convention. It is empowered to issue advisory opinions (legal opinions

not connected with contentious cases) and hear individual complaints. The IACtHR differs from the European Court in that individual complaints may not be made directly, but must be forwarded by the Commission or the state party to the complaint. The IACtHR has jurisdiction only over countries that have ratified the American Convention. Complaints against states that have ratified only the Declaration must be addressed to the Inter-American Commission instead. Decisions of the IACtHR, unlike those of the Commission, are legally binding on states.

The IACtHR has been somewhat less active than its equivalent in the European system. It has received and judged a fairly small number of cases. One of the reasons for this is that unlike the European Court, the IACtHR is not a permanent body, but meets several times a year to hear complaints. Several of its cases, however, have made a relatively significant impact on international human rights law. In particular, the IACtHR has been a pioneer in defending the rights of indigenous peoples and in ordering states to pay reparations to victims of human rights abuses.

The OAS Charter also created **an Inter-American Council for Education, Science and Culture and an Economic and Social Council** to set standards and make recommendations with respect to economic, social, and cultural rights.

3. The African System

The protection of human rights has a long history in Africa, which has struggled for much of recent history against colonialism and apartheid, repressive post-colonial regimes, conflict, and poverty. The legal structure of the African system, however, is the newest and the least developed of the three major regional systems for the promotion and protection of human rights.

The Organization of African Unity (OAU) was established in 1963 to serve as the regional governing body for the African states. It was set up in the wake of the anti-colonial struggle of the 1950s, and its agenda focused primarily on ending colonialism. As such, the OAU Charter recognized the “inalienable right of all people to control their own destiny” and listed as one of its primary purposes the defense of the sovereignty, territorial integrity and independence of African states. This emphasis on sovereignty led the OAU to resist intervening in the internal affairs of African states, even for the purpose of ending gross human rights abuses. But this reluctance to intervene soon led to charges that the OAU was “largely irrelevant,” “bureaucratic and toothless,” and a “dictators’ club” that was “unwilling to hold its members accountable.”

The OAU was succeeded by **the African Union (AU)** in 2002. The AU has a much broader human rights agenda than its predecessor. The founding document of the new body provides that the AU shall operate in accordance with human rights principles, and lists the promotion and protection of human rights as one of its key objectives.

The OAU adopted **the African Charter on Human and Peoples' Rights** (also known as **the Banjul Charter**) in **1981**. The Charter is the founding document of the African system, and has a number of unique aspects. It recognizes a broad range of civil, political, economic, social, and cultural rights, as well as a number of group rights that are not recognized by other regional bodies. For example, the African Charter recognizes the right of peoples to equality; existence; self-determination; control over natural resources; economic, social, and cultural development; international peace and security; and a generally satisfactory environment. Additionally, the African Charter is much more duty-oriented than either the UN human rights system or the other regional systems.

Since the signing of the African Charter, several additional human rights instruments have been adopted. Among these:

- **The 1990 African Charter on the Rights and Welfare of the Child.** The African Children's Charter is overseen by **the African Committee of Experts on the Rights and Welfare of the Child**, which examines state reports, receives individual complaints, and conducts on-site investigations.
- **An African Youth Charter** that focuses on youth participation and basic rights for young people was agreed upon by the African Union in 2006, and came into force on 8 August 2009.
- **The 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.** It is the Africa's primary treaty relating to women's rights. This protocol goes further in its protection against harmful practices than do the equivalent treaties in Europe and the Americas or the regional instruments.
- The former Organization of African Unity (OAU) has adopted the **1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.**

The African Charter establishes an **African Commission on Human and Peoples' Rights** to oversee the implementation of the treaty. The Commission has been in operation since 1987, and is headquartered in Banjul, The Gambia. The African

Commission receives and comments on state reports, conducts on-site visits, issues resolutions, appoints special Rapporteurs and working groups, and acts as a quasi-judicial body, empowered to hear individual complaints and inter-state complaints, and to issue non-binding recommendations. In addition, the Commission's rules of procedure allow it to issue requests for provisional measures to prevent imminent harm to human rights. The African Commission's broad mandate has allowed it develop some leading decisions on economic, social, and cultural rights.

In 1998, the OAU adopted a **Protocol to the African Charter that created an African Court on Human and Peoples' Rights** to complement and reinforce the work of the Commission. The Protocol entered into force in 2004, and the Court opened its doors in Arusha, Tanzania in 2006.

