

HUMAN RIGHTS

Questions and Answers

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Illustrated by **Plantu**

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The first edition of *Human Rights: Questions and Answers* was published by UNESCO in 1981 and translated into many languages. It was then substantially redrafted and updated by taking into account recent developments in the field of human rights. This Indian edition, like the new UNESCO publication, provides basic information on major human rights instruments, procedures for their implementation and activities of international organizations in order to promote and protect human rights. The publication represents a contribution to the realization of the Plan of Action for the United Nations Decade for Human Rights Education (1995-2004). The book is published in the hope that it will be useful to students and teachers and to all those who are involved or interested in the promotion and protection of human rights and fundamental freedoms.

Preface

The history of mankind is marked by efforts to ensure respect for the dignity of human beings. The concept of human rights was introduced and developed by thinkers from various cultural and religious traditions. An important contribution to the promotion of this idea was made by statesmen and lawyers and written norms establishing protection of the rights of individuals were gradually inscribed in national laws.

Steps were also taken to establish international human rights standards, in particular in the nineteenth century and after the First World War. However, it was only in the second half of the twentieth century that a comprehensive international system of human rights promotion and protection was set up. This was mainly due to the efforts of the United Nations, its Specialized Agencies and regional intergovernmental organizations.

The Charter of the United Nations expressed the determination of Member States 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . .'. The Second World War proved that internal massive violations of human rights lead to the breach of international peace. The horrors of this war confirmed and strengthened the belief that 'the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. This provision was inscribed in the Universal Declaration of Human Rights, which has become the cornerstone of international human rights law emerging in subsequent years. The two International Covenants on Human Rights (1966), defining civil, cultural, economic, political and social rights, were a major landmark in this process.

The international law of human rights now comprises more than eighty universal and regional conventions,⁵ which have binding force for States Parties and therefore form so-

called 'hard law'. A much greater number of declarations and recommendations concerning human rights, adopted by international organizations, are not formally binding for States. However, by influencing international and national practice in the field of human rights, they contribute to the creation of customary norms, and therefore form what can be called 'soft law'. In many cases, declarations and recommendations serve as an important step towards the elaboration of binding instruments.

Indisputable achievements in codification and the progressive development of international human rights law have not met with equal success in the observance of the latter. Regrettably human rights are violated every day in many parts of the world. Progress in their implementation depends on a number of factors, among which knowledge of relevant standards and procedures is not the least: it is obvious that human rights and fundamental freedoms can only be observed when they are known.

Education for human rights is therefore of great importance. This has been recognized in many international instruments. The Universal Declaration of Human Rights states that 'education shall be directed to the full development of human personality and to the strengthening of respect for human rights and fundamental freedoms'.

Similar provisions can be found in a number of conventions. This means that States are now duty-bound to educate for human rights.

Education for human rights is an important facet of UNESCO, whose Constitution imposes the obligation to further universal respect for justice, the rule of law and human rights and fundamental freedoms. In order to promote human rights education, UNESCO adopted in 1974 a specific normative instrument 'and in the following years, along with many other activities, organized three major international meetings on this subject.

The first of these, the International Congress on the Teaching of Human Rights (Vienna, Austria, 1979), underlined that human rights education and teaching must aim at: fostering attitudes of tolerance, respect and solidarity; providing knowledge about human rights; and developing the individual's awareness of the ways and means by which human rights can be translated into social and political reality. The second congress, held in Malta in 1987, defined guidelines for human rights education at international, national and regional levels, and stressed the necessity to create a complete system of human rights teaching and education with the broad participation of public organizations and the media.

The third congress took place in March 1993 in Montreal, Canada. This meeting, held after the end of the Cold War, was the first international gathering to stress the intrinsic link between human rights and democracy. The World Plan of Action on Education for Human Rights and Democracy, adopted by the Congress, declares that education for democracy is an integral part of education for human rights which is not only a prerequisite for the realization of human rights, democracy and social justice but is itself a human right.

The importance of human rights education was emphasized by the Vienna Declaration and Programme of Action adopted by consensus by representatives of 171 States at the World Conference on Human Rights (June 1993). The Conference confirmed that respect for human rights is an indispensable element of a genuine democracy and strongly supported the concept of the unity and universality of human rights. It declared that all

human rights are universal, indivisible, interdependent and interrelated and underlined that the ‘the international community must treat human rights globally, in a fair and equal manner, on the same footing and with the same emphasis’.

In accordance with recommendations of the Vienna Conference, the United Nations Decade for Human Rights Education (1995-2004) was proclaimed. Co-ordination for the implementation of the Decade’s Plan of Action has been entrusted to the United Nations High Commissioner for Human Rights. The Plan foresees that UNESCO should play a central role in the design; implementation and evaluation of projects contained therein and should collaborate with the High Commissioner and the United Nations Centre for Human Rights.

In a Memorandum of Co-operation, signed between the Director-General of UNESCO and the United Nations High Commissioner for Human Rights in October 1995, close collaboration in implementing activities related to education for human rights and democracy is envisaged.

UNESCO’s long-term objective is the creation of a comprehensive system of education for human rights, democracy and peace, embracing all levels of education and available to all. This means that the system should cover formal education as well as out-of-school and adult education.

The Organization concentrates its efforts on assistance to Member States in elaborating national strategies for human rights education, and on the preparation and dissemination of teaching aids and curricula. Particular attention is paid to the reinforcement of networks active in education for human rights and democracy, such as the Associated Schools Project and the UNESCO Chairs, established at institutions of higher education in all regions of the world.

The ultimate goal of these actions is the creation of a culture, the very core of which is adherence to the basic values of human rights and democracy and readiness to defend them in daily life. It presumes the formation of certain behavioral patterns. Such a culture of human rights and democracy can only be constructed by the combined efforts of educators, families, the mass media, and intergovernmental and non-governmental organizations, in other words by all social actors and by civil society as a whole.

Since its very beginning UNESCO has provided teaching materials on human rights for all levels of education and for the general public as well as for activists and non-governmental organizations working for the promotion of human rights. The first version of *Human Rights: Questions and Answers*, written by Leah Levin, a distinguished British human rights specialist, and illustrated by [Plantu](#), a well-known French political cartoonist, was published in 1981.

It proved to be a valuable teaching aid on human rights and has been translated into fifteen languages.

Since the publication of the first English edition, major developments have taken place in the world. With the end of the East-West confrontation, ideological disputes concerning the basic concept and priorities between different categories of human rights have been replaced by general agreement on the vital importance of observance of all of them for the maintenance of international peace and security. A great number of nations now share the view that State sovereignty should not be used as a pretext to avoid

responsibility for violating human rights and fundamental freedoms. The scope of domestic jurisdiction is thus narrowing and the principle of non-interference and non-intervention is being interpreted more flexibly. As a result, new opportunities to increase the effectiveness of international control mechanisms have arisen. Respect for human rights is regarded as an important factor in bilateral and multilateral relations. Democratization processes in many parts of the world have substantially reinforced the importance of human rights, the implementation of which is largely accepted as a major criterion determining the adherence to democratic values.

Furthermore, a number of new human rights instruments have been adopted and new States, emerging in the aftermath of the Cold War, have become parties to human rights covenants and conventions. Several important world conferences related to human rights have been held. The apartheid system has been demolished and a non-racial democratic society is being constructed in South Africa.

In the light of all these events, the need for the publication of a new version of *Human Rights: Questions and Answers*, had become evident and Leah Levin was again asked to prepare it.

Though this publication has been substantially revised, amended and updated, it preserves to a great extent the structure of the original edition. In the first part of the book, the scope and meaning of international human rights law are briefly described. Special attention is paid to the development of procedures in the field of human rights protection as well as to the importance of human rights education. In the second part, the meaning of each of the thirty articles of the Universal Declaration of Human Rights is explained.

Plantu agreed to do illustrations for the new version and UNESCO is very grateful to him for bringing the force of the image to the task of human rights education.

In fact, this publication is a result of the common effort of a number of organizations and individuals. The Division of Human Rights, Democracy and Peace wishes to express its sincere gratitude to all international organizations which have contributed to the preparation of this manuscript, in particular to the United Nations Centre for Human Rights, the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, the Council of Europe, the Organization of African Unity, the Organization of American States, and the Organization for Security and Co-operation in Europe.

Furthermore, the Division wishes to thank the staff of the Centre for Human Rights of the University of Essex (United Kingdom) and Ceri Sheppard, researcher, who assisted Leah Levin in preparing the manuscript. At the request of the author, particular gratitude is expressed to the Swedish International Development Agency for its substantial support towards research work.

The contribution of Sheila Bennett and Gabriele Bruns to the preparation of this text for publication deserves special acknowledgement.

Part I

International human rights law

Questions and answers

1. What is meant by 'human rights'?

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all human individuals by virtue of their humanity alone. These claims are articulated and formulated in what we today call human rights, and have been translated into legal rights, established according to the law-creating processes of societies, both national and international. The basis of these legal rights is the consent of the governed that is the consent of the subjects of the rights.

2. Is this notion accepted universally?

The values of dignity and equality of all members of the human race, like many other basic principles which underlie what we today call human rights, can be found in virtually every culture and civilization, religion and philosophical tradition.

3. How are these values reflected in practice?

Human life and human dignity have been disregarded throughout history and continue to be disregarded today. Nevertheless, the idea of rules common to all citizens dates back many centuries. What has been called 'natural law' implies the concept of a body of rules which ought to prevail in society. The principle of equality in rights (see also Part II, Article 1), recognized in natural law, was long accepted in many societies. Yet discrimination continues to exist due to ignorance, prejudice and fallacious doctrines which try to justify inequality. Such doctrines have been used to defend slavery and discrimination on the grounds of sex, race, colour, descent, national or ethnic origin or religious belief, or on the basis of class or caste systems, throughout history and, unfortunately in modern times.



4. How did the idea of human rights protection develop?

The ideas of elaboration and protection of rights of human beings have been gradually transformed into written norms. Many important landmarks may be mentioned on this way, such as, in England Magna Carta (1215), the Petition of Right (1628) and the Bill of Rights (1689). During the eighteenth century, the early ideas of natural law developed into an acceptance of natural rights as legal rights, and these rights for the first time were written into national constitutions, thus reflecting an almost contractual relationship between the State and the individual which emphasized that the power of the State derived from the assent of the free individual. The French Declaration of the Rights of Man and of the Citizen of 1789 and the American Bill of Rights of 1791 were based on this premise. During the nineteenth century this principle was adopted by a number of independent States and social and economic rights also began to be recognized. Despite the recognition accorded to human rights in national constitutions, these rights were sometimes curtailed or eliminated by legislation or by arbitrary means and, perhaps

generally, by informal social mechanisms. Moreover, human rights, in spite of their status as legal rights, were often violated by States themselves.

5. How did the recognition of the need to internationalize human rights protection come about?

The first international treaties concerning human rights were linked with the acceptance of freedom of religion (e.g. the Treaties of Westphalia of 1648) and the abolition of slavery. Slavery had already been condemned by the Congress of Vienna in 1815 and a number of international treaties on the abolition of slavery appeared in the second half of the nineteenth century (e.g. the Treaty of Washington of 1862, documents of the Conferences in Brussels in 1867 and 1890 and in Berlin in 1885). Another field of international co-operation was the elaboration of the laws of war (e.g. the Declaration of Paris of 1856, the First Geneva Convention of 1864 and the Second of 1906 and the Hague Conventions of 1899 and 1907). The creation of the International Committee of the Red Cross (ICRC) in 1864 contributed greatly to these developments.

Since the end of the First World War, there has been a growing belief that governments alone cannot safeguard human rights, which require international guarantees. Though the mandate of the League of Nations, the first universal intergovernmental organization created after the First World War, did not mention human rights, the League tried to undertake the protection of human rights through international means. However, its concerns were limited mainly to the establishment of certain conditions for the protection of minorities in a few countries.

The standards determining the conditions of industrial workers established in the beginning of the twentieth century became the subject of further international agreements elaborated by the International Labour Organization (ILO), created in 1919. The International Slavery Convention, signed in Geneva on 25 September 1926, ended lengthy efforts aimed at the abolition of slavery. Relevant conventions for the protection of refugees were adopted in 1933 and 1938. However, despite all these developments, human rights saw did not emerge in the inter-war period.

The totalitarian regimes established in the 1920s and 1930s grossly violated human rights in their own territories. The Second World War brought about massive abuse of human life and dignity, and attempts to eliminate entire groups of people because of their race, religion or nationality. Thus it became clear that international instruments were needed to codify and protect human rights, because respect for them was one of the essential conditions for world peace and progress.

6. How was it achieved in practice?

This conviction was reflected in and reinforced by the Charter of the United Nations signed on 26 June 1945. The Charter states the fundamental objective of the universal organization, namely: 'to save succeeding generations from the scourge of war' and 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women'. Article I of the Charter states that one of the aims of the United Nations is to achieve international co-operation in 'promoting and encouraging respect for human rights and for fundamental freedoms for all without

distinction as to race, sex, language or religion', thus enshrining the principle of non-discrimination. Article 55 expresses a similar aim, and by Article 56 all members of the United Nations 'pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55'.

The provisions of the Charter have the force of positive international law because the Charter is a treaty and therefore a legally binding document. All United Nations Member States must fulfil in good faith the obligations they have assumed under the Charter of the United Nations, including the obligations to promote respect for human rights, to promote observance of human rights, and to co-operate with the United Nations and other nations to attain this aim. However, the Charter does not specify human rights and does not establish any specific mechanism to ensure their implementation in Member States.

