

## Chapter 5

# How to Recognise Human Rights Issues in Practice

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by Marius Emberland*

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# 1. Introduction

How does a human rights officer recognise an international human rights violation? The purpose of this chapter is to provide tools that help identify the key legal and factual issues necessary to establish an international human rights violation as distinguished from common crimes or misguided government action.

This chapter introduces the theoretical framework of international human rights law and describes the terminology and characteristics of the legal system for international protection of human rights.

We then consider fourteen rights defined in international human rights and examine how the human rights officer in the field should identify violations. The chapter deals with a limited number of rights that are central to most international human rights field operations. The focus is on civil and political human rights because these rights are what officers most often must address. However, economic, social and cultural rights, while not covered extensively here, are equally important.

## 2. Characteristics of international human rights law

Human rights officers should provide an accurate, objective and well-documented analysis so that the state can resolve individual and systemic cases, the goal being to sanction those responsible for violations while preventing further abuses. The human rights officer must thus have a sound understanding of international human rights law.

International human rights law is based primarily on treaties that bind states. In addition, international customary law prohibits certain acts (slavery, torture, 'disappearances' for example) regardless of whether a state has ratified a treaty. The term 'legally binding' refers to a capacity to legally sanction violators. Unfortunately, the sanction apparatus of international human rights law is weak, but it is gradually growing stronger. The most obvious legal sanction is the opportunity to bring the violator before an international court. The more common sanction is international condemnation and shaming of the offender.

Currently, only two international human rights law treaties include court-ordered penalties – the European Convention on Human Rights (ECHR) and the American Convention on Human Rights (ACHR). While important, these two courts have jurisdiction only in their respective geographic regions. The African Court on Human Rights exists on paper only but efforts are underway to make this court a reality. The International Criminal Court (2002) and the International Criminal Tribunals for the former Yugoslavia and Rwanda have convicted dozens of individuals for human rights abuses and violations of the laws of armed conflict. Additionally, most states have agreed to follow the human rights regimes of United Nations conventions and instruments.

Human rights are legally enforceable through other arrangements as well. These differ greatly and will not be dealt with here in detail (but see Chapter 2). The various committees of independent experts overseeing compliance with the six core human rights treaties provide some accountability, while individual complaints filed with these committees under various 'optional protocols' add a further avenue for redress. While not having the force of a

court, these reporting and oversight mechanisms are a key tool for human rights enforcement and for developing crucial judicial interpretations of provisions in the treaties.

The human rights observer should remember that international human rights law is a supranational system of legal norms that supplements and when necessary, corrects national law. National constitutions and laws often have sound human rights language and protections. The biggest challenge facing the human rights observer is enforcing and applying these high principles.

Human rights observers must be familiar with the core human rights treaties to assess quickly whether a certain act might qualify as a human rights violation. Few rights are absolute, many may have restrictions and all but a few may be suspended entirely during a national emergency. The officer will not have time to wait for a definitive legal opinion from a court or even from legal experts while working in a tense and sometimes violent environment.

### **3. Some features of human rights law**

#### ***The human rights victim***

International human rights law protects citizens of a state, and also all foreigners residing there. In principle, a Zimbabwean tourist in Canada enjoys the same right to a fair trial under Article 14 of the ICCPR as a Canadian citizen. International human rights law guarantees rights and freedoms for every human being, regardless of age, wealth, mental or physical capacity, criminal record, race, religion or national origin.

Human rights protection also extends to certain groups. For example, legal entities like political parties, associations, trade unions and indigenous groups have human rights as members of a group. So the human rights officer should consider whether certain groups enjoy the right to assemble, form an organisation, use a particular language and have access to traditional hunting or fishing grounds and to the media.

There are certain circumstances in which individuals, or legal entities, do not enjoy certain international human rights law protections. For example, serving members of the military may have certain restrictions applied to their freedoms of expression, association and assembly.