In 2003, it was established the **African Court of Justice** that was intended to be the principal judicial organ of the African Union (parallel to the European Court of Justice, which is the principal judicial organ of the EU). This Court was to hear cases between states, organs of the African system (including the Commission), and, in some cases, third parties. But, in mid-2008, African leaders voted to establish **an African Court of Justice and Human Rights** to serve as the main judicial organ of the African Union. This new Court merges the African Court on Human and Peoples' Rights and the African Court of Justice into one African Court of Justice and Human Rights. There is also **the Protocol on the Statute of the African Court of Justice and Human Rights** (2008).

In addition to these major human rights institutions, there are also **various courts of justice in Africa's several regional economic communities** that have human rights mandates: The Court of Justice of the East African Community, the Court of Justice of West African States, the Court of Justice of the Common Market of East and Southern Africa, and the Tribunal of the Southern African Development Community may all have some competence over certain human rights issues.

6. Other actors: intergovernmental organizations and Non-Governmental Organizations (NGOs)

The last part of this lesson discusses intergovernmental organizations and NGOs and how their efforts contribute to the enforcement of international human rights law.

Intergovernmental organizations

A huge number of additional UN agencies, partners, and other intergovernmental groups also contribute to the promotion and protection of human rights. These agencies are known generally as **intergovernmental organizations**, and when they are affiliated with the UN they are sometimes known as **specialized agencies**. These organizations are established by governments either through the UN or via a separate treaty in order to monitor, commission studies on, report on, and administer agreements related to a specific issue.

The UN specialized agencies and other intergovernmental organizations form a critical part of the international structure of human rights governance, and their work complements that of the UN Charter-based and treaty-based bodies. These intergovernmental organizations include, among many others:

- Department of Economic and Social Affairs (DESA)
- Food and Agricultural Organization of the United Nations (FAO)
- Inter-Agency Internal Displacement Division (IDD)
- Inter-Agency Standing Committee (IASC)
- International Labour Organization (ILO)
- Joint United Nations Programme on HIV/AIDS (UNAIDS)
- Office for the Coordination of Humanitarian Affairs (OCHA)
- United Nations Children's Fund (UNICEF)
- United Nations Development Programme (UNDP)
- United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)
- United Nations High Commissioner for Refugees (UNHCR)
- United Nations Human Settlement Programme (HABITAT)
- United Nations Mine Action (UNMAS)
- United Nations Population Fund (UNFPA)
- United Nations, Educational, Scientific and Cultural Organization (UNESCO)
- World Health Organization (WHO).

Intergovernmental organizations like these are generally empowered to **act upon a limited set of issues**. With respect to the promotion of human rights, they may be able to perform a range of enforcement activities, from standard-setting to monitoring, reporting, providing technical assistance, or even receiving communications from individuals, businesses, or NGOs.

- For example, one of the specialized agencies with the most effective and well-developed mechanisms for the protection and promotion of human

rights is **the International Labour Organization (ILO)**. The ILO was founded in 1919 for the purpose of improving labor conditions throughout the world. Because its mandate focuses on labour issues, the primary human rights targets of the ILO (as codified in the Declaration of Fundamental Rights and Principles at Work) are:

- Freedom of association and the right to collective bargaining;
- Freedom from slavery and forced labour;
- Freedom from child labour; and
- Freedom from discrimination.

In pursuit of these aims, it examines country reports, receives input from NGOs, conducts technical and political reviews of national policies, and is even empowered to receive complaints about violations of labour rights. It provides technical assistance to Member States, and aids in the drafting and promotion of human rights standards at the national level.

The International Labour Organization (ILO) has adopted a wide variety of international conventions and recommendations, many of which deal with human rights issues. It was one of the first international organizations to support special rights for women, adopting Convention No. 3 on Maternity Protection and Convention No. 4 on Night Work of Women in 1919. The International Labor Organization (ILO) has also continued to be active in concluding conventions for the protection of women's labour rights. These include: conventions on work by women in mines, equal pay, social security, discrimination, and family responsibilities. Moreover, the ILO has set up a Bureau for Gender Equality; an International Programme on More and Better Jobs for Women; and a Capacity-building Programme on Gender, Poverty and Employment.

The ILO has implemented strict rules on working conditions for children as part of the fight to eliminate child labor. It has been active in the area of disability and work, promoting the inclusion and employability of persons with disabilities. The ILO and UNESCO have also contributed to protecting the right to work and the cultural artifacts (creations) of minority groups. The International Labour Organization (ILO) was one of the pioneers in protecting the rights of indigenous persons at the international level.