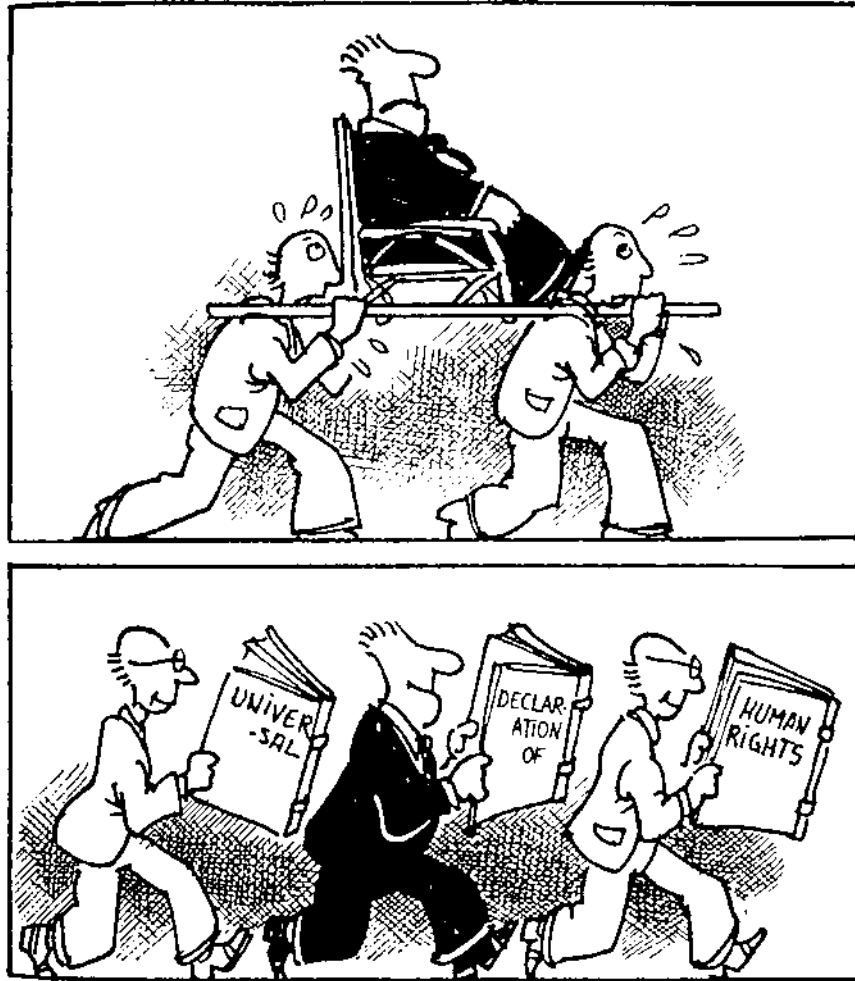
7. How was human rights law created?

The task of drawing up an International Bill of Human Rights, defining the human rights and freedoms referred to in the Charter, was charged upon the Commission on Human Rights, and established in 1945, which is a subsidiary body of the Economic and Social Council (ECOSOC), one of the United Nations principal organs. A major step in drafting the International Bill of Human Rights was realized on 10 December 1948, when the General Assembly adopted³ the Universal Declaration of Human Rights 'as a common standard of achievement for all peoples and nations'.

8. What are the rights proclaimed in the Universal Declaration?

These rights can be broadly divided into two kinds. The first refer to civil and political rights, which include: the right to life, liberty, and security of person; freedom from slavery and torture; equality before the law; protection against arbitrary arrest, detention or exile; the right to a fair trial ; the right to own property; political participation; the right to marriage; the fundamental freedoms of thought, conscience and religion, opinion and expression; freedom of peaceful assembly and association; and the right to take part in the government of his/her country, directly or through freely chosen representatives. The second are economic, social and cultural rights, which relate to, amongst others: the right to work; equal pay for equal work; the right to form and join trade unions; the right to an adequate standard of living; the right to education; and the right to participate freely in cultural life.

The first article of the Declaration expresses the universality of rights in terms of the equality of human dignity, and the second article expresses the entitlement of all persons to the rights set out without discrimination of any kind. The fundamental principle underlying the rights proclaimed in the Declaration is contained in the Preamble to the Declaration, which starts by recognizing the 'inherent dignity and the equal and inalienable rights of all members of the human family'. The second part of this publication describes what is meant by each of the articles of the Universal Declaration.



9. Do States which were not at the time members of the United Nations accept the Universal Declaration?

Although the Universal Declaration of Human Rights is not legally binding, over the years its main principles have acquired the status of standards which should be respected by all States. When the Declaration was adopted, there were only fifty-eight Member States of the United Nations. Since that time, this number has more than tripled. The continuing impact of the Declaration and the use made of it bears out its universal acceptance, and it has become a common reference in human rights for all nations.

The Universal Declaration, together with the Charter, served both as an inspiration and a means for the millions of people under colonial rule to achieve self-determination in the 1950s and 1960s, and many incorporated the provisions of the Declaration in their constitutions.

The consensus of the international community was reflected at the International Conference on Human Rights in Tehran in 1968 - that the Universal Declaration 'states a common understanding of the people of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community'. Twenty-five years later, at the World

Conference on Human Rights (Vienna, Austria, 14-25 June 1993), 171 States reaffirmed that the Universal Declaration ‘constitutes a common standard of achievement for all peoples and all nations’⁶ and that ‘it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

10. What other instruments make up the International Bill of Human Rights?

The Universal Declaration of Human Rights was the first part of the objective; the other parts, designed to elaborate the content of the provisions of the Declaration, took many years to complete. On 16 December 1966, the United Nations General Assembly adopted two Covenants - the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and an Optional Protocol to the ICCPR, allowing for complaints to be made by individuals on violations of their rights embodied in the Covenant. In adopting these instruments, the international community not only agreed on the content of each right set forth within the Universal Declaration, but also on measures for their implementation. A further elaboration took place when, in December 1989, the Second Optional Protocol to the ICCPR, aimed at abolishing the death penalty, was adopted by the General Assembly.

The adoption of these two Covenants endorsed the General Assembly resolution of 1950 that ‘that the enjoyment of civil and political rights and economic, social and cultural rights are interconnected and interdependent’.

11. How do the International Covenants differ from the Universal Declaration?

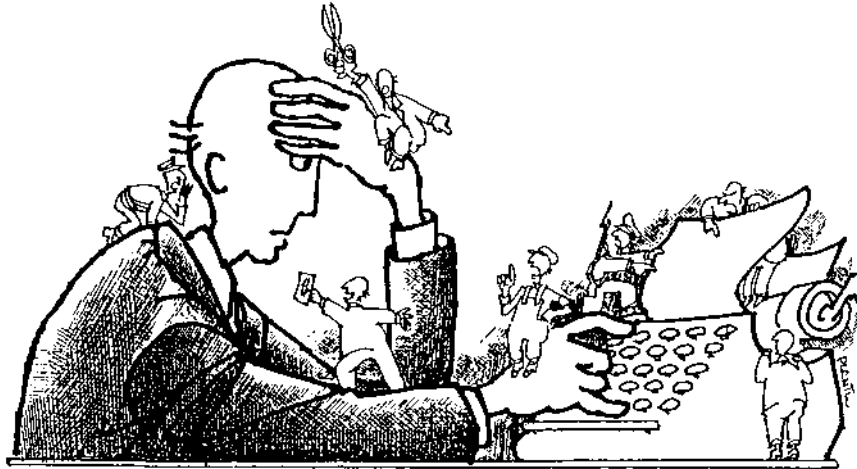
The Covenants, unlike the Universal Declaration, are legally binding treaties for those States which are parties to them and they are thus obliged to respect the procedures for their implementation, including the submission of periodic reports on their compliance with their obligations under the Covenants. Both Covenants entered into force in 1976. Since that time about 130 States have become parties to the ICESCR and to the ICCPR.⁸The First Optional Protocol to the ICCPR also entered into force in 1976 and by now has been ratified by about ninety States. The Second Optional Protocol, which entered into force in 1991, has now been ratified by about thirty States.

12. What rights are protected by the International Covenant on Civil and Political Rights (ICCPR)?

This Covenant elaborates the political and civil rights identified in the Universal Declaration, which include the rights to life, privacy, fair trial, freedom of religion, freedom from torture and equality before the law.

Some of the rights can be suspended in times of ‘public emergency which threatens the life of the nation’, provided that the derogation will not involve discrimination on grounds of race, colour, sex, language, religion or social origin. If a country wants to ‘opt out’ in this way, it must immediately inform the Secretary-General of the United Nations. States of emergency thus declared unfortunately often create the conditions under which gross violations of human rights occur. In no circumstances, in peace or war, is

derogation permitted under the Covenant from the following fundamental rights: the rights to life, recognition before the law, freedom from torture and slavery, freedom of thought, conscience and religion, the right not to be imprisoned solely for inability to fulfil a contractual obligation, and the right not to be held guilty for committing a crime which did not constitute a criminal offence at the time it was committed.



13. What means are provided for implementation under the ICCPR?

Article 28 of the Covenant provides for the establishment of a Human Rights Committee consisting of eighteen independent experts, nominated and elected by States Parties to the Covenant, who serve in their personal capacities, which means that they are not acting on behalf of their State. The Human Rights Committee monitors the implementation of the Covenant in a number of ways.

The Committee examines periodic reports from States Parties to the Covenant on their compliance (Article 40). Such a report must be submitted by each State within one year of becoming party to the Covenant, and thereafter whenever the Committee so determines. The reports are examined in public and in the presence of the representative of the State concerned, who may be questioned. On completion of each State report, the Committee issues concluding observations which reflect the main points of discussion, as well as suggestions and recommendations to the Government concerned on ways in which the Covenant could be better implemented.

The Committee can consider complaints of one State against another, provided that both have made a special declaration recognizing this role of the Committee under Article 41. To date, no such complaints have been received.

The Human Rights Committee also interprets the content and meaning of specific articles of the Covenant in its 'General Comments'. These establish the jurisprudence of the Covenant and thus guide the States Parties in their adherence to their obligations under the Covenant and in the preparation of State reports.

The Committee reports annually on its work to the United Nations General Assembly through the Economic and Social Council (ECOSOC).

14. How effective is this reporting procedure?

Since the protection of human rights depends ultimately upon compliance at the national level, the power of the Human Rights Committee is limited as it has no recourse beyond its comments. However, there is a persuasive value derived from the examination of reports in public, as governments are generally sensitive to public exposure of their human rights performance. Moreover, the principal objective of the Committee is to develop a constructive dialogue with reporting States and thereby promote the compliance of States with the provisions of the Covenant.

Reporting States are urged to make the text of the Covenants known, translated into the main local language, and brought to the attention of administrative and judicial authorities.

15. Can the Human Rights Committee deal with complaints from individuals?

Under the provisions of the Original Protocol to the ICCPR, the Committee can receive complaints from individuals alleging violations of their rights under the Covenant, provided that the State concerned has ratified this Optional Protocol. Complaints are made by submitting written communications to the Committee. Representation may also be made by another person on behalf of a victim when the victim is not able personally to appeal to the Committee. The Committee examines a case on its 'admissibility' and then on its 'merits' or substance in closed sessions, which means in the presence of the members of the Committee only. To determine admissibility, the complaint should not be anonymous, it should not be an abuse of the procedure, it should not be under consideration by any other international procedure, and the complainant must have exhausted all possible domestic remedies.

After confidential consideration of the communication, the Committee is empowered to bring any individual complaint which it finds admissible to the attention of the State Party concerned. The State on its part undertakes to provide the Committee, within six months, with a written explanation on the matter and the remedy, if any, that it may have undertaken. The Committee takes into account all written information made available to it by the initial author of the communication, by the alleged victim and by the State concerned. The Committee adopts Views' on the merits of the case, which are forwarded to the State Party and the individual concerned, in the expectation that the State will act upon them. The Committee also makes public its decisions and views.



16. Do States respect the 'views' of the Committee?

The Human Rights Committee expresses its 'views' in the form of legal judgements, but there is no legal enforcement procedure. Thus the responsibility of compliance rests with the State concerned. States comply for various reasons, including a genuine wish to fulfil the obligations of the Covenant and a desire to enhance their international image.

When compliance does occur, it is not always in full and can be reluctant. In a case against the Netherlands, the Committee found a violation with which the Netherlands did not agree, but 'out of respect for the Committee' made an *ex gratia* payment to the complainant.

There are many examples, however, of States Parties complying fully with the 'views' of the Committee. Finland revised its Aliens Act in order to make the provisions governing the detention of aliens compatible with the Covenant, in compliance with the Committee's 'views'. It also paid compensation to the victim. Likewise, Mauritius changed its law in response to the Committee's 'views' upholding the complaints of a

number of Mauritian women who claimed that the Government had interfered with the family and discriminated on the grounds of sex. Other positive responses relating to the Committee's 'views' on communications under the Optional Protocol have been forthcoming from a number of countries including Canada, Colombia, Ecuador, Peru, and Trinidad and Tobago.

To promote compliance with its 'views', the Committee has appointed a Special Rapporteur with the mandate to request written information from States Parties on any measures taken in pursuance of the Committee's 'views'.



17. What rights are protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR)?

The rights recognized by the Covenant include the rights to: work; favourable conditions of work and equal pay for equal work; form and join trade unions; social security; an adequate standard of living including adequate food, clothing and housing; protection of the family; the highest attainable standard of physical and mental health; education; and participation in cultural life. Each State Party to the Covenant agrees to 'take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized' in the Covenant. None of the rights protected under the Covenant can be suspended.

18. What mechanism exists for the implementation of the ICESCR?

The body which oversees the implementation of the Covenant is the Committee on Economic, Social and Cultural Rights, which was established by ECOSOC in 1985. It is composed of eighteen independent experts nominated and elected by States Parties to the Covenant, who serve in their personal capacities.

The Committee publicly examines periodic reports submitted by States Parties which reflect the measures adopted and the progress made in meeting their obligations under the Covenant. Representatives from State Parties are entitled to be present when the Committee examines the report and are engaged in constructive dialogue. They may be asked to furnish additional information. The Committee also takes account of relevant information from United Nations Specialized Agencies relating to their particular area of expertise, and invites submissions of written and oral statements by non-governmental organizations. If a State fails to respond to a request for follow-up information, the Committee may request that the State Party accepts a mission of one or two of its members to visit the country to assist the State to comply and assess the need for technical and advisory services.

