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Citizen consumer and civic Action Group

A Human Rights Primer

By

Dr. Sumitra Ranganathan,
Senior Researcher, CAG

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Abstract: This Human Rights primer is an introduction to the UN declaration of Human Rights, international human rights law and the protection of Human Rights by different international, regional, national institutions and civil society organizations arbitrating human rights issues. It introduces the main international and regional human rights instruments and the institutional frameworks that support the implementation of these instruments in international and national contexts.

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Introduction

The Universal Declaration of Human Rights (1948) is generally recognized to be the foundation of international human rights law. Coming at a particular historical moment in the aftermath of World War II, it aspires to uphold dignity and justice for everyone by recognizing that basic rights and fundamental freedoms are equally applicable for all human beings. Whatever be their nationality, place of residence, gender, sexuality, national or ethnic origin, colour, religion, language or any other

contingent socio-cultural, political or economic categories used to distinguish human societies, humans have equal claims to dignity and justice.

The fundamental principles of universal human rights contained in the UDHR involve rights and obligations from rights holders and duty bearers. Duty bearer refers to any actor who has a responsibility to respect, uphold and protect the rights of others and to abstain from human rights violations. While state actors have the most publicly obvious role of duty bearer in the modern world, all other kinds of actors are also subject to Human Rights instruments, especially when engaging in public action. In fact, if state actors become aware of human rights violations in private settings, they are empowered to intercede. Thus, private citizens, citizen groups, educational institutions, socio-cultural and religious groups and institutions, and a whole host of other entities and actors could be duty bearers in any given situation, and their duties could be subject to monitoring and evaluation by Human rights bodies.

The UDHR itself is not a legal document. However, since being adopted in 1948, the principles of the UDHR have been translated into law through a rich body of legally binding international human rights treaties and declarations, regional human rights conventions, and domestic human rights bills and constitutional provisions. Together, these constitute a comprehensive, legally binding system for upholding and protecting human rights. A large network of international and national governmental and Civil Society Organizations (CSOs) strive to enable the fundamental rights conceived of in the UDHR using advocacy as a primary tool, but in the case of rights violations, adopting a full range of arbitration methods including investigation and reporting, regular monitoring and counseling, all the way up to litigation and redress.

International human rights instruments and their domain of applicability

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights (both adopted by the UN General Assembly in 1966) and its two Optional Protocols. The two covenants developed many of the everyday rights already recognized in the UDHR, such as the right to life, equality before the law, freedom of expression, the rights to work, social security and education.

Over time, international human rights instruments became more specialized in terms of issues and affected social groups. The body of international human rights law continues to grow, evolve, and further elaborate the fundamental rights and

freedoms contained in the International Bill of Human Rights, addressing concerns such as racial discrimination, torture, enforced disappearances, disabilities, and the rights of women, children, migrants, minorities, and indigenous peoples.

The treaties, declarations and other documents that implement international human rights law are together referred to as international human rights instruments. Nations subscribe to different international human rights instruments through a process of ratification and accession. The Universal Declaration is universal in scope as it is valid regardless of whether or not Governments have formally accepted its principles or ratified the Covenants. On the other hand, the Covenants, by virtue of being multilateral conventions, are legally binding only on those States that have accepted them by ratification or accession.

As of 2018, there are nine core international human rights treaties addressing concerns such as racial discrimination, torture, enforced disappearances, disabilities, and the rights of women, children, migrants, minorities, and indigenous peoples. There are optional protocols that further develop human rights issues addressed by the covenants and treaties on torture, abolition of death penalty, discrimination against women, different dimensions of children's rights, and the rights of persons with disabilities,

Today, all United Nations member States have ratified at least one of the nine core international human rights treaties, and 80 percent have ratified four or more, thus actualizing the universality of the UDHR and international human rights. Not only the covenants, but nearly all the international human rights instruments adopted by United Nations bodies since 1948 elaborate principles set out in the Universal Declaration of Human Rights. This is also the case with international human rights instruments adopted outside the United Nations system as for example, the preamble to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe at Rome in 1950.