- Another specialized agency with a long-standing/old history of promoting and protecting human rights is **United Nations, Educational, Scientific and Cultural Organization (UNESCO)**. Founded in 1945, UNESCO has the obligation "to promote universal respect for justice, for the rule of law and for

human rights and fundamental freedoms without distinction of race, sex, language or religion by the Charter of the United Nations." UNESCO focuses on issues related to education, science, and culture, as well as information and communication.

In order to promote rights in these areas, UNESCO acts as a forum for discussion, provides technical assistance, assists in standard setting, performs research into trends and violations of rights, promotes awareness, and funds schools and educational programmes. Like the ILO, UNESCO has also established a complaints procedure and receives communications from individuals and NGOs. UNESCO has been active in highlighting the educational needs of disabled persons.

- **The United Nations Children's Fund (UNICEF)**, a UN specialized agency established in 1946 is the primary advocate of children's rights at the global level. It is the key global organizations concerned with children's rights. It is tasked with improving the lives of children across the world. Among its many projects, UNICEF does advocacy work, provides technical support and assistance to national governments, and it is one of the world's primary vaccine suppliers
- **United Nations High Commissioner for Refugees (UNHCR)**: an independent UN specialized agency, it is one of the largest and most important humanitarian agencies in the UN system. UNHCR has become a primary player in protecting the rights and well-being of refugees. UNHCR monitors implementation of the Refugee Convention and its 1967 Protocol and related aspects of international refugee law. It also provides basic services such as food, water, and shelter to persons in humanitarian emergencies. Moreover, it also provides protection and assistance to a wide variety of other persons of concern than refugees, including: returnees, internally displaced persons (IDPs) and stateless persons.

Most intergovernmental organizations **maintain up-to-date websites, and persons, particularly students are encouraged to visit some of them** in order to expand their knowledge of how intergovernmental organizations contribute to the promotion and protection of human rights.

Non-Governmental Organizations (NGOs)

Human rights NGOs are civil society organizations formed by private individuals or groups (not governments) for the purpose of promoting and protecting human rights. They may focus either on human rights in general or on a specific human

rights issue, such as landmines or the right to health. They may be local, national, regional, or international both in terms of their focus as well as in their structure and presence.

Human rights NGOs have become an important part of international and regional human rights enforcement systems. There are many ways in which NGOs and other civil society groups engage with and support other global, regional, and national human rights monitoring and enforcement systems. These include:

- Promoting the development, adoption, and ratification of treaties;
- Lobbying states to implement their treaty obligations;
- Monitoring states' compliance with their obligations;
- Submitting information and written reports to international and regional charter and treaty bodies;
- Attending and contributing to sessions of international and regional charter and treaty bodies, where possible;
- Submitting individual complaints to treaty bodies, the Human Rights Council, and regional human rights courts;
- Educating individuals about their human rights;
- Drawing attention to human rights violations and "shaming" states into action; and
- Mobilizing support for human rights enforcement.

NGOs operate under diverse mandates and focus on a huge range of different issues. They vary in size from a few people to major international operations and employ many different types of professionals. They may operate on an international, regional, national, or local level. Because they are decentralized and diverse, they can gather, organize, and distribute information quickly and reach areas where international and regional bodies are unwilling or unable to go. Particularly with respect to gathering and distributing information, NGOs are vital to human rights enforcement.

Over the past several decades, NGOs have gained in power and reputation, and are now an official part of many national and international human rights delegations. Large-scale international NGOs like Amnesty International, Oxfam, Doctors without Borders, and Human Rights Watch have attended many intergovernmental meetings. They have been given key responsibilities in the delivery of humanitarian and development assistance, and partner with governments and international organizations on education and monitoring activities. They have scored major victories – **the 2006 Convention on the Rights of**

Persons with Disabilities (CRPD), for example, came out mainly as the result of NGO lobbying.

However, many people have criticized powerful NGOs for their lack of transparency and accountability, arguing that they are, in effect, unelected special interest groups that have been given important powers within the international system.

Conclusion

In this lesson, we have examined the mechanisms established by the international community through the UN; the regional bodies set up in Europe, the Americas, and Africa, and the role played by intergovernmental organizations and NGOs. The mechanisms discussed in this lesson are extremely important parts of the international human rights enforcement system. Regional and other organizations work alongside the UN system in the promotion and protection of human rights. They fill gaps in global enforcement and create their own contextualized systems of human rights norms.

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