The Committee reports annually to ECOSOC regarding its consideration of the State reports and presents its concluding observations. The latter reflect the main points of discussion, identify positive aspects as well as principal subjects of concern, factors and difficulties impeding the implementation of the Covenant, and put forward suggestions and recommendations. These observations are an important source of public information.

No procedure which allows for individual or interstate complaints exists.



19. How are States Parties assisted in implementing the Covenant?

At the invitation of ECOSOC, the Committee prepares 'General Comments' on the various articles and provisions of the ICESCR, the purpose of which is to assist States Parties in fulfilling their reporting obligations and to assist and promote progressively the full realization of the rights recognized in the Covenant. In its third General Comment, the Committee specified two provisions in the Covenant on which States Parties must take immediate action. These are non-discrimination provisions and the obligation to 'take steps' which should be 'deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant'. The Committee also notes in this comment that it is the obligation of all States Parties 'to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights' in the Covenant. The only exception is if a State can show that resource constraints make it impossible to act.

Other 'General Comments' have focused on such issues as the right to adequate housing and international assistance measures as they relate to the Covenant.

20. Has the Committee on Economic, Social and Cultural Rights initiated any other procedures?

During each of its sessions, the Committee holds a day of general discussion regarding a specific right or particular aspect of the Covenant, the purpose of which is to further understanding of the issues. Some of the focal issues have been the right to food, the right to housing, the role of social and economic indicators, the rights of the elderly and ageing, and the right to take part in cultural life. These discussions are summarized in the Committee's annual report to ECOSOC.

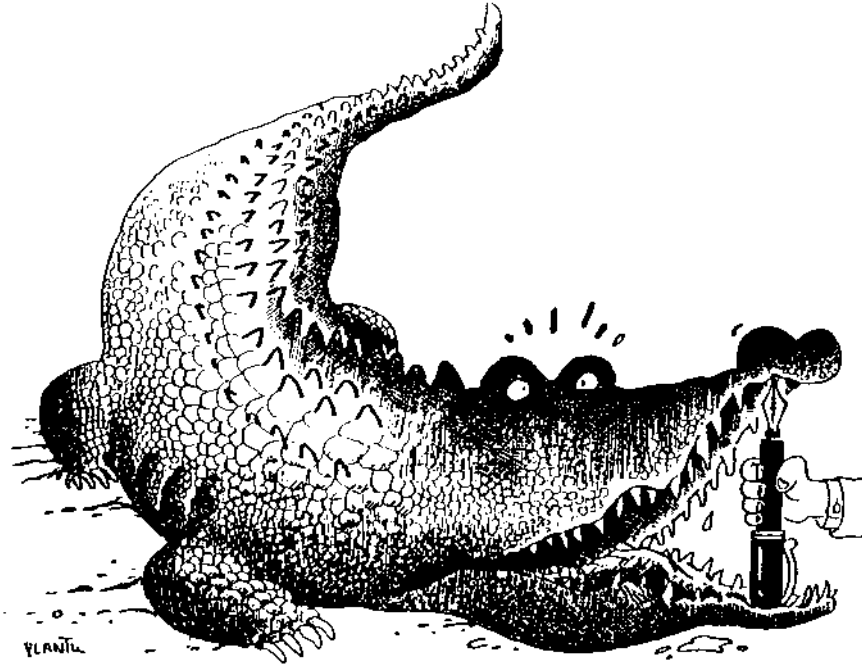
21. Does international scrutiny of compliance under obligations concerning human rights constitute interference in the internal affairs of States?

The State is the guarantor and protector of human rights and, according to a customary rule regulating the relations between States, governments in principle have no right to intervene in the internal affairs of another State. For a long time human rights were understood as being a State's internal responsibility. This understanding began to be eroded by the realization that human rights violations present a threat to peace and security in the world. In 1993, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, stated that the promotion and protection of all human rights is a legitimate concern of the international community' (Article 4). Likewise, in Resolution 48/125 of 20 December 1993, in paragraphs 3 and 5 of the operative part, the United Nations General Assembly reaffirmed that it is 'a purpose of the United Nations and the task of all Member States ... to promote and encourage respect for human rights and fundamental freedoms and to remain vigilant with regard to violations of human rights wherever they occur'. It also confirmed that 'the promotion, protection and full realization of all human rights and fundamental freedoms, as legitimate concerns of the world community, should be guided by the principles of non-selectivity, impartiality and objectivity'.

States usually remain sensitive and defensive regarding the scrutiny of their human rights records and continue to invoke Article 2 (7) of the United Nations Charter which stipulates that the United Nations should not intervene 'in matters which are essentially within the domestic jurisdiction of any State'. However, such behaviour is increasingly recognized as being an attempt not to fulfil the obligations under international law and has not inhibited human rights issues from being raised within the United Nations system. Moreover, the United Nations Charter recognizes that peace and stability among nations is related to the recognition of and respect for human rights, and seeks to establish conditions under which both peace and human rights, which include the social and economic advancement of all peoples, can be achieved.

22. What other important United Nations human rights instruments are there besides the International Bill of Human Rights?

There are a large number of conventions, declarations and recommendations adopted by the General Assembly and other legislative bodies of the United Nations system which elaborate in more detail the rights set out in the Universal Declaration and the International Covenants, and which also affirm certain rights not specified in the International Bill of Human Rights. The declarations and recommendations apply to all Member States of the United Nations but do not have the same legal force as the conventions, which are legally binding upon States that have become parties to them.



Every effort is made to encourage States to observe international standards, to ratify or accede to international human rights treaties and incorporate these in their national legislation. These standards provide a normative base for the strengthening of democracy.

Among the international instruments are those relating to the right to life, the prevention of discrimination and the rights of persons belonging to minorities, as well as the rights of indigenous peoples, victims of war and refugees, which are all discussed below. Other standards referred to include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see also Part II, Article 5), the Convention on the Rights of the Child (see also Question No. 33, below), and the Convention relating to the Status of Refugees and the respective Protocol (see also Question No. 45, below).

23. What measures have been taken to prevent genocide?

In December 1948 the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. It came into force in 1951 and has been ratified by approximately 120 States.¹¹ Genocide is defined in the Convention as certain acts 'committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group'. Genocide is designated a crime under international law,

whether committed in time of war or of peace, and is defined as a crime against humanity.

Provision is made in Article 6 of the Convention for persons charged with committing genocide to be tried either by a competent tribunal in the State where the act was committed or by an international penal tribunal which has been accepted as competent by States Parties to the Convention.

24. How was the principle of prevention of discrimination further elaborated?

The fundamental principle of non-discrimination is enshrined in Article I of the United Nations Charter (see Question No. 6, above) and is reflected in the International Bill of Human Rights and all other major human rights instruments. The two specific instruments in this field relate to racial discrimination and discrimination against women.

25. What provision is made for combating racial discrimination?

The International Convention on the Elimination of All Forms of Racial Discrimination came into force in 1969 and by now has been ratified by more than 140 States.¹² It represents the most comprehensive United Nations statement regarding discrimination on the grounds of 'race, colour, descent, or national or ethnic origin'. States Parties to the Convention undertake to pursue a policy of eliminating racial discrimination in all its forms and to ensure the protection of special racial groups, guaranteeing their members full and equal enjoyment of human rights and fundamental freedoms.

26. How is the International Convention on the Elimination of All Forms of Racial Discrimination implemented?

A Committee on the Elimination of Racial Discrimination (CERD) comprising eighteen independent experts, established under Article 8 of the Convention, supervises governmental compliance. The Committee has several functions. Its main task is the examination of periodic reports from States Parties on the measures they have taken to implement the Convention. Governments are represented at the examination of their reports, and the Committee pursues a strategy of informal dialogue to encourage governments to comply with their obligations. In its final report, the Committee makes concluding observations on each State report, suggesting and recommending ways in which the Convention could be more effectively implemented. Some States have taken account of this by amending their constitutions and domestic laws to make racial discrimination a punishable offence, as well as establishing educational programmes and new agencies to deal with problems of racial discrimination.

The Committee reports annually to the General Assembly of the United Nations and is dependent upon the Assembly to endorse and give authority to its suggestions and general recommendations. Other functions of the Committee are to apply the procedure (not yet invoked by any State) which allows the Committee to deal with inter-State complaints.

27. What other action does the Committee on the Elimination of Racial Discrimination (CERD) take?

The Committee is developing measures aimed at the prevention of racial discrimination. These include early-warning measures to prevent existing problems from escalating into conflicts, and confidence-building initiatives towards strengthening racial tolerance and peaceful coexistence. It also undertakes urgent preventative action in response to acute problems arising from serious violations of the Convention. In this context, the Committee has initiated 'on the spot' visits by sending missions to areas of particular concern.

28. Can individuals complain to the Committee about violations of the Convention?

Article 14 of the Convention allows the Committee to examine, in closed session, complaints from individuals or groups of individuals against States, provided that the State concerned has recognized the right of individual petition. This procedure became operative in December 1982. More than twenty States had recognized this right and the Committee has considered and concluded several cases and published its opinions on them.

29. Are these principles reflected in other standards?

A very important instrument in this field is the UNESCO Declaration on Race and Racial Prejudice, which was adopted by acclamation in 1978, together with the resolution for the implementation of this Declaration whereby Member States are urged to report through the Director-General to the General Conference on the steps they have taken to give effect to the principles of the Declaration. Inter-national non-governmental organizations are also called upon to co-operate and assist in the implementation of the principles set out in this Declaration.

30. What provision is made for combating gender discrimination?

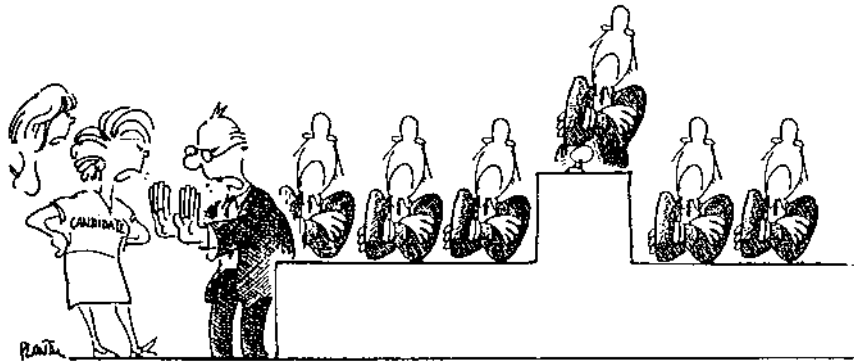
The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979, and entered into force on 2 September 1981. By now there are more than 150 States Parties to this Convention. There is no provision under the Convention for inter-State complaint, nor complaints from individuals.

The Committee on the Elimination of Discrimination against Women, a body of twenty-three independent experts, established under Article 17 of the Convention, considers periodic reports from States Parties regarding their compliance with the provisions of the Convention. The Committee makes general recommendations on specific articles of the Convention, or on issues related to the Convention. In 1992, General Recommendation No. 19 was made on the issue of violence against women which, whilst not specifically mentioned in the Convention, is deemed by the Committee as constituting discrimination against women and, as such, violates, amongst others, Articles 1 to 4 of the Convention. The recommendation suggests specific measures which States should take to protect women from violence. The Committee submits to the General

Assembly an annual report which contains a record of the examination of State reports, concluding observations and general recommendations.

31. Why is there a separate convention for women's rights?

The object of the Convention on the Elimination of All Forms of Discrimination against Women is to implement equality between men and women and to prevent discrimination against women, in particular such specific forms of discrimination as forced marriages, domestic violence and less access to education, health care and public life as well as discrimination at work.

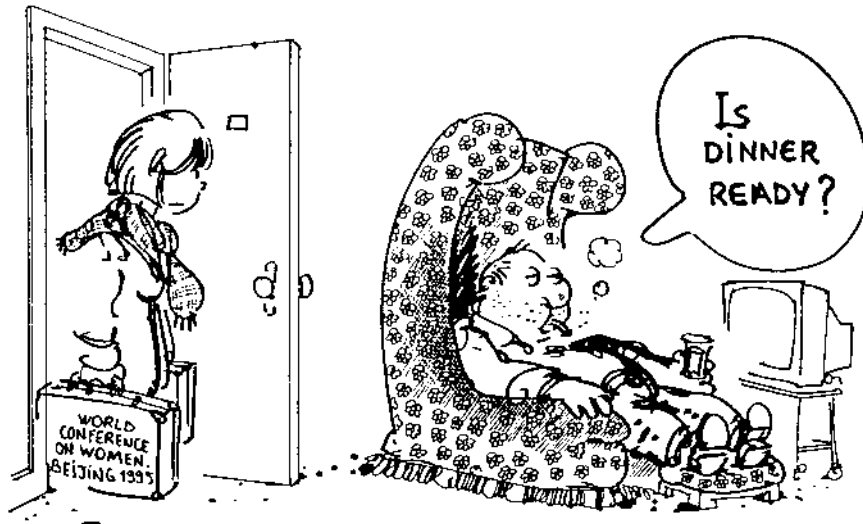


These issues were recognized at an early stage by the Commission on the Status of Women (a body of governmental representatives), which was established in 1946 with the mandate to further gender equality. It was also given the task of drafting the Convention. In emphasizing the indivisibility of human rights, the Commission has focused attention on development issues as an area which affects women disproportionately. More recently, the Commission has been concerned with practical measures to ensure the implementation of women's rights.

32. What strategies are being followed to ensure women's equality?

These are broadly aimed at integrating the human rights of women into all United Nations activities, as well as creating special mechanisms to deal with violations of those rights specifically concerning women.