#### ***The human rights violator***

International human rights law deals primarily with the responsibilities of public authorities versus private actors. For instance, private actors usually cannot be held responsible for violating human rights norms. A father who kills his son in a family dispute has committed an awful act, a crime, but this in itself is not an international human rights law issue, since he is not acting in the capacity of a state official but as a private individual. A private joint-stock company intercepting calls made from office telephones might intrude in the private lives of their employees (and perhaps violate domestic law). But such interception does not transgress international human rights law unless public authority was sufficiently involved in the matter. The human rights violator is most often a public actor, acting as an official or agent of the state.

In recent years, however, the traditional notion of the human rights violator has evolved. For example, if a husband beats his wife in a domestic dispute this is a private matter. If the police, however, did not intervene to stop the violence, or knew the husband had a bad temper and had acted violently before and the police did not take proper steps to prevent further beatings, the state is now implicated and the act becomes a human rights violation. Similarly, the Convention on the Rights of the Child speaks of the duties of parents towards their children, and the failure to provide certain protections to the child makes the parents liable for a human rights violation.

Also, non-state actors controlling territory and acting as a government have also been held to violate human rights laws even though these groups – Tamil Tigers in Sri Lanka, Maoist rebels in Nepal, Sudan People's Liberation Army, and various militias in Liberia and Sierra Leone – have not ratified any human rights treaties. Yet their acts have been qualified as human rights violations by the UN and by major international human rights NGOs. Finally, corporations have been held complicit in human rights violations when they have failed to take steps to protect their workers and have polluted the environment (oil companies in Nigeria, timber companies in Nicaragua and Indonesia).

A state answers for subordinate public agencies and officials. *The state is responsible* under international human rights law for the acts of its employees and agents committed in the course of their official duties. The state is also responsible if it acquiesces to acts committed by its employees and agents outside their official duties. Subordinate public officials exceeding their mandate, breaking domestic laws or violating internal regulations will still bind the state under international human rights law. Knowing whether you are facing a human rights issue therefore requires some knowledge of the command structures of the state, especially the police, military and other security forces.

As was noted above, the state can be responsible if its officials and agents fail to act to prevent or protect human rights. Is not a government authority, when refusing to protect a lawful demonstration from violent antagonists, as much responsible for violating the right to freedom of assembly as if the police itself had dissolved the demonstration? The failure of the state to provide inmates with adequate medical treatment while in custody is as serious as the prison authorities' actively authorising regular humiliating treatment. Human rights officers will frequently face this reality: post-conflict states are so weak that their police do not protect, their courts do not prosecute and their prisons cannot feed or care for their inmates. These acts of 'omission' are as much a violation of human rights as acts of 'commission'.

International human rights law does not require that the violator know or should have known that he or she was committing a violation. Intent is not required usually. There are however exceptions to this rule. For instance, torture requires intent and a certain purpose.

### ***Identifying human rights violations***

Human rights observers must decide, based on the facts, whether a human rights violation has occurred. Does the act itself violate a right specified in an applicable treaty?

A Liberian soldier rapes a 16-year-old girl while interrogating her on suspicion of aiding a rebel group. What human rights violations have occurred? First, the rape violates the girl's right to physical integrity (ICCPR Art. 10, Convention on the Rights of the Child Art. 37) and respect for her private life (ICCPR Art. 17). The rape also may be torture and is certainly inhuman or degrading treatment (ICCPR Art. 7). Is rape 'torture'? Recent jurisprudence from the international criminal tribunals has held that rape may amount to torture, and may also be a war crime, a crime against humanity and an act of genocide (Rwanda Tribunal). The law evolves and human rights officers need to keep current with these changes.

The officer must then analyse whether legal restrictions or limitations to the right apply. For example, the prohibition on slavery and forced labour (ICCPR Art. 8) contains an exception for times of public emergency, when people may be ordered to work to address emergency needs like clearing roads or transporting people to hospitals. Human rights law is rarely absolute. If public authorities have acted within the boundaries of accepted restrictions and limitations established in the human rights treaties, then no violations have occurred.

### ***Limitations of human rights protection***

Human rights are universal and inalienable, but governments are allowed to qualify or restrict the application of rights under carefully defined circumstances. Several human rights are absolute and can never be suspended or restricted (e.g. prohibition on torture, summary or extrajudicial executions, slavery, or retroactively applying penal laws). Legitimate limitation mechanisms form part of the human right itself.

