
FOREWORD

by the
**Office of the United Nations High Commissioner
for Human Rights**

The way in which **justice** is administered in a society is one of the basic indicators of its well-being. As highlighted by the Universal Declaration of Human Rights, “...it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.¹ It is for national legal systems and the administration of justice to ensure that this goal is achieved.

Independent legal professions play a fundamental role in the protection of human rights. They are the guardians of international human rights law, ensuring that it is properly enforced within the judicial process and that individuals whose rights have been violated can find an effective remedy domestically. In order to discharge this responsibility, judges, prosecutors and lawyers need to have access to information on the human rights standards laid down in the main international legal instruments and to the related jurisprudence developed by universal and regional monitoring bodies.

For many years, the **Office of the United Nations High Commissioner for Human Rights** has been supporting projects aimed at promoting human rights among the professions responsible for the administration of justice, projects that have addressed judges, prosecutors and lawyers on all continents. In the framework of the United Nations Decade for Human Rights Education (1995-2004), and in partnership with professional associations, the Office has developed relevant methodological tools.

HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE, composed of a Manual and a Facilitator’s Guide, is the result of a joint endeavour with the **International Bar Association**, a key international legal organization with more than 180 member bar associations and law societies. Its objective is to provide a comprehensive core curriculum on international human rights standards for legal professionals.

Readers of the **Manual** are offered basic information on international human rights law and the jurisprudence of universal and regional bodies and national courts. Each module addresses a specific human rights area. In view of the nature of the legal professions, the Manual should have multiple applications: as training material for collective exercises, as a resource tool for carrying out individual studies, and as a reference source for the interpretation and application of the law.

The Manual is complemented by the **Facilitator’s Guide**, which aims at assisting training managers and resource persons engaged in organizing workshops or courses – from the planning stage to the stage of final evaluation. For each of the Manual’s modules, the Guide includes suggested training aids such as overheads, exercises, case studies and role plays. It is based on an **interactive training methodology** which encourages participants to play an active role, contributing their professional expertise to the joint study on how to apply international human rights standards effectively.

¹Universal Declaration of Human Rights, third preambular paragraph.

The Manual and the Guide should be used with a substantial degree of **flexibility**. While they target a specific audience, it may be necessary to make a selection of the most appropriate material. Presentations, examples, case studies and role plays may need to be tailored and customized to reflect relevant legal systems and address issues of particular interest. To facilitate the adaptation of the Manual and Guide to the needs of readers or course participants, both publications are also available in electronic format.

HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE has been developed for use in all kinds of courses and workshops involving the legal professions and not necessarily only in those organized by OHCHR or IBA. Its use is encouraged in the development of curricula, in pre-service training for future legal professionals and in the continuing education activities of professional associations.

All users are invited to comment on the material and suggest improvements. Feedback will be taken into account in future revisions of the Manual and Guide. Please mail your contribution to the following address:

Manual on Human Rights for Judges, Prosecutors and Lawyers
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10
Switzerland

OHCHR is hopeful that this material and other initiatives based on it will lead many individuals who work as judges, prosecutors and lawyers around the world to be agents of change and to contribute directly to the practical implementation of international human rights standards.

Geneva, September 2002

FOREWORD

by the
International Bar Association

During the past 50 years, the International Bar Association (IBA) has gained recognition as the global representative of both individual lawyers and the Bar Associations and Law Societies that oversee the profession. Its 180 Member Organisations cover all continents and include the American Bar Association, the German Federal Bar, the Japan Federation of Bar Associations, the Law Society of Zimbabwe and the Mexican Bar Association.

The IBA believes in the fundamental right of the world's citizens to have disputes heard and determined by an independent judiciary, and for judges and lawyers to practise freely and without interference.

In 1995 the IBA established the Human Rights Institute (HRI) under the Honorary Presidency of Nelson Mandela to further this work. The Human Rights Institute welcomes members from across the spectrum of legal practice; indeed the vast majority of the most active participants do not practise human rights law in their daily lives but, through membership of the HRI, demonstrate their commitment to supporting the freedom of the legal profession. It is to strengthen this commitment that the present Manual and Facilitator's Guide have been conceived, composed and compiled.

In many countries even traditional legal training tends to ignore the comparative and international dimension, with the result that lawyers and judges often have not been introduced to the remarkable and comprehensive developments of statements of international human rights norms and the decisions and views of the international monitoring bodies and regional courts. The basic problem about international human rights law is not so much its applicability or inapplicability in national systems – the basic problem is how little is known around the world of its provisions!

Yet members of the legal profession and the judiciary have an unstated moral obligation to assist in the development of a civil society based upon the rule of law, and, at a more practical level, lawyers and judges have a professional responsibility to maintain their educational and practical proficiency through regular professional programmes.

The international and regional human rights instruments and their developing jurisprudence reflect international law and principles and are of vital importance as aids to interpretation, and in helping judges to make choices between competing interests.