In order to further promote the rights of women, the United Nations convened several world conferences: in Mexico City, Mexico (19 June-2 July 1975), Copenhagen, Denmark (24-30 July 1980) and Nairobi, Kenya (15-26 July 1985). The World Conference on Women held in 1985 adopted the 'Nairobi Forward-looking Strategies for the Advancement of Women to the Year 2000', which are aimed at the achievement of a genuine equality of women in all spheres of life and the elimination of all forms and manifestations of discrimination against them.



The Vienna Declaration and Programme of Action (1993) called for increased integration of women's rights into the United Nations human rights system. It furthermore endorsed the need to recognize the particularity of women's rights and the development of means to implement them, including the more vigorous implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

In a follow-up to the Vienna Declaration, the Commission on Human Rights passed a resolution at its fiftieth session calling for 'intensified effort at the international level to integrate the equal status of women and the human rights of women into the mainstream of United Nations system-wide activity'.

The Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly in 1993, calls on all States to take measures to prevent and punish violence against women. In March 1994, the Commission on Human Rights established a Special Rapporteur on violence against women, with the mandate to examine the causes and consequences of violence against women.

The Fourth World Conference on Women, which took place in Beijing, China, from 4 to 15 September 1995, confirmed the importance of actions in order to ensure the advancement of women, including their full incorporation into the development process, improvement of their status in society, and greater opportunities for education.

33. Are the rights of the child protected by international human rights law?

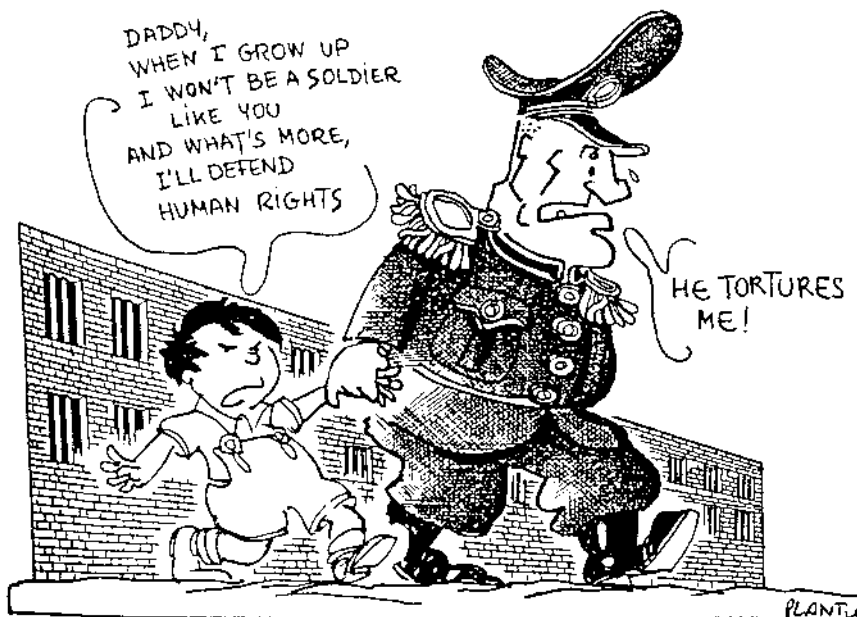
On 2 September 1990, the Convention on the Rights of the Child came into force less than one year after it had been adopted by the United Nations General Assembly on 20 November 1989. By now a record number of States - more than 180 - have ratified the Convention.²¹ States Parties to the Convention agree to take all appropriate measures to implement the rights recognized in the Convention, and in doing so the best interest of the child shall be the paramount consideration and guiding principle. The provisions are wide-ranging and include recognition of the importance of family life for the child.

The Committee on the Rights of the Child, established under the Convention and comprising ten independent experts, examines periodic reports submitted by States

Parties on the implementation of the Convention. The Committee makes concluding observations, including suggestions and recommendations on each periodic report. Specialized Agencies may be present during the examination of country reports and are invited to submit information or advice on their special areas of expertise. The Committee transmits requests and indicates needs for technical advice or assistance arising from States' reports to the Specialized Agencies. The United Nations Children's Fund (UNICEF)," which plays an important role in promoting the Convention, is a significant participant in these proceedings. The Committee may recommend to the General Assembly that studies on specific issues relating to the rights of the child should be undertaken by the Secretary-General (children in armed conflict were the subject of a recent study).

A Special Rapporteur, appointed by the Commission on Human Rights (see Question No. 7, above), is investigating the sale of children, child prostitution and child pornography, taking into account the fact that these practices are being increasingly internationalized.

An African Charter on the Rights and Welfare of the Child, adopted by the Organization of African Unity (see also Question No. 73, below), will enter into force after it has been ratified by fifteen Member States.



34. What measures have been taken to protect minorities?

The issue of minorities is long-standing, and was one of the reasons for establishing in 1947 the Sub-commission on the Prevention of Discrimination and the Protection of Minorities, a subsidiary body of the Commission on Human Rights. The rights of persons belonging to ethnic, religious and linguistic minorities were the subject of one of its early studies. A further major study on this issue has recently been completed. New approaches

towards the implementation of effective international protection of minorities are now beginning to emerge.

35. What provision is made for the protection of persons belonging to minorities?

The most comprehensive United Nations human rights instrument devoted solely to minority rights is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities which was adopted by consensus by the United Nations General Assembly in 1992. The Preamble to the Declaration states that the promotion and realization of the rights of persons belonging to minorities is an 'integral part of the development of society . . . within a democratic framework based on the rule of law . . .'. Article 1 of the Declaration requires States to recognize and promote the identity of such minorities. The General Assembly has appealed to States to 'take all the necessary legislative and other measures to promote and give effect, as appropriate, to the principles of the Declaration'.

36. What other human rights instruments refer to minority rights?

Article 27 of the International Covenant on Civil and Political Rights and Article 30 of the Convention on the Rights of the Child both state that people belonging to minorities (rather than minorities as a group) shall not be denied the right to enjoy their own culture, practise their own religion or use their own language. The Human Rights Committee, which is the treaty body of the International Covenant on Civil and Political Rights (see also Question No. 13, above), has received complaints by individuals under the Optional Protocol relating to violations of Article 27.

The Convention against Discrimination in Education (1960), adopted by the General Conference of UNESCO, specifically provides for the rights of national minorities in respect of their educational activities (Article 5), as well as forbidding discrimination against any group of persons (Article 1).

37. Why has the issue of minorities now taken on a greater urgency?

During the late 1980s and early 1990s, the question of minority rights became a major issue of global concern due to the proliferation of violent internal conflicts, with consequent massive costs in human suffering, displacement of people and economic social disruption. Ongoing, seemingly intractable, internal conflicts in Africa, Asia and Latin America were augmented by new conflicts arising from the results of the dissolution of the former Soviet Union and the disintegration of former Yugoslavia, with the abhorrent and criminal 'ethnic cleansing' which accompanied the latter.

Many of these conflicts have their roots in the disaffection of minorities arising from long-standing grievances and discrimination. Resultant assertions of identity, often politically manipulated, are expressed in claims to self-determination. The denial of these claims, and the absence of mechanisms to deal with them, often results in violent conflict and even civil war.

In *An Agenda For Peace*, Boutros Boutros-Ghali, Secretary-General of the United Nations, pointed out that, in spite of the growing 'co-operation of both regional and

continental associations of States, fierce new assertions of nationalism and sovereignty spring up, and the cohesion of States is threatened by brutal ethnic, religious, social, cultural or linguistic strife'. It was also indicated that 'one requirement for solutions to these problems lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic'.

38. Are there any universal procedures for addressing these problems?

In many of these situations the international community has failed to find effective and adequate responses. This underlies the need, expressed in *An Agenda for Peace*, for developing preventive diplomacy in order to ease tensions before they lead to conflict. Therefore peaceful ways must be sought and preventive measures developed, including early-warning systems to avert the occurrence of violence and, when possible, to resolve the underlying causes of grievances.

39. Are there any regional procedures for addressing these problems?

The Conference on Security and Co-operation in Europe (CSCE) see also Question No. 81, below appointed in December 1992 a High Commissioner on National Minorities as a conflict-prevention measure. His function is to provide early warning and early action as appropriate in regard to tensions involving national minority issues. The High Commissioner is allowed free access to the territory of any participating State and may receive information directly from sources including non-governmental organizations. It is hoped that an impartial presence will facilitate discussion and dialogue between conflicting parties and help to resolve disputes.

40. What means are there to safeguard the rights of indigenous peoples?

There are at least 300 million indigenous people in around seventy States in all parts of the world. The main international instrument to protect their rights is the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted in June 1989, which entered into force in September 1991.³¹ It affirms that no State or social group has the right to deny the identity of indigenous peoples, and places responsibility on States for ensuring, with the participation of indigenous peoples, their rights and integrity.

Within the United Nations, the Committee on the Elimination of Racial Discrimination (CERD, see also Questions 26-28, above) has considered the situation of indigenous people, and the Human Rights Committee (see also Questions 13-16, above) has examined cases brought by indigenous persons alleging violation of their rights under Article 27 of the International Covenant on Civil and Political Rights, which prohibits discrimination on the basis of ethnic, religious or linguistic status.

The United Nations Working Group on Indigenous Populations, created in 1982, is the centre of indigenous rights activities within the United Nations system. As well as reviewing Government policies and making recommendations to the Sub-commission on Prevention of Discrimination and Protection of Minorities, it also functions as a forum attended annually by 500 to 600 indigenous representatives who are able to exchange views in a free and democratic manner with governments, non-governmental organi-

zations and United Nations agencies. A draft United Nations declaration on the rights of indigenous peoples, which includes the rights to self-determination, to control their land and resources, to speak their own languages, etc., was adopted by the Sub-commission in 1994 and should be further elaborated by an open-ended working group created by the Commission on Human Rights in 1995 (Resolution 1995/32 of 3 March 1995). The possibility of elaborating draft guidelines and principles for the protection of the cultural and intellectual rights of indigenous peoples is also under consideration.

Indigenous peoples continue to be among the group which suffers the greatest discrimination in all countries. As well as suffering the worst housing, health conditions, educational opportunities and employment conditions, they are also losing their land and resources, upon which their very survival depends. In some nations, indigenous peoples suffer other serious human rights violations, such as arbitrary killings and disappearances. In an attempt to rectify this, the United Nations General Assembly has proclaimed the ten years starting from 10 December 1994 as the Decade of the World's Indigenous People. The goal of the Decade is to strengthen international co-operation for the solution of problems faced by indigenous peoples. One day (9 August) of every year is to be observed as the International Day of Indigenous People.

41. What provision is made to protect human rights in periods of armed conflict?

It is evident that in periods of armed conflict human rights cannot be fully realized. However, protection of basic rights should be ensured and this is the subject of international humanitarian law.

This history of international humanitarian law is closely associated with that of the Red Cross. The Red Cross (today known as the International Red Cross and Red Crescent Movement) arose out of the work of Henri Dunant, a Swiss humanitarian, who, at the Battle of Solferino in 1859, organized emergency aid services.

The Geneva Convention of 1864, the first multilateral agreement on humanitarian law, committed governments to care for the wounded of war, whether enemy or friend. This Convention was extended by the Geneva Convention of 1906, by the Hague Conventions of 1899 and 1907 and by the Geneva Convention of 1929.

After the Second World War, during which enormous abuses of the principles of humanitarian law were witnessed, the existing provisions were extended and further codified.

Legal protection for combatants and non-combatants consists of the rules which govern the conduct of military operations, known as the 'Law of The Hague', and the laws which protect victims of war, which are mainly set out in the four Geneva Conventions of 1949. Almost all countries of the world became parties to these Conventions.

Nowadays the distinction between 'Geneva law' and 'Hague law'⁷ is a rather artificial one, as the two 1977 Additional Protocols to the Geneva Conventions contain rules of both types.

The Additional Protocol I relates to the protection of victims of international armed conflicts and the Additional Protocol II* relates to the protection of victims of non-international armed conflicts.

42. What protection is envisaged for individuals in times of armed conflict?

The Geneva Conventions require respect and protection of wounded, sick and shipwrecked members of armed forces, as well as prisoners of war, without discrimination, thus ensuring equal rights for the protection of all war victims. The Fourth Convention concerns the protection of civilians in time of war. The Additional Protocols extend the protection to all persons affected by armed conflict and forbid attacks on civilian populations and objects by the combatants parties to the conflict, be it international or internal.

The World Conference on Human Rights (1993) appealed to States which have not yet done so to accede to the Geneva Conventions of 12 August 1949 and the Protocols thereto, and to take all appropriate national measures, including legislative ones, for their full implementation.

As a neutral intermediary in armed conflicts and disturbances, the International Committee of the Red Cross (IC RC) attempts, either on its own initiative or basing its action on the Geneva Conventions and their Additional Protocols, to provide protection and assistance to the victims of international and non-international armed conflicts and of internal disturbances and tensions.

43. Are there means for dealing with gross violations of humanitarian law?

An international tribunal was established by Resolutions 808 and 827 (1993) of the United Nations Security Council whereby it decided that such a body shall be established for the prosecution of persons responsible for 'serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991'. The International Tribunal is empowered to prosecute persons who are alleged to have committed genocide as defined by the Convention on the Prevention and Punishment of the Crime of Genocide (see also Question No. 23, above). The International Tribunal has the sole purpose of prosecuting and punishing persons responsible for such violations, and will remain in operation until international peace and security are restored in that region.

The International Tribunal consists of eleven independent judges, and an independent Prosecutor who is responsible for investigations and prosecutions. Proceedings may only be initiated by the Prosecutor. In conducting investigations; the Prosecutor has the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. Information may be collected and received from any source. All Member States of the United

Nations are obliged to co-operate fully with the international Tribunal, both in the preparation of cases, including the forwarding of information and the surrendering of accused persons, and the implementation of the decision. An accused person will enjoy all the guarantees of a fair trial. The penalty for a person found guilty of serious vio-

lations of international humanitarian law by the International Tribunal is imprisonment. The sentence will be carried out in the territory of a consenting State. The death penalty is not permitted under the Statute of the International Tribunal. Provision is made for an appeal process-The International Tribunal must submit an annual report on its activities to the Security Council and the General Assembly.