Human Rights bodies

The different human rights bodies that together constitute monitoring mechanisms in the United Nations system include The Office of the High Commissioner for Human Rights (OHCHR), charter based bodies and treaty based bodies. Charter based bodies include the former Commission on Human Rights, the Human Rights Council, and Special Procedures. Treaty based bodies include the expert bodies that monitor implementation of the core international human rights treaties, and the bodies of independent experts mandated to monitor State parties' compliance with their treaty obligations.

Amongst the charter bodies, the Human Rights Council, which replaced the former Commission on Human Rights, comprises representatives from 47 United Nations Member States elected to serve on the Council. Its charter is to prevent abuses, inequity and discrimination, and to protect the most vulnerable, and expose perpetrators. To aid its operations, the Council often constitutes Special Procedures in response to human rights issues in specific countries or in specific thematic areas. This could comprise a special rapporteur or independent expert or working group. Appointed directly by the Human Rights Council, these prominent independent experts are mandated to investigate, monitor and come up with recommendations for addressing the issue, and for publicly reporting on human rights situations on country and/or thematic mandates¹.

While Human Rights instruments support and constitute an International legal framework managed as described above, it has to be recognized that the protection of human rights requires the incorporation of many different types of institutions and actors at international, regional, national and local levels. The role of regional councils, national governments and civil society organizations is recognized to be singularly important in this regard.

How International Law Protect Human Rights at the level of nation states

International human rights law lays down obligations that States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.²

Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. The domestic legal system, therefore, provides the principal legal protection of human rights guaranteed under international law. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual and group complaints are available at the regional and

¹ <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> (accessed February 2018)

² The discussion in this section is based on <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> (Accessed February 2018)

international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.

Domestic measures and legislation compatible with treaty obligations and duties are enacted in a few different ways. National and local tribunals have frequently cited principles set out in the International Bill of Human Rights in their decisions. National constitutional and legislative texts have increasingly provided measures of legal protection for those principles; indeed, many recent national and local laws are clearly modeled on provisions set forth in the Universal Declaration of Human Rights and the International Covenants, which remains a guiding document in the field of human rights, both nationally and internationally.³

National Human Rights Institutions (NHRIs)

Since Human Rights instruments are not co-eval with State judiciary frameworks, and nations differ in how they commit to the UN charter on Human Rights, there must be some systems in place to assess how different nations keep up their commitments to Universal Human Rights. National Human Rights Institutions (NHRIs) play a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level.

Developed during a meeting of the United Nations in 1990, the Paris principles ("Principles Relating to the Status of National Human Rights Institutions") set out the standards required by national human rights institutions to be considered credible and to operate effectively. The Global Alliance of National Human Rights Institutions (GAHNRI) assesses the effectiveness of NHRIs based on the Paris Principles and awards them accreditation status. NHRIs considered to be fully compliant are awarded "A" status whereas others are "B" status. Only "A" status NHRIs are eligible to participate in the United Nations Human Rights Council's mechanisms.

At the regional level, localization of international human rights standards and norms is achieved by having regional instruments and mechanisms. Regional instruments (treaties, conventions, declarations) reflecting the particular concerns and issues of that region are implemented through regional human rights mechanisms such as special rapporteurs, commissions and courts. Well-developed regional human rights systems exist in Europe, the Americas and in Africa. In Europe, the European Council's history dates back almost to the initial drafting of Universal Human Rights, and European nations actively reference the national, regional and international human rights instruments.

³ <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> :9 (Accessed February 2018)

Human rights in the National context – a brief look at the UK

The website of the Equality and Human Rights Commission, UK provides a number of resources for understanding how Human Rights advocacy, monitoring and action is implemented in the context of the United Kingdom⁴. The Human Rights Act (1998) came into effect in 2000, and it incorporates many of the principles of the European Convention on Human Rights (ECHR) into British law.