Governments need certain leeway to preserve order and progress for the common good. Unlimited protection of one type of human right (freedom of expression for example) could hamper the effectiveness of other human rights guarantees (for instance the right to respect for private life). Most international human rights law systems therefore acknowledge the inherently limited nature of human rights law. Rights may conflict.

Limiting the right must have a basis in domestic law. Should the public interference with, e.g., a person's religious rights, have no basis in national law, then a violation has occurred.

The limitation must fulfil an objective that is a *legitimate purpose* of normal governance (in the words of UDHR Art. 29, "meeting the just requirements of morality, public order and the general welfare in a democratic society"). Normally, these legitimate purposes for government limitation on rights are explicitly listed in the human rights provisions: national security and public safety, public health and morals, and protecting the rights and freedoms of others.

The limitation must be a necessary vehicle to achieve the stated goal. The *necessity requirement* often causes much debate and requires careful analysis by the human rights officer. What amounts to necessity often depends on careful considerations of proportionality of means and ends, and the concrete circumstances of the case will help determine the answer. Balancing competing interests is paramount to human rights law. Frequently,

however, governments use the limitation provisions to stifle dissent and control political opposition, so the human rights officer must assess rights limitations with a critical eye.

In 1997-98, a Hutu extremist group raided villages and farms in northwestern Rwanda from their bases in refugee camps in Zaire. The Rwandese Government declared a curfew beginning at dusk and banned all public gatherings in this section of the country. These restrictions on freedom of movement and assembly were legitimate at the time to protect the public order and health of the people.

Similarly, in Kosovo in 1999-2000, the UN was forced to acknowledge that it could not meet time limitations on detention since the entire judiciary had fled at the end of the NATO bombing campaign in August 1999. There were no judges to hear cases or lawyers to represent clients. Yet many of those arrested had been caught committing acts of violence and it would have been dangerous to release them.

Several treaty mechanisms, often referred to as derogations and reservations, allow states to set aside their human rights responsibilities.

Reservations are made at the time of ratification and limit the state's responsibility for the specific right mentioned in the reservation. Reservations to human rights treaties are relatively commonplace. Valid reservations must fulfil the requirements set forth in the conventions themselves or in international treaty law. There are certain limits to the comprehensiveness of reservations. If they are too broad they are invalid. The interpretation of the scope of reservations is, however, intrinsically disputable. Generally speaking, it is not for the human rights observer to decide on the validity of an existing reservation.

Human rights officers should obtain information about any relevant reservations made by the host country. A list of reservations can be found with each human rights treaty at [www.ohchr.org](http://www.ohchr.org).

Derogations allow the government to respond to serious emergencies that threaten the life of the nation. It is therefore likely that the human rights officer will encounter incidents of alleged derogation in his or her work. Derogation is a particularly significant and sensitive human rights question because it not only restricts the extension of human rights protection, but it may also *completely set aside* the protection. A valid derogation (or 'suspension') requires special procedures in which the government derogating from protected rights must notify an international body of the derogation and the reasons for it. There are strict conditions for derogating from international human rights provisions, for example, in Article 4 of the ICCPR. Since the prohibitions against torture, slavery and retroactive penal laws can never be suspended, human rights officers should be on heightened alert whenever rights are derogated. For example, torturing suspected members of a militia group or suspected terrorists is never allowed, even under martial law.

## 4. The right to life

The right to life is “inherent” (ICCPR Art. 6.1) to the human being. The state is obligated to protect the right by law. Normally this involves an obligation on the state to enact criminal laws prohibiting individuals from taking the life of other human beings. The right to life does not, however, prohibit every taking of life. The death penalty is not yet entirely forbidden in international human rights law. Taking a life in legitimate self-defence or defence of a third party is also recognised.

Human rights law prohibits the arbitrary taking of lives. Assassinations of political opponents ordered by a government clearly violate the right to life. The right to life also includes a responsibility for governments to investigate disappearances and unsolved deaths. Other issues that might provoke inquiries into the applicability (but not necessarily be a violation) of the right to life include government refusal to provide individuals under violent threats with bodyguards or deficient vaccination programmes leading to preventable deaths.