44. In what other ways does the United Nations deal with violations of international humanitarian law?

By Resolution 955 (1994), the Security Council has established an international tribunal for the purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed on the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed on the territory of neighbouring States.

45. Are refugees protected by international law?

International and internal conflict as well as internal strife force people to leave their homes in an attempt to escape gross and massive violations of their human rights or just to save their lives. If they move within their own country, they are called internally displaced persons. Those who leave their country are called refugees.

Refugee movements, triggered in a number of cases by human rights abuses and armed conflicts, are often aggravated by drought, famine and, in some regions, total anarchy.

The Convention relating to the Status of Refugees (1951) and its Protocol (1966) recognize as refugees only those who leave their country because of a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion' (Article 1 of the Convention). The security of refugees rests on being granted asylum and on the observance of the principle of *non-refoulement*, which means that no person should be faced with expulsion or compulsory return, either at the border or after having entered another country, to a country where his or her life or freedom may be threatened because of the reasons enumerated above.

46. How is this protection implemented?

The Office of the United Nations High Commissioner for Refugees (UNHCR) is responsible for supervising international provisions for the protection of refugees and for seeking durable solutions by assisting governments to facilitate the voluntary repatriation of refugees and/or their integration within new national communities.

In 1951, when the UNHCR was established, there were an estimated 1 million refugees. By the end of 1994 there were 45 million refugees and internally displaced persons spread over five continents, of whom 18 to 20 million fell within the definition of 'refugee' and were central to the mandate of the UNHCR. The UNHCR is also increasingly asked to assist the estimated more than 25 million internally displaced persons because of its specialized expertise in providing humanitarian assistance and protection.

Although refugee law is not directly applicable to the internally displaced persons, the UNHCR provides assistance for them under the general provisions of human rights law and humanitarian law, on an ad hoc operational basis. This protection is similar to that provided to refugees.

The UNHCR is increasingly concerned with the root causes of conflicts and with the need for early-warning and 'preventative strategies to avert and resolve refugee flows and internal displacement. According to the United Nations High Commissioner for Refugees, preventative strategies required a comprehensive approach encompassing development assistance, as well as humanitarian action and the protection of human rights'.

47. Are there regional protection systems for refugees?

The most comprehensive and significant regional instrument is the Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Organization of African Unity (see also Question No. 73, below) in 1969 and which entered into force in 1974. This Convention contains an expanded definition of the term 'refugee', which applies to every person who is compelled to seek refuge outside his or her country of origin or nationality for reasons including external aggression, occupation and internal civil disturbance.

48. Can an appeal be made to the United Nations if a person feels that his/her human rights are being violated?

The United Nations has received hundreds of thousands of complaints from individuals and organizations alleging violations of human rights. Since the introduction of a special procedure on this matter (see Question No. 49, below), the number of complaints has grown significantly. For example, in 1993 alone some 280,000 such communications were received by the United Nations. Various procedures have evolved to deal with these complaints, which do not always concern individual cases. Nevertheless, other procedures exist which allow individual cases to be considered by the Human Rights Committee (see Question No. 13, above), the Committee on the Elimination of Racial Discrimination (CERD) (see Question No. 26, above), the Committee against Torture (see Part II, Article 5) and the Working Group on Arbitrary Detention.

49. What is done about complaints?

The Commission on Human Rights (see also Question No. 7, above) is the body primarily responsible within the United Nations for dealing with human rights issues, including these complaints.

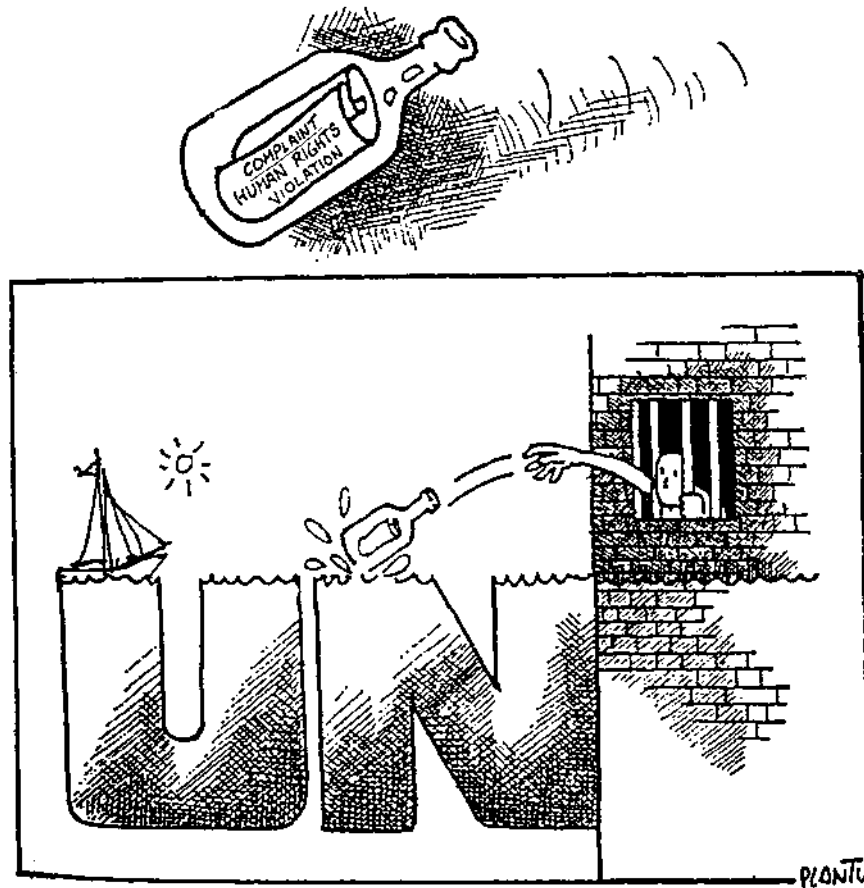
When the Commission was established, no provision was made for machinery whereby individuals or groups could seek redress for alleged violations of human rights, and the Commission consistently recognized 'that it had no power to take any action in regard to complaints concerning human rights'. A procedure (ECOSOC Resolution 728F of 1959) was, however, developed which permits the drafting of two lists of

communications from the complaints received: a non-confidential list dealing with the principles involved in protecting and promoting human rights; and a confidential list made up of complaints against States.

This latter procedure was formalized in 1970 by ECOSOC Resolution 1503 (XLVIII), which set up a complex confidential procedure whereby complaints which reveal 'a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms' could be examined. For the first time, evidence could be submitted not only by victims of violations but also by any person or group or non-governmental organization with a direct and reliable knowledge of the violations. The complaints are examined in the first instance by a Working Group of the Sub-commission on the Prevention of Discrimination and the Protection of Minorities (see also Question No. 34, above) and subsequently by a Working Group of the Commission on Human Rights. The Commission on Human Rights can decide either to make a thorough study of the situation or, with the consent of the State concerned, to appoint an ad hoc committee to investigate the situation, and, in either case, to submit the resulting report to ECOSOC, at which point the information becomes public. The Commission has never publicly taken either action. It is known, however, that the Commission has repeatedly set up a confidential intersessional mechanism, appointing independent experts to examine a situation and report to the Commission. The Commission can, on its own initiative, also waive secrecy in respect of a particular situation and set up public machinery for its investigation.

The Commission announces publicly the countries which were considered under the Resolution 1503 procedure at its session that year. Countries so named may be the subject of public discussion of violations of human rights under other agenda items. The effectiveness of this procedure depends largely upon the voluntary co-operation of States. It has an important function in that it embraces all rights recognized in the Universal Declaration of Human Rights and the International Covenants, and applies to all Member States of the United Nations. It thus complements other procedures concerned with specific rights, which are applicable only to States Parties to the treaty.

As far as the open procedures are concerned, a landmark was achieved in 1967, when ECOSOC adopted Resolution 1235, empowering the Commission on Human Rights to 'make a thorough study of situations which reveal a consistent pattern of violations of human rights, as exemplified by the policy of apartheid, and to report and make recommendations to ECOSOC. Fact-finding studies were then initiated: and a Working Group of Experts on Southern Africa was set up in 1967. Subsequently a group to look into alleged violations of human rights in the occupied Arab territories and an ad hoc Working Group on Chile (terminated in 1979) were created. The achievement of political will and agreement on these situations opened the door for the Commission on Human Rights to pursue its mandate to consider publicly situations concerning violations of human rights and fundamental freedoms in any part of the world.



50. What other measures to deal with human rights violations have been initiated by the Commission on Human Rights?

Gradually, and on an ad hoc basis, a range of supervisory mechanisms is being developed which do not derive their legitimacy from any particular human rights instrument. They are established, each with its own particular mandate, by resolution of the Commission, as approved by the Economic and Social Council. Essentially mechanisms of implementation, these special procedures seek to promote compliance by governments with agreed human rights standards. These mechanisms, known collectively as the 'Special Procedures' of the Commission on Human Rights, fall into two groups: those addressing human rights issues on a global basis by theme and those which focus on the overall human rights situation in a specific country.

These mechanisms are established either as Special Rapporteurs or as Working Groups. Members of the Working Groups and the individual Special Rapporteurs are independent experts, not Government representatives. In addition to the above, there are also further mandates requesting the Secretary-General to prepare reports on various specific subjects. These may be either thematic or situation-based.

51. Which are the thematic procedures?

The first of the thematic procedures to be established was the Working Group on Enforced or Involuntary Disappearances in 1980. Its primary role is to act as an intermediary between families of missing persons and governments with the aim of clarifying the location of the missing persons. In pursuing this aim, the Working Group analyses cases of disappeared persons; receives information from governmental and non-governmental sources; transmits cases to the governments concerned, with the request that they carry out investigations; relays governments' replies to the families of the disappeared; follow up the investigations and other inquiries; examines allegations of a general nature concerning specific countries; and intervenes with governments when relatives of missing persons, or people who have co-operated with the Group, have suffered intimidation or reprisals as a result. The Working Group makes general conclusions and recommendations which are included in its report to the Commission on Human Rights.

The Declaration on the Protection of all Persons from Enforced Disappearance was adopted by the United Nations General Assembly on 8 December 1992. The Declaration states that the systematic practice of disappearance constitutes a crime against humanity as well as a violation of the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture. It also violates or constitutes a grave threat to the right to life. States are obliged to take effective measures to prevent and terminate acts of enforced disappearance.



The Working Group on Arbitrary Detention was established in 1991 to investigate cases of detention imposed arbitrarily or otherwise inconsistent with relevant international standards accepted by the States concerned. The post of Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (see also Part II, Article 3) was established in 1982, and of Special Rapporteur on Torture (see also Part II, Article 5) in 1985. These, together with the Working Group on Enforced or Involuntary Disappearances, undertake urgent actions whereby they can immediately react to situations of concern.

Among other 'special procedures', it is necessary to mention the Special Rapporteurs on Internally Displaced Persons (see Part II, Article 14); the Sale of Children, Child Prostitution and Child Pornography (see Part II, Article 25); Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers (see Part II, Article 10); Elimination of Violence against Women (see also Question No. 32, above); Contemporary Forms of Racism, Racial Discrimination and Xenophobia (see Part II, Article 2); Religious Intolerance (see Part II, Article 18);

Freedom of Opinion and Expression (see Part 11, Article 19); and Use of Mercenaries as a Means of Impeding the Exercise of the Right of Peoples to Self-Determination.

52. Can a situation in any specific country be under scrutiny?

In 1994, eight countries were under scrutiny by Special Rapporteurs reporting to the United Nations General Assembly and to the Commission on Human Rights. Furthermore situations in some countries were examined by Special Rapporteurs, reporting only to the Commission on Human Rights.

53. What is the main objective of these special procedures?

All special procedures are mandated to study or examine a situation of human rights violations, in terms of effective implementation of international human rights standards. In doing so, they may objectively seek and receive information from governmental and non-governmental sources, including victims of human rights violations; ask governments to comment on information; and undertake country visits with the consent of the State concerned. Their overall aim is to establish constructive dialogue with governments, and to recommend to them ways to improve human rights protection. Special Rapporteurs and Working Groups have renewable mandates and include in their reports general conclusions and recommendations indicating the gravity and nature of the human rights situations covered by their mandates.

The use of Field Officers in connection with certain specific mandates has been initiated recently.

54. What is the significance of the special procedures?

The overall significance of the special procedures is that it reflects an evolution in the human rights activities from a focus on standard-setting to one on implementation and compliance with established standards. A framework of procedures and mechanisms for the protection of human rights is thus being established.

To be the focus of a special procedure is an indication of grave human rights violations, and States lobby ardently against such exposure and public censure. Public scrutiny of a State's practices and mistreatment of its citizens can in itself act as a protective measure, preventing further abuses and saving lives. Urgent action procedures may impede further violations. Maintaining international pressure and disapproval can result in States improving their human rights situation.

Success ultimately depends upon the responsiveness of States and thus upon their sensitivity to censure and to remaining on the public agenda of the Commission and General Assembly.

55. What new institutions are there in the field of human rights?

The Vienna Declaration and Programme of Action (1993) recognized the need for adapting the United Nations machinery for the promotion and protection of human rights to current and future needs and recommended considering the establishment of a High Commissioner for Human Rights. This was achieved on 20 December 1993 when the United Nations General Assembly unanimously adopted Resolution 48/141 establishing

the post of the High Commissioner for the Promotion and Protection of all Human Rights. On 5 April 1994, the newly appointed High Commissioner took up his duties.

The High Commissioner for Human Rights, appointed for four years with the possibility of one renewal, must function within the framework of the United Nations Charter, the Universal Declaration of Human Rights and other relevant instruments to promote universal respect for and observance of all human rights, and must be guided by the recognition that 'all human rights - civil, cultural, economic, political and social - are universal, indivisible, interdependent and interrelated', and that the promotion and protection of human rights is the legitimate concern of the international community.