The Human Rights Act 1998 does not cover all of the human rights. Others are contained in the international human rights treaties that the United Kingdom has signed and ratified. Those treaty rights are binding on the UK in international law, which means that the UK has agreed to them and the Government must comply with them. However, the method for holding the Government to account for its compliance with treaty rights is different from the enforcement method for the Human Rights Act.

One of the Equality and Human Rights Commission core tasks as an NHRI is to monitor the UK's compliance with the seven United Nations (UN) human rights treaties it has signed and ratified. Although the rights contained in these treaties are not directly legally enforceable in UK courts, they constitute binding obligations in international law. By ratifying the treaties, the UK has pledged to make sure its domestic laws and policies comply with them. This means the Commission, Parliament and civil society can hold the Government accountable against the terms of the treaties. Both the Commission and Civil Society Organizations can submit "shadow reports" to assess whether the UK Government is in compliance with its Treaty obligations.

Human rights education, and promoting consciousness and respect for Human Rights are integral to the charter of NHRIs. As the UK Human Rights Commission online resource explains, "the purpose of regulation is to change behaviour in society and to prevent and stop unlawful actions through working with individuals and organisations in the public, private and voluntary sectors... Regulation does not just mean legal enforcement action such as inquiries and investigations. It also means providing advice, raising awareness and understanding, transferring expertise and supporting organisations in their efforts to comply with the law".⁵ The UK HRC uses a range of tools that include enforcement and litigation powers and is committed to action that is "evidence-based, proportionate, consistent, accountable and transparent". (*ibid.*)

⁴ <https://www.equalityhumanrights.com/en> (accessed January 2018)

⁵ <https://www.equalityhumanrights.com/en/our-powers/commissions-regulatory-approach> (accessed February 2018)

This brief discussion of the Human Rights framework in the UK illustrates that the functional system of Human Rights is a collection of regulatory frameworks and institutions that operate in tandem at different scales (national, regional and international), rather than a single, overarching set of laws managed by a single authority.

Human rights in a changing world

The frameworks and principles of International Human Rights emerged in the context of World War II, when most postcolonial countries were working to establish independent governments. The primary approach in the protection of International Human Rights by NHRIs has been one of advocacy, promotion and mentoring, leaving national constitutions and judicial processes in modern nation states to enable human rights through enactment of laws, political processes and socio-economic measures. At the same time, monitoring and reporting is an integral part of NHRIs functions, as well as intervention in cases of human rights violations. Here, NHRIs work with the state and with public authorities to ensure compliance with Human Rights principles. The major covenants and optional covenants also reflect the emphases of human rights concerns in the post War world.

With the coming of MNCs, globalization, trans-nationalization and rapid development, Human Rights bodies have begun to rethink both their domain and their charters. Two significant transformations in recent times are introduced briefly here.

Extending emphasis from advocacy to accountability

Even as the domain of human rights attention has been recognized as going beyond the State and action in the public domain, many Human Rights bodies have become more attentive to quantitative assessments of compliance with Human Rights instruments and principles. The development of Human Rights indicators is one such framework.

The OHCHR has developed a general approach to identifying indicators for monitoring civil and political rights, and economic, social and cultural rights. The framework distinguishes structural, process and outcome indicators to help assess the progress of states in addressing their obligations - from commitment and acceptance of international human rights standards (*structural* indicators) to efforts being made to meet the obligations that flow from the standards (*process* indicators) and to the results of those efforts (*outcome* indicators).⁶ The indicators are designed to be contextually sensitive, and include both qualitative and quantitative assessments that can be obtained from official statistical systems based on

⁶ <http://www.ohchr.org/EN/Issues/Indicators/Pages/framework.aspx> (Accessed Feb 2018)

administrative records and statistical surveys, as well as those usually compiled by human rights organizations. The OCHCR reports include lists of illustrative indicators for human rights issues such as the right to life, the right to liberty and security of person, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to adequate food, the right to adequate housing, the right to education, the right to work, the right to non-discrimination and equality, and other thematic areas. The reports are intended as guidelines to support human rights stakeholders to develop contextually sensitized indicators in different situations.