The Manual seeks to assist practitioners in ensuring they are familiar with human rights jurisprudence and statements, and their practical application. As noted by Justice Bhagwati, the former Chief Justice of India, international human rights norms would remain sterile unless lawyers and judges poured life into them, and infused them with vigour and strength so that they may become vibrant and meaningful for the whole of humanity and their universality a living reality.

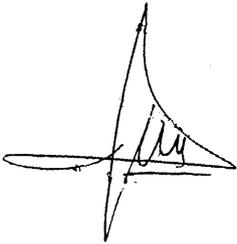
The International Bar Association was pleased to provide practical support to the Office of the High Commissioner for Human Rights by jointly recruiting and financing a Consultant to draft the Manual and Guide and by creating an international committee of distinguished jurists to review and comment on the text.

The Manual will enable judges and lawyers to acquaint themselves with, and deepen their knowledge of, international and regional human rights law and its practical use. The comprehensive Manual and accompanying Facilitator's Guide constitute a detailed legal source of use to lawyers, judges and prosecutors in their everyday work and a structured training programme which can easily be used in all jurisdictions.

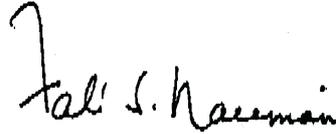
The Human Rights Institute's objectives are to promote and protect the rule of law and human rights. We pursue these aims through trial observations, interventions and fact-finding investigations of legal systems by legal experts. Using our rich resource of experienced lawyers worldwide, we also offer educational help and long-term practical assistance to build or reinforce the structures which support the rule of law.

The publication of the present Manual and Guide will enable the Human Rights Institute to continue its training programme with renewed vigour. We aim to work closely with Bar Associations and Law Societies to introduce them to lawyers, judges and prosecutors worldwide.

We should like to extend our sincere thanks to the Office of the High Commissioner for Human Rights for its unfailing support; to Anna-Lena Svensson-McCarthy for her hard work and professionalism in drafting the Manual and Guide; to members of the IBA's Review Committee for their invaluable input; and finally to Lord Goldsmith QC, Attorney-General for the United Kingdom and former Co-Chair of the IBA's Human Rights Institute, who has encouraged the development of this Manual from its inception.



Ramón Mullerat
Co-Chair
IBA's Human Rights Institute



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ACKNOWLEDGEMENTS

The Office of the United Nations High Commissioner for Human Rights wishes to thank the many individuals and organizations who provided useful comments, suggestions and support for the preparation of this Manual and Facilitator's Guide. In particular, we would like to acknowledge the work done by Anna-Lena Svensson-McCarthy who took primary responsibility for developing and assembling the material.

The partnership between OHCHR and the International Bar Association (IBA) in the management of the project was strongly supported and encouraged by Lord Goldsmith QC (former Co-Chair of the IBA Human Rights Institute) and by the current Co-Chairs Ramón Mullerat OBE (Spain) and Fali Nariman (President, Bar Association of India). An IBA Review Committee provided comments and advice; the Committee was chaired by Dr. Phillip Tahmindjis (Associate Professor, Faculty of Law, Queensland University of Technology, Australia, and Council Member, IBA Human Rights Institute). Members of the Committee who submitted comments were Justice Michael Kirby (High Court of Australia), Finn Lynghjem (Norway), Ambassador Emilio Cardenas (Argentina, IBA Vice-President), Professor Christof Heyns (University of Pretoria) and Associate Professor Carole Peterson (University of Hong Kong). In addition, Kazuyuki Azusawa (Vice-Chair, IBA Human Rights Institute and Vice Chairman of the Committee on International Human Rights, Japan Federation of Bar Associations) provided comments.

Useful information and advice was received from the following organizations: Adalah – The Legal Center for Arab Minority Rights in Israel, Amnesty International, the Commonwealth Secretariat, the Council of Europe, Franciscans International, the General Council of the Bar of South Africa (Johannesburg, South Africa), the Secretariat of the Inter-American Commission on Human Rights and of the Inter-American Court of Human Rights, the International Commission of Jurists, the Law Council Secretariat (Australia), the New Zealand Human Rights Commission, Penal Reform International and the World Organization Against Torture. Michael Birnbaum, Coleman Ngalo, Justice Bernhard Schlüter, Professor Dinah Shelton, Richard Stainsby and Professor David Weissbrodt also provided input.

Within the United Nations, staff from the Department of Economic and Social Affairs/Division for the Advancement of Women, the Office of the United Nations High Commissioner for Refugees and the United Nations Volunteers offered input, as did several OHCHR staff members.

The conceptualization and drafting of this package also benefited from an early draft prepared in 1996/97 under the supervision of Marcia V. J. Kran (Adjunct Professor, Faculty of Law, University of British Columbia, Canada), assisted by a number of researchers, doctoral candidates and students. The contributors to that draft included Justice Lucien Beaulieu, Justice P.N. Bhagwati, Param Kumaraswamy (Special Rapporteur on the independence of judges and lawyers), Matar Diop, Anil Gayan, Louis Joinet, Justice Michael Kirby, Scott Leckie, William McCarney, Manfred Nowak, Craig Scott, Soli Sorabjee, Jean Trépanier and Rick Wilson. Input was also provided by the Council of Europe, the International Association of Judges, the International Association of Juvenile Court Judges, the International Bar Association, the International Commission of Jurists, the International Training Centre of the International Labour Organization, the International Women Judges Foundation and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders.