56. What is the mandate of the High Commissioner for Human Rights?

The High Commissioner for Human Rights is the United Nations official with principal responsibility for human rights activities, with the mandate to promote and protect the effective enjoyment of all human rights including, specifically, the right to development.

Among the High Commissioner's responsibilities are co-ordinating human rights promotion and protection activities throughout the United Nations system; providing advisory services and technical and financial assistance through the Centre for Human Rights; rationalization, adoption, strengthening and streamlining of the United Nations human rights machinery with a view to improving its efficiency and effectiveness; engaging in dialogue with all governments with a view to securing respect for all human rights; and playing an active role in preventing the continuation of human rights violations throughout the world.

57. What are the responsibilities of the United Nations Centre for Human Rights?

The United Nations Centre for Human Rights serves as a focal point for United Nations activities in the field of human rights. It was created in 1982 by Resolution 37/437 of the General Assembly by the re-designation of the former Division of Human Rights. The Centre,

Geneva with an office in New York is headed by an Assistant Secretary-General.

The main functions of the Centre are to assist United Nations organs and bodies in the promotion and protection of human rights and fundamental freedoms as envisaged by the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights and in resolutions of the General Assembly.

Since the establishment of the post of United Nations High Commissioner for Human Rights (see also Question No. 55, above), the supervision of the Centre has been entrusted to him in order to co-ordinate the promotion and protection of human rights activities throughout the United Nations system.

The Centre provides secretarial and substantive services to United Nations organs and bodies concerned with human rights, including the General Assembly, the Economic and Social Council, the Commission on Human Rights, the Sub-commission on Prevention of Discrimination and Protection of Minorities, the Committee on the Elimination of Racial

Discrimination (CERD), the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture.

The Centre also carries out research and studies on human rights and prepares reports on their implementation. In addition, it co-ordinates liaison with nongovernmental and other organizations active in the field of human rights as well as with the media. Furthermore, it disseminates information and prepares publications related to human rights.

A number of resolutions of the United Nations General Assembly have stressed the importance of the activities of the Centre and the necessity to ensure adequate human, financial and other resources for its work.

58. What practical assistance does the United Nations offer to States to further the protection and promotion of human rights?

In 1985 the General Assembly formally established a Programme of Advisory Services in the field of human rights to be coordinated by the United Nations Centre for Human Rights. Its main functions were to provide, at the request of governments, the services of experts, fellowships, scholarships, seminars and training courses in human rights. A Voluntary Fund for technical co-operation in this field was established in 1987 to meet the budgetary requirements of a substantially expanded programme.

This expansion can be explained by the political changes heralded by the end of the Cold War in the late 1980s. New-States and emerging democracies in Latin America, Eastern Europe and Africa appealed for help in strengthening their fledgling legal and civil institutions, and in meeting reporting obligations under newly ratified human rights instruments.

A new comprehensive country programme is now in operation. Based on the assessment of the human rights needs of a country, an integrated technical assistance programme is elaborated with the aim of strengthening a legal and institutional framework that can promote and sustain human rights and democracy under the rule of law.

Within this context, experts are provided to assist in the drafting of national constitutions which make provision for: the inclusion of human rights norms and the independence of the judiciary; advice on mechanisms to secure democratic order, including electoral assistance; and the training of judges, law-enforcement personnel, public officials and the armed forces, with particular reference to international human rights standards.

The programme also has components relating to human rights education, strengthening the mass media in the promotion of human rights, and conflict resolution. The latter focuses on conflict prevention and techniques for their peaceful resolution, which include the training of United Nations peace-keepers and the establishment of field offices of the Centre of Human Rights. The High Commissioner for Human Rights pays great attention to technical co-operation.

The programme recognizes the crucial role of human non-governmental organizations and other community groups in building civil society, and provides direct support for their projects.

59. Which of the United Nations Agencies have special implementation procedures for the protection of human rights within their own fields of competence?

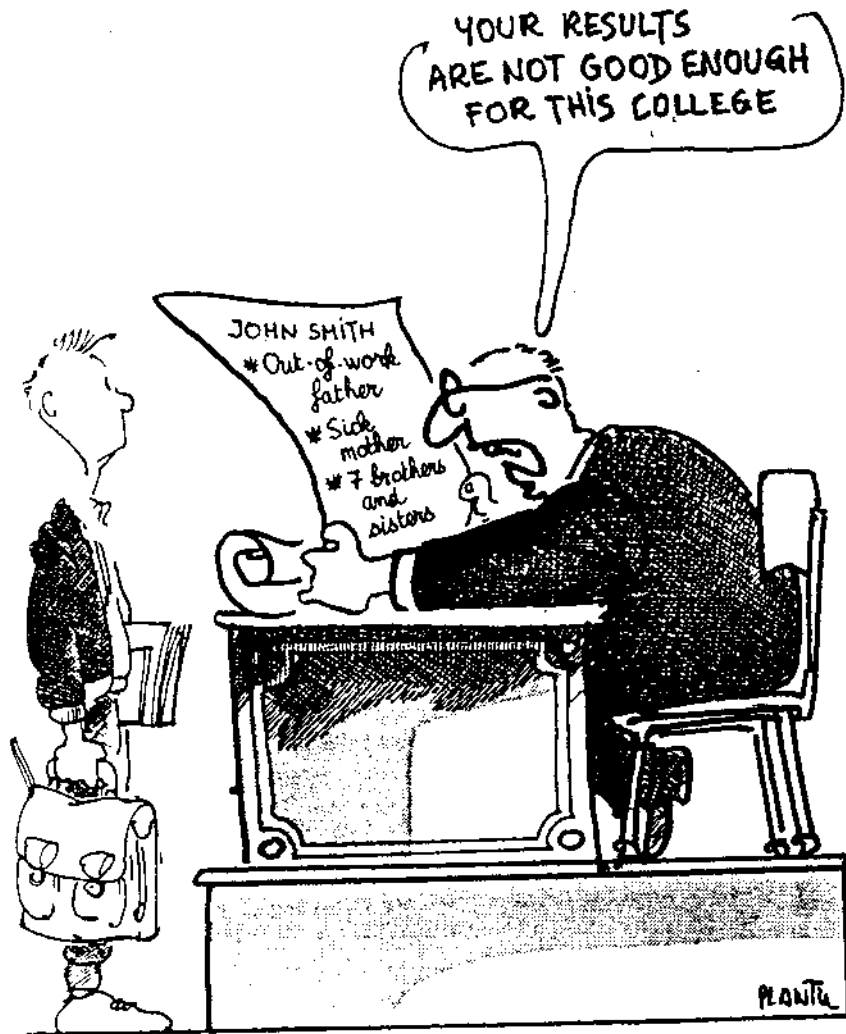
There are two United Nations Specialized Agencies within which such procedures have been established: the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organization (ILO).

60. What mechanism exists within the United Nations Educational, Scientific and Cultural Organization (UNESCO)?

UNESCO's competence extends to the rights relating to education, science (including social science), and culture and communications, which includes freedom of opinion and expression, and freedom of the press.

The procedures whereby UNESCO can take action regarding the promotion and implementation of human rights are partly provided for by the conventions and recommendations it has adopted. The method used is a reporting and complaints system.

The UNESCO Convention against Discrimination in Education entered into force in 1962 and by now more than eighty States have become parties to it." This Convention commits States Parties to a national policy which will promote equality of opportunity and treatment in matters of education. States Parties undertake to ensure, by legislation if required, that there is no discrimination in the admission of pupils to educational institutions, nor any discrimination in the treatment of students. Foreign nationals are assured of the same access to education. The measures for implementation are based on a system of reports from the participating States which are examined by a special Committee on Convention and Recommendations. The report and comments of the Committee are then submitted to the General Conference of UNESCO. The only further action taken is in the form of resolutions passed by the General Conference on the basis of the issues raised. To supplement and strengthen this system, a Conciliation and Good Office Commission was created under a protocol to the Convention⁵⁶ to deal with complaints from States alleging that another State Party is not giving effect to the provisions of the Convention. The Commission's mandate is to seek an amicable solution or, failing this, to make a recommendation which could include a request to the International Court of Justice for an opinion (the latter procedure, however, has never been applied).



Other procedures exist for the implementation of other UNESCO instruments relating to such matters as the status of teachers. The joint International Labour Organization/ UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (1966) was set up in 1968 by a decision of UNESCO's Executive Board and by the Governing Body of the ILO. The Committee is made up of twelve independent experts, half of whom are chosen by the ILO and the other half by UNESCO. Discussions are under way on the desirability of updating the Recommendation and including some of the aspects covered by it in a possible convention on the status of teachers.

UNESCO has also undertaken efforts to protect cultural property, considering that this field of interest is closely linked with cultural rights. There are three UNESCO Conventions: the Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 'Hague'

Convention), with Regulations for the Execution of the Convention, as well as the Protocol to the Convention and the Conference Resolutions (1954); the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of

Ownership of Cultural Property (1970); and the Convention concerning the Protection of the World Cultural and Natural Heritage (1972).

61. Can UNESCO receive complaints of alleged violations of human rights?

UNESCO has a procedure for handling complaints from alleged victims or any person, group of persons, or national or international non-governmental organization having reliable knowledge of an alleged violation of human rights in the Organization's fields of competence, namely, education, science, culture and communication. If and when consent is given by complainants for their names to be divulged, the Government concerned is informed and asked to submit any written comments it may have regarding the complaints, called 'communications'. The communications, together with relevant replies, if any, from governments, are examined in camera by the Executive Board's Committee on Conventions and Recommendations. Representatives of governments concerned may attend meetings of the Committee in order to provide additional information or answer questions from members of the Committee. The Committee first examines the admissibility of each communication and then, if the communication is declared admissible and considered to warrant further action, it seeks to help bring about a friendly solution designed to advance the promotion of human rights falling within UNESCO's field of competence. The Committee submits a confidential report to the Executive Board of UNESCO, which may take whatever action it considers appropriate.

This procedure not only concerns individual and specific cases of violations of human rights, but also 'questions' of massive, systematic or flagrant violations. A question is considered to exist when there is either an accumulation of individual cases forming a consistent pattern of gross violations of human rights or a policy contrary to human rights applied de-jure or de facto by a State. Communications relating to questions of violations of human rights may be considered at public meetings of the Executive Board or of the General Conference. To date, this procedure has not been used.

The UNESCO procedures are subject, in some respects, to less stringent preconditions than some of the other international and regional procedures for dealing with alleged violations of human rights. For example, they do not require that all domestic remedies be exhausted, but only proof that an attempt has been made to exhaust those remedies; also the fact that a case is being examined by another international organization does not prevent it from being considered under UNESCO procedures.

By the end of 1995, the Committee had dealt with 440 communications, of which 266 were satisfactorily resolved, mainly through dialogue between the Committee and the States concerned.

62. What other activities does UNESCO undertake in order to promote and protect human rights and fundamental freedoms?

UNESCO, in accordance with its Constitution, adopted in 1945, should 'contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms'.

Guided by the Universal Declaration of Human Rights, UNESCO made efforts to develop its provisions by codifying certain rights within its fields of competence and to disseminate knowledge on human rights by means of education UNESCO has also undertaken numerous activities in order further to develop the right to participate in cultural life. The Declaration of the Principles of International Cultural Co-operation (1966) stresses that international cooperation should 'enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in resulting benefits, and to contribute to the enrichment of cultural life' (Article IV, Para. 4). The Recommendation by the People at Large in Cultural Life and Their Contribution to It (1976) defines access to culture as opportunities available for everyone for obtaining information, training and knowledge, and for enjoying cultural values, in particular through the creation of appropriate socio-economic conditions.

A number of instruments protecting the rights of persons playing an important role in cultural and scientific life have been adopted,

As a Specialized Agency responsible for education, science, including social sciences, and culture within the United Nations system, UNESCO sponsors an important interdisciplinary research programme, which seeks to determine the social, economic and cultural factors which govern the perception of rights and their implementation. An example of such research is the project on the right to privacy and the meaning of privacy for various social strata and various societies. Another area of research is the effect of technological progress on rights in the modern State. In particular, since 1989, UNESCO has been engaged in examining legislation concerning independent and pluralist media and in advising Member States on new media legislation and possible structures for editorially independent public broadcasting services. In the monitoring of the operation of law, social science research is also important in analysing real access to equality before the law and the obstacles to the implementation of human rights.

63. What is the contribution of the International Labour Organization (ILO) to the promotion of human rights?

The ILO, which has been in existence since 1919 and became a United Nations Specialized Agency in 1946, seeks to achieve social justice through its activities in the social and labour fields. The basis of ILO action for human rights is the establishment of international labour standards and the supervision of the implementation of these standards by Member States of the organization.

The ILO is a tripartite organization, which means that all policy-making bodies of the organization are composed of representatives of governments, employers and workers, who participate on an equal footing in the decision-making and procedures of the organization.

International labour standards are adopted by the main body of the ILO, the International Labour Conference, in the form of conventions or recommendations. The conventions, when ratified by States, are binding upon them. The conventions relate to the basic human rights concerns of the ILO, such as freedom of association, abolition of forced labour, freedom from discrimination in employment and occupation, child labour,

etc. They also lay down standards in such fields as conditions of work, occupational safety and health, social security, industrial relations, employment policy and vocational guidance, and provide for the protection of special groups, such as women, migrants and indigenous and tribal peoples.

64. What provisions are there for seeing that governments adhere to their undertakings?

There are various procedures for supervising and monitoring the implementation of ILO standards. When States ratify conventions they also undertake to submit Periodic reports on the measures they have taken to give effect to the provisions of the convention. These reports must always be sent by governments to the workers' and employers' organizations in each country, which may submit comments. An independent twenty-member Committee of Experts on the Application of Conventions and Recommendations examines the reports and comments on the degree of compliance by governments. In its assessment, the Committee makes allowances for any flexibility of implementation allowed by a convention, but does not take into consideration differences in political, economic or social systems, especially in regard to fundamental human rights. The Committee submits a report to the annual International Labour Conference, which is examined by the Conference Committee on the Application of Conventions and Recommendations. Over the year, the ILO's standard-setting and supervisory activities have had a considerable influence in changing the social and labour legislation of Member States and have helped to improve the conditions and lives of working people. Since 1964, more than 2,000 instances of such changes in over 130 countries have been noted by the Committee.

