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Chapter 1

International human rights law and the role of the legal professions: A general introduction

Facilitator's Guide

Learning objectives

- To ensure that the participants acquire a basic working knowledge of the origin, purpose and scope of international human rights law and its application at the domestic level
- To make the participants aware of the important role played by the legal professions in promoting and protecting human rights

Questions I

- What is a human right?
- Why are human rights important in general?
- Why are human rights important in the country where you are professionally active?

Questions II

- How do you as judges, prosecutors and/or lawyers see your role as promoters and protectors of human rights in the exercise of your professional duties?
- What are the specific problems, if any, that you face with regard to the protection of human rights in the country/countries where you work?

The Charter of the United Nations I

1. According to the Preamble to the Charter of the United Nations, the Peoples of the United Nations are determined:

- To save succeeding generations from the scourge of war
- To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small
- To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained
- To promote social progress and better standards of life in larger freedom

The Charter of the United Nations II

2. Article 1 (3): Among the purposes of the United Nations is:

To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

3. Article 13 (1) (b): The General Assembly shall initiate studies and make recommendations for the purpose of, inter alia:

Promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Charter of the United Nations III

4. **Article 55 (c): The United Nations shall promote:**

[...]

Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

5. **Article 56:** All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

The origin of the contemporary international concern to protect the rights of the human person

The devastating experiences of the First and Second World Wars underscored the imperative need both to protect the human person against the arbitrary exercise of State power and to promote social progress and better living standards in larger freedom.

The concept of human rights: Its specificity I

Human rights are inherent in all members of the human family. Human rights are thus *universal* and *inalienable* rights of all human beings.

Human beings cannot be deprived of the substance of their rights (*inalienability*). Only the exercise of some of these rights can be limited in certain circumstances.

The concept of human rights: Its specificity II

The fact that human rights originate in the unique nature of the human being means that they should be subjected to effective legal protection at the national and international levels.

Human rights and national and international peace, security and development

Effective protection of human rights and fundamental freedoms is conducive to both domestic and international peace and security.

Effective human rights protection provides a basic democratic culture allowing the peaceful resolution of conflicts.

Economic progress depends to a large extent on good governance and the effective protection of human rights.

The sources of law

Human rights must be effectively protected by domestic legal systems.

Judges, prosecutors and lawyers have a crucial role to fulfil in ensuring that human rights are effectively protected at the domestic level.

The principal sources of international law are international conventions, international customary law and general principles of law.

The jurisprudence of United Nations treaty bodies, as well as regional human rights courts, provide authoritative and valuable interpretation of the human rights obligations that are contained in international and regional human rights instruments.

International treaties I

Obligations incurred by States under international treaties must be performed in good faith.

In international human rights law, State responsibility is *strict* in that States are responsible for violations of their treaty obligations, even if these were not intentional.

International treaties II

A human rights treaty must be interpreted:

- In good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose, which is the protection of the dignity, rights and freedoms of human beings
- By searching for an interpretation that respects the rights and interests of the individual and is also logical in the context of the treaty as a whole
- By taking into consideration the jurisprudence of United Nations treaty bodies and regional human rights courts

International human rights law and international humanitarian law

International human rights law is applicable at all times, that is, both in times of peace and in times of turmoil, including in armed conflicts, be they of an internal or international character.

Reservations to human rights treaties I

The scope of a State's legal obligations under an international human rights treaty may have to be considered in the light of any existing reservations or interpretative declarations.

The general principle is that reservations must be compatible with the object and purpose of the treaty. Certain treaties may have a provision that places limitations on making reservations, such as the International Convention on the Elimination of All Forms of Racial Discrimination (art. 20 (2)) and the Second Optional Protocol to the International Covenant on Civil and Political Rights (art. 2 (1)). In the absence of a limiting provision on reservations, the question is regulated by the general principle.

Reservations to human rights treaties II

The European Convention for the Protection of Human Rights and Fundamental Freedoms forbids reservations of a general character. Reservations must relate to a specific provision of the Convention.

Limitations on the exercise of human rights I

Limitations on the exercise of human rights are the result of a carefully struck balance between the *individual's interest* and the *general interest*, and must, in order to be lawful:

- Be provided for by law
- Be imposed for one or more specific legitimate purposes
- Be necessary for one or more of these purposes in a democratic society
- Be proportionate – proportionality requires a reasonable relationship between the purpose of the limitation, the scope of the envisaged limitation and the right affected

Limitations on the exercise of human rights II

In order to be *necessary*, the limitation, both in general and as applied in the individual case, must respond to a clearly established social need.

It is not sufficient that the limitation is desirable or simply does not harm the functioning of the democratic constitutional order.

Derogations from international human rights obligations I

Under the International Covenant on Civil and Political Rights, and the American and European Conventions on Human Rights, State parties have the right, in certain particularly difficult situations, to derogate from some of their legal obligations.

The right to derogate is subject to strict formal and substantive legal requirements.

Derogations from international human rights obligations II

Some fundamental rights may never, in any circumstances, be derogated from.

The right to derogate must be construed so as not to sap the individual rights of their substance.

The African Charter on Human and Peoples' Rights does not provide for derogation by State parties from any treaty obligation in time of public emergency.

State responsibility for human rights violations I

Whenever bound by international human rights law, States have a *strict* legal obligation to guarantee the effective protection of human rights to all persons within their jurisdiction.

States' legal duty to protect human rights implies an obligation to *prevent, investigate and punish* human rights violations, as well as to *restore* rights when possible or provide reparation, such as, but not necessarily limited to, *compensation*.

State responsibility for human rights violations II

States have a legal duty not only to abstain from committing human rights violations themselves, but also to ensure the existence of adequate protection in their domestic law against acts committed by private persons or entities that would impair the enjoyment of human rights.

Business corporations and human rights

States have an international legal obligation to ensure adequate protection in their domestic law against acts committed by corporations that would impair the enjoyment of human rights.

Corporations may have legal obligations derived from domestic law to avoid the impairment of the enjoyment of human rights.

Domestic law and international law

States cannot invoke provisions of national law in order to modify or not carry out their international obligations.

International human rights law has had a considerable impact on legal developments at the domestic level and is now frequently invoked and applied by domestic courts.