ADDENDUM

Major Recent Developments (2002 – March 2003)

The following information should be added to the chapters indicated. Further updates of relevant developments will be posted on the OHCHR web site (www.ohchr.org).

Chapter 2: *The Major Universal Human Rights Instruments and the Mechanisms for Their Implementation*

The International Criminal Court (pp. 49-50): The International Criminal Court was inaugurated on 11 March 2003 and has its seat in The Hague, the Netherlands. As of 10 March 2003, 89 States had ratified the Court's Statute. For more information about the Court, see www.icc-cpi.int/.

The Convention on the Rights of the Child, 1989, and its two Optional Protocols, 2000 (p. 43): In two meetings held on 10 February 2003, States parties to the Convention on the Rights of the Child expanded the membership of the Committee that monitors compliance with the Convention by electing 13 experts, five to replace members whose terms were expiring and eight new ones, thereby bringing the total number of members to 18. Originally, the Committee on the Rights of the Child had only ten members (art. 43(2) of the Convention).

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (p. 54): On 18 December 2002, the United Nations General Assembly adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The objective of this Optional Protocol "is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment" (art. 1).

Chapter 3: *The Major Regional Human Rights Instruments and the Mechanisms for Their Implementation*

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987 (p. 107): With the entry into force on 1 March 2002 of Protocol No. 1 to this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State of the organization to accede to the Convention. No geographical limits on this power of invitation are foreseen in the Protocol (see www.cpt.coe.int/en/about.htm).

Chapter 4: *Independence and Impartiality of Judges, Prosecutors and Lawyers*

International Law and the Independence of Prosecutors (p. 147): With regard more particularly to prosecutors in Europe, see also Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system. This recommendation can be found at <http://cm.coe.int/ta/rec/2000/2000r19.htm>.

Chapter 8: *International Legal Standards for the Protection of Persons Deprived of Their Liberty*

Personal hygiene, food, health and medical services (pp. 345-348): The European Court of Human Rights has rendered an important judgment in a case regarding the continued detention of a prisoner undergoing treatment for cancer. The Court was of the view that the national authorities had not ensured that the applicant concerned was given health care enabling him to avoid treatment, contrary to article 3 of the European Convention on Human Rights. His continued detention therefore constituted a violation of his right to dignity and also caused him suffering in excess of that inevitably associated with a custodial sentence and treatment for cancer (see *Eur. Court HR, Case of Mouisel v. France, judgment of 14 November 2002*, para. 48).

The case of *Papon v. France* concerned the detention of a man convicted when he was in his late eighties of aiding and abetting crimes against humanity and sentenced to ten years' imprisonment by a French court. In his application to the European Court of Human Rights, the applicant argued that it was contrary to article 3 of the European Convention on Human Rights to keep a man of over 90 years of age in prison and that the conditions of detention in the prison where he was held were not compatible with extreme old age. The Court rejected the complaint as being manifestly ill-founded (see *Eur. Court HR, Case of Papon v. France, decision on the admissibility of 7 June 2001*).

Chapter 12: *Some Other Key Rights: Freedom of Thought, Conscience, Religion, Opinion, Expression, Association and Assembly*

Freedom of association and political parties (p. 614 at pp. 620-626): With regard to the *Refah Partisi (Prosperity Party) and Others v. Turkey*, an appeal was lodged against the judgment given by a chamber of the European Court of Human Rights on 31 July 2001. In its judgment of 13 February 2003, the Grand Chamber of the Court concluded *unanimously* that article 11 of the European Convention on Human Rights had not been violated in this case (see *Eur. Court HR, Case of Refah Partisi (The Welfare Party) and Others v. Turkey, judgment of 13 February 2003*; the judgment can be found on the Court's web site: <http://hudoc.echr.coe.int>).

ABBREVIATIONS

<i>ACHPR</i>	African Commission on Human and Peoples' Rights
<i>ECOSOC</i>	United Nations Economic and Social Council
<i>ETS</i>	European Treaty Series
<i>Eur. Comm. HR</i>	European Commission of Human Rights
<i>Eur. Court HR</i>	European Court of Human Rights
<i>GAOR</i>	United Nations General Assembly Official Records
<i>I-A Court HR</i>	Inter-American Court of Human Rights
<i>I-A Comm. HR</i>	Inter-American Commission on Human Rights
<i>IBA</i>	International Bar Association
<i>ICJ</i>	International Court of Justice
<i>OAS</i>	Organization of American States
<i>OAU</i>	Organisation of African Unity
<i>UN</i>	United Nations
<i>UNICEF</i>	United Nations Children's Fund