Where there are difficulties in complying with conventions, the ILO offers assistance to the countries concerned to help find solutions. This is done through a network of technical advisers throughout the world, and by a variety of other means. ILO technical assistance in all fields, in fact, is based on its standards.

65. What other provisions exist for the implementation of ILO standards?

Apart from the regular supervisory function of the ILO based on reports from governments, there are two complaints procedures under the ILO Constitution for the implementation of labour standards. The first allows any employers' or workers' organization to make a representation to the ILO claiming that a Member State has failed to comply with its obligations in respect of a convention it has ratified. A special tripartite committee of the Governing Body of the ILO examines the case to determine whether the convention is in fact applied.



The second procedure allows a Member State to make a complaint against another Member State if it considers that the latter is not securing effective observance of any convention which they have both ratified. Neither the complaining State nor its nationals need to have been a victim of such a failure to observe the convention; the action is considered to be in the general interest of human rights. A complaint may also be made by the Governing Body, either on its own initiative or on receipt of a complaint from a delegate to the annual International Labour Conference. The Governing Body may appoint a commission of inquiry.

If the Government in question does not accept the findings of the commission, it may refer the case to the International Court of Justice. This has not yet happened, as the findings of the commissions of inquiry have generally been accepted by the governments concerned. Only a relatively limited number of representations and complaints have been made, but they have related to important questions, particularly linked with trade-union rights, discrimination and forced labour.

66. What provisions have been envisaged to safeguard trade-union rights?

In 1950 the ILO established a special procedure for examining allegations of violations of trade-union rights and also the rights of employers' organizations, which supplement the general supervisory procedures for conventions. Complaints may be submitted by workers' or employers' organizations or by governments. In practice, most complaints are made by national or international trade unions and complaints may relate to all trade-union rights, including those not covered by the two principal conventions: the Convention (No. 87) concerning Freedom of Association and Protection of the Right

to Organize (1948) and the Convention (No. 98) concerning the Application of Principles of the Rights to Organize and to Bargain Collectively (1949). Complaints may be made against any Government whether it has ratified the conventions or not. The tripartite Committee on Freedom of Association of the Governing Body examines these allegations and may refer complaints for further investigation to a Fact-Finding and Conciliation Commission on Freedom of Association. In practice, the Committee itself has examined almost all the complaints received. Since its inception and up to 1995, the Committee has dealt with nearly 2,000 complaints. The recommendations of the Committee have prompted action ranging from the repeal or amendment of legislation and the reinstatement of dismissed workers to the release of imprisoned trade unionists. In some cases, death sentences on trade unionists have been commuted.

67. Are there regional systems for the protection of human rights?

There are three regional organizations which maintain permanent institutions for the protection of human rights: the Council of Europe, the Organization of African Unity and the Organization of American States. All of them have initiated instruments on human rights which have been inspired by the Universal Declaration of Human Rights.

68. What actions have been undertaken by the Council of Europe to protect human rights?

The Council of Europe, created in 1949, established machinery for the protection of human rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights) (1950), which came into force on 3 September 1953. The Convention deals mainly with civil and political rights and states in the Preamble that 'the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law' are resolved to 'to take the first step for the collective enforcement of certain of the rights stated in the Universal Declaration of Human Rights'.

Membership of the Council of Europe has grown from twenty-three Western European States to thirty-nine, with the admission to membership of Central and Eastern European States since 1990. Thirty-three of these have ratified the Convention and accepted the right of individual petition and the compulsory jurisdiction of the European Court of Human Rights.

The machinery for guaranteeing enforcement of the rights protected under the European Convention currently consists of the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers. The competence of these institutions extends to both inter-State cases and individual applications, where the Government concerned has recognized the right to individual petition.

The decisions of the Court are legally binding and States Parties are therefore obliged to comply with its findings. This commonly leads to States making legislative or other changes of a general character (usually to prevent the repetition of the violation) in response to the Court's judgements on specific cases: Austria and Germany have amended their laws on detention before trial, the United Kingdom has changed prison rules in order to comply with a judgement regarding the right or access to a court, and the

Netherlands has introduced amendments to the law of military discipline. The Court also often requires States to pay costs and compensation to the person or persons whose rights have been violated.

As the procedures have become better known, the workload of the Commission and Court has grown to the extent that it can take up to five or six years for cases to be dealt with. The cumbersome nature of the control machinery of the Convention, and the further implications for this of the expanding membership of the Council of Europe, led to a decision to reform the system. The first step towards this reform was the signing, on 11 May 1994, of Protocol No. 11 to the European Convention on Human Rights by the Foreign Ministers of the thirty-one Member States of the Council of Europe. The next step requires ratification by all the parties to the Convention (by May 1996 there were twenty-one ratifications), upon which a new mechanism of control will come into force whereby a new single permanent European Court of Human Rights will replace the present bodies (the European Commission and the European Court of Human Rights). The Committee of Ministers will no longer have any role in the procedures. The jurisdiction of the Court with respect to individual and inter-State cases will become mandatory.

69. How does the Council of Europe protect economic, social and cultural rights?

These rights are recognized by the European Social Charter (1961), which entered into force on 26 February 1965. Contracting parties⁶¹ agree to 'make every effort in common to improve the standard of living and to promote the social well-being of both their urban and rural populations by means of appropriate institutions and action'. Each contracting party must send a report to the Secretary-General of the Council of Europe every two years noting the progress made in implementing the provisions of the Charter.

In June 1995, a new Protocol was adopted which will enable, when it comes into force, social partners and nongovernmental organizations to lodge collective complaints with the Committee of Independent Experts alleging violations of the Charter.

The aim of the collective complaints procedure is to boost participation from both sides of industry and from non-governmental organizations. It is also an example of one of a number of measures drawn up to improve the enforcement of social rights guaranteed by the Charter. A revised draft European Social Charter is currently being examined by the Committee of Ministers.

70. What are the other main areas of activity within the Council of Europe?

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides non-judicial preventative machinery to protect people deprived of their liberty. This is based on systematic monitoring and investigative visiting by members of an independent and expert committee, the Committee for the Prevention of Torture. The Committee makes recommendations (and may ultimately make a public statement) and reports annually to the Committee of Ministers.

The Council of Europe also places much importance on the issue of equality between women and men. The Steering Committee for Equality between Women and Men has

taken action on issues such as violence against women and prostitution, and also formulated concrete proposals following detailed analyses and conferences. In 1994, the concept of 'parity democracy' was launched, with the aim that women and men share in the decision-making process on an equal fifty-fifty basis.

The Council of Europe is also involved in the field of the media. The aim is to strengthen and enhance freedom of expression and information and the right to receive and impart information regardless of frontiers.

71. How does the Council of Europe protect minority rights?

The Framework Convention for the Protection of National Minorities, adopted in November 1994, represents the first ever legally binding multilateral instrument devoted to the protection of national minorities. The Convention (opened for signature in February 1995) covers many areas, for example the right to linguistic freedom and education, and participation in public life.

Furthermore, in the European Charter for Regional or Minority Languages, adopted in June 1992, educational, administrative and judicial proposals are laid down, based on the central recognition that the right to use a minority language in private and public life is an inalienable right

72. Does the Council of Europe offer practical assistance to States?

The Council offers an extensive programme of practical assistance in the human rights field through the Demosthenes Programme, which aims at strengthening the transition towards democracy in Central and Eastern European States, and at facilitating their integration into the Council of Europe. Activities within this Programme include providing assistance to establish basic political, legal and social democratic structures in the areas of administrative and legislative reform, human rights and the rule of law. Emphasis has been placed on training lawyers, judges, civil servants and media professionals.

The Human Rights Information Centre of the Council of Europe is responsible for the promotion of human rights awareness and professional training as well as for responding to all requests for human rights documentation.

73. What measures to protect human rights have been taken by the Organization of African Unity (OAU)?

The Assembly of the Heads of State and Government of the OAU adopted the African Charter of Human and Peoples' Rights on 26 June 1981: it came into force in October 1986. As of May 1996, it had been ratified by fifty out of the fifty-three OAU Member States.

74. What rights are protected by the African Charter?

The Charter has several elements which distinguish it from other regional human rights instruments inspired by the United Nations Charter and the Universal Declaration

of Human Rights. Uniquely, the Charter covers economic, social and cultural rights as well as civil and political rights, thus emphasizing that the two 'categories' of rights are indivisible and interdependent. Moreover, the Charter also promotes 'peoples' rights', in other words, the collective rights of people as a group. Linked with the principle of peoples' rights is the belief that human beings can only realize their full potential as members of groups. As such, human beings not only have rights but also responsibilities to the community, including the duty to the family, the duty to work to the best of one's ability and to pay taxes, and the duty to do one's best to promote African unity. The Charter charges States with the duty to ensure the exercise of the right to development.

75. Are there any means for implementing the Charter?

An African Commission of Human and Peoples' Rights was established in 1987 by the OAU to promote human and peoples' rights and ensure their protection in Africa. This Commission has eleven members, selected on the basis of personal integrity and competence, who serve in their personal capacities and not as Government representatives. The Commission has a number of functions, including the protection of the rights laid down in the Charter, and the promotion of discussion and development of those rights.

76. How does the African Commission carry out its functions?

The African Commission examines periodic reports from States Parties on their compliance with the provisions of the Charter and establishes dialogue with State representatives, aimed at encouraging States to implement their human rights obligations.

The Commission appointed a Special Rapporteur on Extra-judicial Executions in 1994. His first responsibility was to undertake studies on the situation in Rwanda, and on extra-judicial executions of children in Africa, and to report back to the Commission.

77. Can complaints about violations be made to the Commission by States or individuals?

The Charter is unique in that all States Parties must automatically accept the competence of the Commission to receive complaints of alleged violations of the rights under the Charter. Such complaints may be made by States Parties as well as by individuals and non-governmental organizations, provided that the alleged violator has ratified the Charter.⁶⁴ The entire procedure is confidential, but a summary of cases which have been considered is published in the Commission's Annual Report. The Commission prepares a report on its facts, findings and recommendations which is sent to the State concerned and to the Assembly of the Heads of State and Government of the OAU, which may decide to make the findings public.

78. How does the Commission promote the rights stipulated in the Charter?

The function of promoting the rights contained in the African Charter is laid down in Article 45 of the Charter. In fulfilling this function, the Commission has elaborated a

programme of workshops and colloquia, often carried out in co-operation with non-governmental organizations. It has also established a Documentation Centre in Banjul, Gambia, and publishes a journal, the *African Review of Human Rights*.

The Commission also issues interpretative statements on specific provisions of the Charter aimed at 'solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation'. Statements have been issued on subjects such as the right to a fair trial and respect for humanitarian law.

79. What new initiatives are being undertaken by the OAU?

In June 1993, the OAU set up a mechanism for conflict prevention, management and resolution to address these problems in Africa. Furthermore, in a resolution adopted by the Assembly of the Heads of State and Government during the 30th Summit held in Tunis, the OAU Secretary-General was asked to convene a meeting of experts in order to draft the statutes of an African Court on Human and Peoples' Rights.

80. What measures have been taken by the Organization of American States (OAS) to protect human rights?

The OAS, created in 1890, which includes more than thirty States of the Western Hemisphere, provides the framework for the Inter-American Commission on Human Rights by which violations of human rights are investigated. Established in 1959, its objects are 'to promote the observance and defence of human rights' and to serve as the consultative organ of the OAS in this matter. It receives petitions regarding alleged violations of human rights, and conducts investigations which include sending missions, making country studies and acting on individual complaints. Upon receiving reports of large-scale violations of human rights, the Commission may undertake a study of the situation. This includes investigating the facts, hearing witnesses and consulting with the Government concerned. Following this, it may request permission from the Government to visit the country.⁶⁹ The Commission may also carry out an on-the-spot investigation at the request of the OAS or a Government and can on its own initiative review the status of human rights in any of the Member States of the OAS, and prepare special reports.

Individual complaints alleging violation by a State of the rights to life, liberty and personal security, equality before the law, a fair trial, freedom of expression and religion, and freedom from arbitrary arrest can be made to the Commission. States do not have to enter into a separate agreement for this procedure to take place. If the Commission considers that the violations are substantiated it will intercede on behalf of the individual with the Government concerned, but will not inform the Government as to the identity of the complainant. The Commission reports annually to the Assembly of the OAS.

The American Convention on Human Rights of 1969 entered into force in July 1978⁷⁰. Under the Convention, an Inter-American Court of Human Rights was established in Costa Rica. Article 62 of the Convention provides for the jurisdiction of the Court to extend to all States Parties who by declaration or special agreement have recognized the jurisdiction of the Court as binding. Seventeen States had done this as of January 1994.

An Additional Protocol to the American Convention relating to Economic, Social and Cultural Rights ('Protocol of San Salvador') was adopted in 1988. It will enter into force when eleven ratifications have been received.

81. Which other intergovernmental organizations have a concern for human rights as part of their activities?

The Organization on Security and Co-operation in Europe (OSCE) began its activities in the 1970s, under the name of the Conference on Security and Co-operation in Europe (CSCE), as a multilateral forum for dialogue and negotiation between East and West. In the Helsinki Final Act, signed in 1975, the participating States agreed on basic principles for behaviour among the States and of governments towards their citizens. The States also agreed to further development of the CSCE process in three main areas: questions relating to security in Europe; co-operation in the fields of economics, science and technology, and the environment; co-operation in humanitarian and other fields. At successive follow-up meetings, participating States have made commitments to standards and norms on human rights issues ranging from the treatment of minorities to prevention of torture, protection of freedom of expression and abolition of the death penalty.