## 5. Prohibition against torture and cruel, inhuman or degrading treatment or punishment

The prohibition against torture and cruel, inhuman or degrading treatment or punishment is paramount in any international human rights law regime. The UN Convention Against Torture (CAT) is an important point of departure. A similar prohibition is found in the ICCPR (Art. 7). All prohibition clauses are absolute and non-derogable. Therefore, the important task is to examine the content of the three prohibited forms of ill-treatment.

The mildest form of ill-treatment prohibited by human rights law is *degrading* treatment or punishment. Both mental and physical treatment or punishment can be degrading. There is a crucial distinction between ‘degrading’ treatment and treatment that is not degrading. The humiliation or debasement involved must attain a particular level before a punishment or a treatment is classified as ‘degrading’. This is often referred to as the threshold of seriousness. The threshold is a relative one, depending on numerous factors particular to every case. Typical instances of degrading treatment or punishment include humiliating interrogation techniques, poor material conditions for inmates in institutions, corporal punishment of different kinds, as well as serious forms of discrimination.

*Inhuman and cruel* treatment or punishment is the second form of ill-treatment absolutely prohibited in human rights law. This is more serious and requires a different degree of intensity of the suffering. Even though the death penalty is not necessarily part of the protected right to life, imposing the death penalty on particularly vulnerable individuals such as under-aged criminals and the mentally retarded can amount to inhuman treatment. Severe police beatings of suspects held in detention under interrogation might also qualify as ‘inhuman’ treatment.

*Torture* is a serious human rights violation, defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession” (CAT Art. 1). Torture involves an intentional element, and pain or suffering of a particularly severe



character. The application of torture instruments on individuals under interrogation naturally comes within the province of such provisions. However, contemporary international human rights case law also includes certain acts one would not necessarily think of as torture. For instance, in some human rights systems certain severe forms of police brutality during interrogation are classified as ‘torture’ (without the application of any particular instruments). The determining factors are the purpose (obtaining information) and the severity of the suffering.

The number of conceivable acts of torture is as vast as the human imagination. The interrogation techniques used at Guantamano Bay, Abu Ghraib prison and in certain Afghan detention centres run by the US military and the Central Intelligence Agency have generated intense debate on the meaning of ‘torture’.

The UN has enacted several minimum standards for the treatment of imprisoned or detained individuals. These minimum standards supplement treaty-regulated norms such as the prohibition against torture and inhuman or degrading treatment. Human rights observers will frequently deal with questionable treatment of prisoners and detainees and the following instruments have worked very well as training and advocacy tools: the Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) and the Code of Conduct for Law Enforcement Officials (1979). These are available electronically at [www.ohchr.org](http://www.ohchr.org).<sup>1</sup>

## **6. Freedom from arbitrary detention**

The right to liberty and security of the person prohibits arbitrary detention. Deprivation typically includes arrests and subsequent detentions pending trial in criminal cases. Other forms of detention that might involve a human rights abuse include hospitalisation of the mentally ill or similar procedures relating to disadvantaged groups subject to government care.

To deprive an individual of his or her liberty is extremely serious. Therefore the state must meet certain requirements established by law related to legality, purpose and process in order to avoid human rights breaches. Laws and procedures must be established and followed to lawfully arrest and detain anyone in the territory of the host state.

The right to liberty and security establishes procedural safeguards that the state must comply with to avoid violations. A detained person is entitled to challenge the legality of the detention before a tribunal shortly after being deprived of his or her freedom. He or she also has a right to be released should a court find the detention to be unlawful, as well as a right to compensation. He or she shall further be informed of the reasons for the deprivation. These procedural guarantees are close siblings to the general right to a fair trial.

Haitian law requires a warrant for every arrest unless the police catch someone in the act of committing a crime. The police often claimed this exemption when asked by human rights officers why there was no warrant for a particular arrest. When pressed further, the police often could not cite a violation of the penal code but rather relied on vague charges like “belonging to a group of troublemakers”. Human rights observers then determined that all these arrests just happened to involve known political opponents of the government. The Human Rights Mission complained to the authorities and such warrantless arrests soon dropped dramatically.