The increased emphasis on quantifying human rights impacts finds resonance in regions and nation states also. For instance, the UK HRC has been a leader in developing metrics for progress towards equality and fulfillment of human rights. In 2017, they have announced a new framework that will track progress in six major domains that have been identified as fundamental to human rights fulfillment – namely, education, work, living standards, health, justice and personal security, and participation. Each domain includes a set of indicators and measures that enable institutions to track change over time and monitor their progress in achieving targets for fulfillment of human rights.⁷

Human Rights and Development – holding Businesses accountable

A second major shift in the domain of universal human rights is the recognition that the forces of development in a rapidly globalizing world creates and perpetuates severe inequalities, no less impactful than the ravages of war and internecine conflict. Business corporations can be perpetrators of human rights violations in the course of bringing essential services and benefits to society. While business practices may not always be classifiable as “public action”, they could cause widespread, long lasting and deep damage, especially to vulnerable sections of society, and to the environment. In recognition of this, the UN appointed a Special Rapporteur to develop a framework to make businesses acknowledge their responsibilities for protecting and respecting human rights. Professor John Ruggie developed the “Protect, Respect, and Remedy framework” which forms the basis of the UN Guiding principles on Businesses and Human Rights that came into effect in 2011⁸. The impact of business practices is explicitly recognized today as a human rights issue, especially in the context of transnational corporations divesting

⁷ <https://www.equalityhumanrights.com/en/our-work/blogs/our-new-measurement-framework-lever-change> (Accessed February, 2018)

⁸ <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx> and http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (Accessed February, 2018). Also see Ruggie, John. 2013. Just Business: Multinational Corporations and Human Rights (Norton Global Ethics Series), New York: W. W. Norton & Co. and https://business-humanrights.org/sites/default/files/media/documents/ruggie_-_wfls.pdf (Accessed February 2018)

indigenous peoples of their lands, divesting natural resources from rightful owners, and causing widespread environmental damage and damage to public health in the process. At the same time, the UN Guiding principles on Businesses and Human Rights have been recognized as too weak in scope, intent and wording to be used effectively in containing the negative impacts of rapid development especially in the trans-national context. The efforts of many human rights bodies and CSOs have focused on developing a much more robust agenda for assessment, monitoring, intervention and redress in the impacts of business practices on human rights worldwide, such as for instance, pushing for new international legal obligations for companies that can be enforced, for developing explicit duties for individual states to regulate the human rights impacts of business enterprises beyond national borders, and for incorporating explicit reference to the full body of human rights laws and standards that is relevant for the assessment of the corporate responsibility to respect human rights.⁹ Working with GANHRI, the Danish Institute of Human Rights has published a comprehensive guide and resources for NHRIs on the business and human rights field, including examples of how NHRIs can use their Paris Principles mandate to engage on business and human rights issues¹⁰.

Human rights in the National context – the case of India

Developed around the same time as the UDHR was being drafted, the legal framework for the protection of Human Rights in India is its Constitution. Several articles in Part III of the Constitution concern the fundamental rights of citizens, which are enforceable by law. Rights are not absolute and they are subject to restrictions imposed by law, but it is a Constitutional obligation to protect the fundamental rights and prevent their infringement. Fundamental rights can be suspended during proclamation of a national emergency under Article 352, in accordance with the Constitution. Part IV of the constitution (Article 36-51) contains the Directive Principles of State Policy. As the name suggests, these are directives to be used by legislative and executive wings of the government while formulating laws and policies, and are not enforceable by law. In order to address human rights more explicitly, the Government of India enacted the Protection of Human Rights Act in 1993. Together, these documents constitute the implementation of Human Rights charters within the Indian legal framework. Aside from the national legal framework, the NHRI and the State level Human Rights bodies work directly with