## 7. The right to a fair trial

ICCPR Art. 14 and similar provisions in regional human rights treaties (see Chapters 2 and 8) establish the right to a fair trial by a court of law. This right offers extensive procedural safeguards for individuals and legal entities alike in case of a conflict with another private actor or with the state.

The right to fair trial applies to both criminal cases and civil cases. Human rights officers will most often monitor criminal cases, although in some missions (especially in the Balkans), property cases may also be priorities.

First, one has the right to *access to a court of law* established by law. Should a summary committee, randomly assembled for the occasion, try an individual charged with a criminal offence, the right to access to a court is violated. Courts, for the purpose of international human rights law, must have an established and institutionalised structure. They must not be partisan and should be functionally separate from other branches of government. If the organ in question consists of, or acts under the authority of, officials of the executive or legislative branches of government, the decision making body may not be a ‘court’ for the purposes of Article 14 of the Covenant.

The individual brought before a court of law has a *right to a public hearing*. Secret trials are prohibited under human rights law. However, some restrictions on the public character of the trial are allowed. Typically, national security reasons can legitimately restrict the public character of the trial. Non-public trials do not, therefore, always constitute a human rights violation issue. Arguably, some military tribunals might be in accordance with international human rights law even though access to their proceedings is limited, usually on the grounds of national security.

The suspect in a criminal case enjoys several *minimum guarantees*. He or she has a *right to be informed* of the nature and reason of the charge against him or her. International human rights law does not allow Kafkaesque trials in which the defendant has no information on the charges. The defendant has the right to a *proper defence*, as well as an opportunity to *be present* during the trial.

The defendant shall be presumed innocent until the court has found otherwise. Any trace of partisanship or prejudice by the court can conflict with the *presumption of innocence*.

An important part of this principle is a right for the charged person not to be compelled to testify against him- or herself. Any legally imposed obligation to confess or testify against oneself sanctioned for instance by fines or prison, violates human rights law. The prohibition against self-incrimination is a cornerstone of a fair trial. Evidence resulting from torture can never be admitted as proof at trial. The defendant has the right to call his or her own witnesses and to cross-examine witnesses for the prosecution.

Anyone convicted of a crime has *the right to appeal* the decision to a higher court. He or she also has the right not to be convicted twice for the same offence, or be convicted for a crime for which he or she has previously been acquitted. A trial shall also proceed with *due speed*, i.e. it should not last (all factors considered) too long. What is regarded as too long is difficult to ascertain, especially in many countries with weak or destroyed judiciaries where human rights officers are most likely to work.

## 8. Non-retroactive penal laws

Human rights law acknowledges the right not to be convicted of a criminal offence for an act that at the time of the offence was not a crime. *The prohibition of ex post facto criminal laws* is found in ICCPR Art. 15. An example of a violation of this right is when new laws are quickly passed after a new regime takes over through a *coup d'état*, penalising retrospectively those involved in resisting the coup. This prohibition applies only to *penal* laws. Non-penal laws may have retroactive effect without violating human rights.

## 9. Non-discrimination

Freedom from discrimination is a fundamental human rights principle and its close counterpart, equality under the law, is also a cornerstone of international human rights law. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination against Women (CEDAW) are central to the struggle to ban discrimination. The International Covenant on Economic, Social and Cultural Rights (ICESCR) promotes equality by imposing obligations on governments to use maximum available resources to achieve progressive realisation of these rights in a non-discriminatory fashion. ICCPR Art. 26 also contains a provision committing the state to guarantee equality in upholding civil and political rights.

Discrimination means treating similar people or situations differently, based on arbitrariness or unreasonable considerations resulting in negative or harmful effects for the individual concerned. For instance, treating a citizen of a state preferably in an employment process because the job requires impeccable knowledge of the national language may not be discriminatory. Favouring one racial group over another when allocating public housing, however, is a prohibited form of discrimination and thus a violation of human rights law.

## 10. Protection of minorities

The protection of minorities takes the principle of non-discrimination further. ICCPR Art. 27 guarantees ethnic, racial or religious minorities the right to enjoy and practice their cultures, languages and religion.

ICCPR Art. 27 prohibits direct government activity restricting the rights of minorities and requires the state to provide the conditions allowing the minority to enjoy their rights. Minority rights protect the enjoyment of culture, religion and language. The state must provide schooling in minority languages, media and government services also in minority languages and opportunities for minorities to practice their cultural and religious heritage.

Defining the term ‘minority’ has proven most difficult. Traditionally, the term is reserved for distinct groups, well defined and long established on the territory of the state in question. Inuit groups in Canada and Greenland qualify as a ‘minority’ in human rights terms. So do several Indian tribes in South and North America. But who are the minorities in the former Yugoslav territories?

Immigrants, refugees or asylum-seekers do not automatically constitute minorities in a strict legal sense. The group’s relationship to the territory where they are found must be more profound and certainly of longer duration than that of temporarily displaced individuals and groups. Only certain minorities enjoy protection (“ethnic, religious [and] linguistic minorities”). Groups being in minority in a state on account of their political beliefs or sexual orientation do not count as ‘minorities’ within the meaning of ICCPR Art. 27. These groups might however be protected by virtue of other mechanisms of international law not dealt with here.

## **11. Prohibition of forced labour**

Forced (compulsory) labour is a common human rights violation. Compulsion is a necessary element, requiring involuntary work by others, either for public authorities or for private employers who benefit from the state’s active or passive support. Forced labour usually includes threatening violence or other forms of punishment if the person does work.

Some conventions under the International Labour Organisation (ILO) specifically prohibit forced labour (see, e.g., ILO Convention Nos. 29 and 105). A typical example of forced labour is forcibly recruiting individuals to work for an alleged ‘public good’. The human rights officer must examine the facts of each case carefully. If there is a public health emergency or natural disaster, for example, the state may force people to help in the relief effort. Legitimate state interests, as long as they are applied proportionately to the need and equally to all, may limit the prohibition on forced labour. In Aceh and Sri Lanka, for example, some people were ordered temporarily to help clear dead bodies and garbage from the streets following the tsunami in 2004. While in Burma, the government has forced people to work for months without compensation to cut trees for the state logging company, which is a clear human rights violation.

Abolishing slavery and the slave trade in the mid-1900s was the first global human rights campaign in modern history. Human rights law has ever since prohibited slavery. The human rights officer should not forget this fundamental right protecting freedom and dignity of persons. Our understanding of terms such as ‘slavery’ has evolved. For example, trafficking in persons and the exploitation of the sex trade can in certain circumstances constitute a modern form of slavery. Special UN instruments such as the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others ban such forms of forced labour. The required element of public authorities’ pas-

sive or active endorsement of or acquiescence to such activity applies here. Trafficking in humans, especially women and young girls, occurs in many post-conflict states and human rights officers will need to become familiar with the specific facts and the applicable laws in the country where they are posted.

The exploitation of child labour has also increased recently around the world. International law prohibits forced labour and trafficking of children. The United Nations Convention on the Rights of the Child (CRC, see e.g. Art. 32) and the recently enacted Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182) provide solid legal grounding for the human rights officer to monitor, report on and advocate against the exploitation of children. The CRC is especially helpful since it also includes the family's responsibility for the well-being of the child and every country in the world except the USA and Somalia has ratified it. Here, however, it is important to check for reservations since several states have entered onerous reservations limiting the applicability of the CRC.

## 12. Protecting privacy

In principle, individuals' privacy shall be free from public intrusion. On the other hand, a state cannot function without a certain degree of encroachment into our private sphere. Thus unsurprisingly, the right to privacy is subject to extensive legitimate limitations.

*Private life* comprises one's sexual life, reputation, physical and mental integrity, information and data related to one's personal life, and freedom from illegal searches and seizures, including intercepting mail, phone calls and electronic communications. The right to *family life* includes respect for the integrity of the nuclear family, but is not necessarily confined to such a sphere.