⁹ <http://cividep.org/wp-content/uploads/2017/04/How-to-use-the-UN-Guiding-Principles-on-Business-and-Human-Rights-in-company-research-and-advocacy24-ilovepdf-compressed.pdf> (Accessed February 2018)

¹⁰ See <https://www.humanrights.dk/publications/business-and-human-rights> and https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/bhr_guidebook_for_nhris_2013_eng.pdf (Accessed February 2018)

GANHRI in monitoring the implementation of Human Rights in different thematic areas and contexts.

There are six fundamental rights contained in the Indian Constitution – namely, Right to Equality (Articles 14 – 18), Right to Freedom (Articles 19 – 22), Right against exploitation (Article 23 – 24), Right of freedom of religion (Article 25 – 28), Cultural and Educational rights (Article 29 – 31) and Right to Constitutional Remedies (Article 32).

The Right to equality (Articles 14 to 18) is the principal foundation of all other rights and liberties. Article 14 confers "equality before the law" and "the equal protection of the laws." Article 15 prohibits discrimination on the grounds of race, caste, religion, creed, sex, or place of birth. However, the State is authorized to make special provisions for women, children, , and for the advancement of members of Scheduled Castes and Scheduled tribes, and socially and educationally backward classes of citizens. Article 16 guarantees equality of opportunity in matters of public employment. However, there are some exceptions, the parliament has the right to enact law/s describing that certain jobs can only be filled by the applicant/s who are domiciled in the area for the post that require knowledge and the language of the locality or the area. The state may also reserve posts for members of educationally and economically backward classes, scheduled castes and tribes. Article 17 abolishes the practice of untouchability. Article 18 prohibits the state from conferring titles.

The other Articles are summarized in tabular form below¹¹:

Article 19	Right to freedom
Article 20	Protection in respect of conviction for offences
Article 21	Protection of life and personal liberty. Right to Life.
Article 21A	Right to Education
Article 22	Protection against arrest and detention in certain cases
Article 23	Right against exploitation. Prohibition of human trafficking.
Article 24	Prohibition of employment of children in

¹¹ Table created by Pazhani Perumal

	factories, etc. Act 1986
Article 25	Right to freedom of religion
Article 26	Freedom to manage religious affairs
Article 27	Freedom as to payment of taxes for promotion of any particular religion
Article 28	Freedom as to attendance at religious instruction or religious worship
Article 29	Cultural and educational rights
Article 30	Rights of minorities to establish and administer educational institutions
Article 31	Right to property (1978)
Article 32	Right to constitutional remedies

Some landmark cases have invoked universal human rights as a cornerstone to push for justice and redress in the Indian context. The Dongria Khond bauxite mining case against the multinational Vedanta Resources is one such¹². Olga Tellis & Ors Vs. the Bombay Municipal Council fighting for the housing rights of pavement dwellers in Mumbai is a second example¹³. Yet others have investigated human rights impacts in specific domains and made recommendations for change and redress. The UN Special Rapporteur's report on the human rights impacts of hazardous activities such as ship breaking and the recycling of e-waste is an example of the latter¹⁴.

A closer study of these landmark cases will serve as useful models for investigating the human rights impact of business practices through the lens of waste.

¹² See <https://business-humanrights.org/en/vedanta-resources-lawsuit-re-dongria-kondh-in-orissa> (Accessed February 2018); also see Pahuja, Sundhya. 2013. "Laws of encounter: a jurisdictional account of International Law" in *London Review of International Law*, Vol.1(1): 63–98 for a discussion of this case in relation to international law.

¹³ See <https://indiankanoon.org/doc/709776/> (Accessed February 2018)

¹⁴ See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/145/75/PDF/G0914575.pdf?OpenElement> (Accessed February 2018)