Searches and seizures conducted by public officials as part of a criminal investigation are found in every state. Such intrusions must follow legal requirements like obtaining a warrant from a judicial official or time limits on when searches may occur. For example, in Haiti no house can be searched between 18:00 and 06:00 unless the police witness a crime being committed. Human rights officers frequently investigate cases involving alleged violations of the right to privacy.

## 13. Property rights

The right to property has occupied a paradoxical position in human rights law. The protection of the right to property can cause tremendous tensions and even violence. A broad right to property may conflict with principles of equality and protection of the poor and dispossessed – ideas central to international human rights law.

Yet while the right to property is proclaimed in the UDHR (see Art. 17) and guaranteed in different regional systems such as the European Convention on Human Rights, it is not found in either of the two major Covenants (ICCPR and ICESCR).

The right to protect one's possessions comprises not only respect for land, but moveable property (chattels) as well. A typical interference with the right to property pro-

voking a human rights issue is public expropriation of private land without adequate economic compensation or by arbitrary proceedings. Many recent international conflicts have shown the problems arising from the displacement of people. Numerous refugees or internally displaced persons returning to their homes find their property now inhabited by strangers, often without there being a direct government endorsement of such private expropriation of land.

Human rights officers in Bosnia, Kosovo, Rwanda and Timor-Leste have had to handle complex and conflicting claims to property, often by minority groups seeking to return home. Some international peace operations have established special courts to handle large caseloads of property claims. If these cases are not resolved quickly and fairly, the conflict can easily reignite. One benchmark of success in Bosnia, for example, was the increase in peaceful evictions of illegal occupants of apartments to allow their original owners, often members of minority groups, to return home.

The right to property is not absolute. It is subject to extensive legitimate limitations as mentioned previously in this chapter. Land issues and property rights are fundamental and can often be a key to our understanding of the root causes of a conflict and how to craft an enduring peace.

## 14. Freedom of expression

Freedom of expression is central to a well-functioning democracy. International human rights law protects electronic media, artistic expression, television broadcasts, commercial expression, and research (ICCPR Art. 19). Freedom of expression also has limits and may conflict with other rights, and it is up to free, fair and independent courts to resolve any impasse.

*Political expression* is the fundamental element of free expression. Political views and the coverage of political issues in the media enjoy a special status in human rights law. Media is society's 'public watchdog', yet a government-sponsored media campaign against an individual's reputation can be an effective tool for destroying dissent and political opponents. Human rights law therefore protects freedom of expression most fully when the speech or writing involved is essentially political.

Freedom of expression protects views and opinions challenging the majority. Human rights law stresses the importance of tolerance for minority views. Even shocking and disturbing expressions are entitled to protection as long as they do not incite violence or discrimination, or national, racial or religious hatred (Art. 20 of the ICCPR). As one U.S. Supreme Court justice once famously observed, "I detest your views but I will fight with all my strength for your right to express them."

Incitement to genocide is prohibited and the International Criminal Tribunal for Rwanda has convicted several journalists involved with radio broadcasts in Rwanda urging listeners to “kill all the cockroaches” (meaning the Tutsis).

In Kosovo, the UN banned a radio programme that was broadcasting the names and addresses of Serbs remaining in Pristina and other cities on the grounds that this was an incitement to violence based on ethnic hatred.

## 15. Freedom of assembly and association

Freedom of association and peaceful assembly are close siblings of free expression. Whereas freedom of peaceful assembly relates to people meeting to express opinions or grievances, freedom of association covers people who want to form an organisation for a variety of purposes, including political, cultural, sporting or social.

*Freedom of association* usually involves questions relating to the ability of political parties, trade unions, professional organisations or neighbourhood groups to form, hold meetings, own property, keep bank accounts, lobby their governments, present their views to the public and seek new members. Trade union rights are relatively well protected by the ICESCR and by detailed safeguards under ILO Conventions.

The typical situation in a *freedom of assembly* case is a public demonstration in the streets or a public square. Freedom of assembly protects only *peaceful* meetings or demonstrations. (See, e.g., ICCPR Art. 21.) The borderline cases are difficult. When does an assembly transform from a peaceful one to a situation that becomes violent? Should the assembly become violent, however, that does not absolve the police from using only the minimal amount of force required to re-establish peace and to protect people and property. So even a violent demonstration may generate human rights violations by the police or security forces; unfortunately, this scenario is all too common for human rights officers, who should be familiar with the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.

Restricting freedom of choice to join a political party or any lawful organisation violates *freedom of association*. Individuals and other persons have the right to become members of associations and participate in meetings free from fear and intimidation. They also have the right not to be forced to join any group. Human rights officers should analyse situations where the government has declared a group ‘illegal’ and forbidden any activities. Often, the state uses this as a pretext to quash dissent and the very act of declaring the group ‘illegal’ is illegal. Careful attention to local laws requiring groups to register with the state and seek ‘approval’ from the authorities may show that these laws conflict with the state’s obligations under ICCPR Article 22.



## 16. Freedom of religion, thought and conscience

Freedom of religion is closely related to other rights like privacy, freedom of expression, conscience, association and assembly. Religions normally involve assemblies for worship, and they often have many members. Freedom of religion protects sincere and meaningful belief by adherents. Freedom of religion, thought, and conscience also protects the right of individuals not to be part of any specific religion. A law mandating religious services in public schools contravenes freedom of religion.

Indoctrination ('brainwashing') contravenes the right to form and have one's own conscience. A government programme systematically sending children forcibly to schools for education in a state-mandated religion or belief system (e.g. North Korea, Saudi Arabia, Cuba) must concern a human rights observer. Freedom of thought, conscience and religion is absolute. Neither the state nor anyone else can limit this right and it can never be suspended under Article 4 of the ICCPR.

Human rights issues arise when the state interferes with individuals' right to exercise and express their beliefs, conscience and religion. The right to *free manifestation* of one's religion and beliefs is specifically guaranteed in ICCPR Art. 18. This right includes the freedom to worship, practice and teach, alone or together with fellow believers. The freedom to manifest one's beliefs, however, may be limited as "prescribed by law and (...) necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others."

Human rights officers in Darfur, Sierra Leone, Liberia, Afghanistan and Timor-Leste have investigated and evaluated situations where certain alleged religious practices have harmed people. For example, female genital mutilation severely injures young girls yet some claim this practice is grounded in religion. Delicate cultural issues often arise and human rights observers must be ready to confront them.

## 17. Conclusion

Human rights law should have the greatest impact for the most vulnerable: the marginalised, the poor, women, children, the elderly and minority groups. Prisoners; ethnic, racial, religious and ethnic minorities; political dissidents and the internally displaced also are at risk of grave and systematic abuse. Human rights monitors learn quickly to assess the status of these groups to get a reliable reading on the overall rights situation in a country.

Equality and non-discrimination are cornerstones of human rights law and key indicators of whether rights are being respected, protected and fulfilled. Equipped with a sound understanding of human rights law, the human rights observer should be ready to identify violations, propose solutions to prevent further abuses and help educate all on their rights and duties under international law.



***Note***

<sup>1</sup> See also the University of Minnesota Human Rights Library (<http://www.umn.edu/humanrts>) where all international human rights law instruments are conveniently compiled in full text versions.





*The Norwegian Centre for Human Rights* aims to contribute to the realisation of internationally recognised human rights, through research and reporting, teaching, advisory services, information and documentation. The Centre was founded in 1987 and is organised as an interdisciplinary centre under the Faculty of Law at the University of Oslo. Since 2001 the Centre has been designated as the National Institution for Human Rights in Norway.

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The first edition of the Manual on Human Rights Monitoring was developed at the request of the United Nations High Commissioner for Human Rights and published in 1997. The Manual is integral to the generic training provided to members of the NORDEM Stand-by Force in order to prepare them for human rights field operations. This is the third, revised edition (2008). The new edition includes one new chapter (Chapter 10) and three rewritten chapters (Chapters 2, 5 and 11). The remaining chapters are updated according to events and new developments in the field of human rights since the second edition in 2001.

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