Within the OSCE, the High Commissioner for National Minorities responds, at the earliest possible stage, to ethnic tensions that have the potential to develop into a conflict within the OSCE region. The Office of Democratic Institutions and Human Rights (ODIHR) furthers human rights, democracy and the rule of law by providing a forum for addressing the States' implementation of their human dimension commitments. The ODIHR offers a framework for exchanging information on building democratic institutions and co-ordinates the monitoring of elections. The Chairman-in-Office, being responsible for executive action in the OSCE, may also direct personal representatives to investigate specific human rights situations.

82. Are there any steps being taken to establish other regional systems?

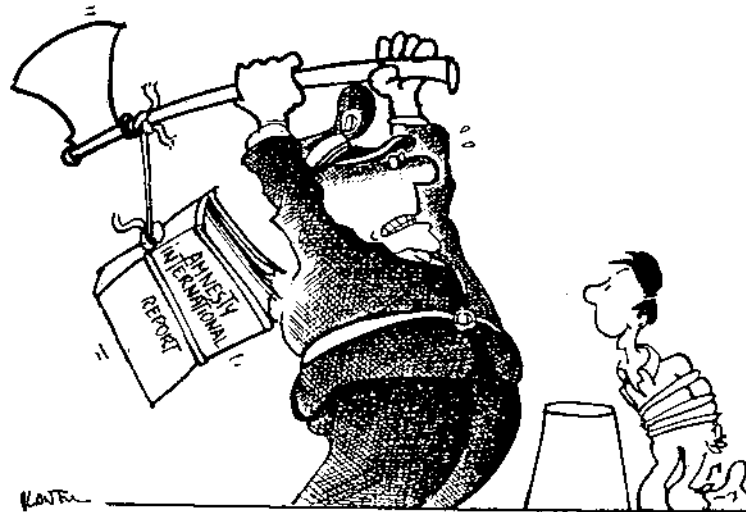
Proposals and suggestions for the creation of regional machinery for the protection and promotion of human rights are currently being discussed by States in Asia and the Pacific and the Middle East as well as within the British Commonwealth.

83. What role do non-governmental organizations (NGOs) play in the promotion of human rights?

The role of NGOs in the promotion of human rights at international, regional and national levels is widely recognized and endorsed by the international community. NGOs contribute significantly to the United Nations "human rights programme. They serve as a unique source of information; assist in the identification and drafting of new international standards; seek to obtain redress for victims of human rights abuses; and play an important role in promoting human rights education, particularly at the non-formal level.

There are numerous NGOs, international and national, which are very active in the field of human rights. One of the most famous is Amnesty International, founded in 1961.

Since that time the organization's logo — a burning candle wrapped in barbed wire — has become world-famous.



Amnesty International was awarded the Nobel Peace Prize in 1977 for its tireless activities in the protection of freedom of speech, religion and belief, for the release of political prisoners, and in the fight against torture and discrimination.

The World Conference on Human Rights (1993) recognized the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels. The Conference appreciated their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to the promotion and protection of all human rights and fundamental freedoms. The World Conference on Human Rights also emphasized the importance of continued dialogue and Co-operation between governments and non-governmental organizations, and stressed that non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights and the protection of national law.

84. What are the major preconditions for the effective implementation of human rights?

The effective implementation of human rights demands that people be aware of their own human rights and of those of others, so as to be able to demand their implementation and protection. Thus knowledge of human rights and of ways to protect them is an indispensable precondition to ensure that these rights are not disregarded.

85. What measures have been taken by the United Nations to ensure better knowledge of human rights?

In view of the importance of information about human rights, the United Nations General Assembly adopted several resolutions. On 10 December 1988, a United Nations

World Public Information Campaign for Human Rights was launched by General Assembly Resolution 43/128. The aim of this campaign was to develop programmes of teaching, education and information in the field of human rights in a global and practically oriented fashion. Major types of action features in the campaign include the production and dissemination of printed material on human rights, the organization of workshops and seminars, the granting of fellowships and the creation of national human rights institutions. Special attention was also paid to the media in order to increase public awareness of human rights.

The need for clear and accessible information on human rights, tailored to regional and national requirements and disseminated by national and local languages, was acknowledged by the General Assembly. Member States were urged to include in their education curricula materials relevant to a comprehensive understanding of human rights issues, and all those responsible for training law-enforcement officials, members of the armed forces, medical personnel, diplomats, etc., were encouraged to include appropriate human rights components in their programmes.

Every two years the Secretary-General presents a report on the campaign activities and resolutions confirming its aims were adopted by the General Assembly in 1992 (45/ 99), 1992 (47/128) and 1994 (49/187).

The United Nations Centre for Human Rights co-ordinates the activities of the world campaign within the United Nations system and also liaises with governments, regional and national institutions and interested individuals in the development and implementation of various human rights activities.

86. What recent initiatives have been undertaken by UNESCO in the area of human rights education?

In March 1993, UNESCO and the United Nations Centre for Human Rights, in collaboration with the Canadian Commission for UNESCO, held an International Congress on Education for Human Rights and Democracy in Montreal, Canada. The World Plan of Action on Education for Human Rights and Democracy, adopted by the Congress, stresses that education for democracy is an integral aspect of education for human rights, and notes that 'education for human rights and democracy is itself a human right and a prerequisite for the realization of human rights, democracy and social justice'. The Plan outlines the means by which education for human rights and democracy could be made effective and comprehensive, worldwide. The main lines of action identified in the Plan include the identification of target groups, the development of appropriate curricula, research into education for human rights and democracy, the revision of school textbooks with the aim of eliminating stereotypes, the building of networks among educators, increasing resources for education for human rights and democracy, and the design of cost-effective and sustainable educational programmes. The plan also identifies the obstacles to be overcome in the field of human rights education. The Advisory Committee on Education for Peace, Human Rights and Democracy established in December 1994 and composed of twelve high-level experts representing all regions of the world, is invited to present recommendations for the implementation of UNESCO instruments and to encourage activities aimed at promoting education for human rights, democracy and peace at national, regional and universal levels.



87. How is the international community promoting human rights education?

The Vienna Declaration and Programme of Action (1993), taking account of the World Plan on Education for Human Rights and Democracy, encourages States to strive to eradicate illiteracy, to include human rights, humanitarian law, democracy and the rule of law in all formal and non-formal educational curricula, and to develop programmes for ensuring the wide dissemination of public information, taking particular account of the human rights needs of women. Human rights education is an integral part of certain United Nations peace-building operations, e.g. in El Salvador and Cambodia.

By Resolution 1994/51, the Commission on Human Rights requested that the General Assembly proclaim a ten-year period starting from 1 January 1995 as a decade for human rights education. By its Resolution 49/184, adopted on 21 December 1994, the United Nations General Assembly proclaimed the ten-year period beginning on 1 January 1995 the United Nations Decade for Human Rights Education.

The objectives of the Decade (1995-2004) have been spelled out in the Plan of Action. They include: **a.** The assessment of needs and the formulation of effective strategies for the furtherance of human right education at all school levels, in vocational training and formal as well as non-formal learning, **b.** The building and strengthening of programmes

and capacities for human rights education at the international, regional, national and local levels, **c.** The co-ordinated development of human rights education materials. **d.** The strengthening of the role and capacity of the mass media in the furtherance of human rights education, **e.** The global dissemination of the Universal Declaration of Human Rights in the maximum possible number of languages and in other forms appropriate for various levels of literacy and for the disabled. The General Assembly appealed to all governments ‘to contribute to the implementation of the Plan of Action and to step up their efforts to eradicate illiteracy and to direct’ education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms’ and urged governmental and non-governmental educational agencies to intensify their efforts to establish and implement programmes of human rights education, in particular by preparing and implementing national plans in this field. The United Nations High Commissioner for Human Rights was requested to co-ordinate the implementation of the Plan of Action. The Centre for Human Rights of the Secretariat and the Commission on Human Rights, in co-operation with Member States, human treaty-monitoring bodies, other appropriate bodies and competent non-governmental organizations, were asked to support his efforts. Specialized Agencies and United Nations programmes have been invited to contribute, within their respective spheres of competence, to the implementation of the Plan of Action.

The General Assembly called upon international, regional and national non-governmental organizations, in particular those concerned with women, labour, development and the environment, as well as all other social justice groups, human rights advocates, educators, religious organizations and the media, to increase their involvement in formal and non-formal education in human rights.

Part II

The Universal Declaration of Human Rights what each article means

The first twenty-one articles of the Declaration correspond, for the most part, to what are called civil and political rights and concern the freedom and personal security of individuals.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Does this mean that all people are equal?

To be born ‘free’ means that all people have an equal right to freedom, but we know they are affected throughout life by economic and social as well as civil and political restrictions. Freedom is not and cannot be total nor can the freedom of one be at the expense of the non-freedom of others. Freedom therefore should not be equated with anarchy.

‘Equal’ does not mean that individuals are identical or similar in terms of physical or mental capacities, talents and respective characteristics. Indeed, each individual is different from any other individual and the differences between individuals of different social and cultural groups. There is no justification whatsoever for arranging groups hierarchically with regard to any intellectual or cultural capacities, or genetic potential. Discrimination and denial on grounds of ‘race’ or anti-social beliefs of innate inequality between differing social or ethnic groups have absolutely no scientific foundations. Refusing persons, regardless of groups to which they belong, the possibility of developing their full potential as individuals is a grave injustice and a denial of their equality of rights and dignity. In order to make it possible for everyone to be treated equally, this article recalls the duty of everyone to treat other people in a ‘spirit of brotherhood’, that is, as fellow human beings equal in rights and dignity.

The practice of tolerance is the basis on which people can live together in peace with one another in the ‘spirit of brotherhood’. To promote this principle, the United Nations General Assembly proclaimed 1995 as the United Nations Year for Tolerance. It noted that ‘tolerance - the recognition and appreciation of others, the ability to live together with and to listen to others - is the sound foundation of any civil society and of peace UNESCO, at the initiative of which the Year was proclaimed, was invited to assume the role of lead organization.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

These two articles express the guiding principles for the prevention of discrimination - a fundamental principle which permeates the whole of the Declaration, and indeed constitutes a crucial principle in the protection of human rights. Article 2 concerns non-discrimination in application of the provisions of the Declaration, whereas Article 7 ensures non-discrimination in the application of the law in general, that is, essentially, national laws. Article 7 demands that all States ensure that no distinction of any kind is made in their legal systems in respect of any of the criteria established by Article 2. Equal protection before the law also binds law-enforcement officials, e.g. the judiciary and the police, and demands a system in which all should have access to legal defence. Furthermore, States have a duty to protect all minorities against any form of discrimination in violation of the provisions of the Universal Declaration. It also means

that it is illegal to 'incite' such discrimination, that is, to encourage others to practise discrimination.

The Human Rights Committee (see also Part I, Question 13-16), in its interpretation of the corresponding article of the International Covenant on Civil and Political Rights, pointed out that the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance, e.g. juvenile offenders should be segregated from adults. The Committee also pointed out that States Parties are required to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant (General Comment No. 18).

How have people tried to justify racial discrimination?

The International Convention on the Elimination of All Forms of Racial Discrimination (see also Part I, Questions 25 and 26) defines racial discrimination as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life' (Article I).



The practice of racism and racial discrimination stems primarily from notions of superiority and inferiority of racial or ethnic groups which are used to justify the servitude and even the elimination of 'lesser' beings. Any such theory, according to UNESCO's Declaration on Race and Racial Prejudice adopted in 1978, 'has no scientific foundation and is contrary to the moral and ethical, principles of humanity' (Article 2, para, 1). Racism and discrimination on the grounds of racial or ethnic origin, however, continue to be major problems of our time and are manifested in a variety of ways.

In the first half of this century, we witnessed the effects of anti-Semitic racist theories culminating in the Nazis' attempt to eliminate the Jews, and other crimes against humanity carried out by totalitarian regimes.

Towards the close of the century, humanity has witnessed 'ethnic cleansing' in the former Yugoslavia and the systematic mass killing of Tutsis in Rwanda. These are only two of the many current instances of brutality committed in the course of ethnic or racial conflicts in all continents.

In earlier centuries, many powerful European and other nations practised as part of colonial and imperial expansion harmful policies of racial superiority and discrimination towards subject peoples, including indigenous people. These sentiments are recurring in new manifestations of racism and xenophobia within European States. Millions of migrant workers, refugees and displaced persons and other foreigners, as well as persons belonging to national or ethnic, religious and linguistic minorities living in Europe and in some other continents, are experiencing discriminatory attitudes, prejudicial violence and exploitation. Right-wing extremist political groups are on the rise, propagating militant racism and extreme nationalism.

In former colonial countries, many of the discriminatory practices and legacies of the past have become entrenched in patterns of discrimination and the perpetuation of ruling political, economic and social structures. Erstwhile victims of racial practices have themselves allowed racist doctrines to obscure their former quest for freedom.

The system of apartheid, with its institutionalized separation of races as a particular form of racism and racial discrimination, existed until recently in South Africa. The first step towards a democratic society was taken in February 1990, when President de Klerk announced the unbanning of the proscribed political parties, followed by the release of Nelson Mandela after twenty-seven years of imprisonment, and the repeal of apartheid legislation. In 1991, a forum representing eighteen political organizations, including the then South African Government, was set up to prepare a post-apartheid political blueprint for the country. The following year a whites-only referendum agreed to abolish apartheid, thus endorsing equal political participation for all South Africans in the democratic process. In April 1994 a multi-party election based on universal suffrage took place, resulting in the establishment of a five-year interim Government of National Unity headed by President Nelson Mandela.

It should be noted that international organizations in particular the United Nations systems, played a major role in the elimination of apartheid.

Article 3.

Everyone has the right to life, liberty and security of person.

Is it the responsibility of the State to ensure these rights?

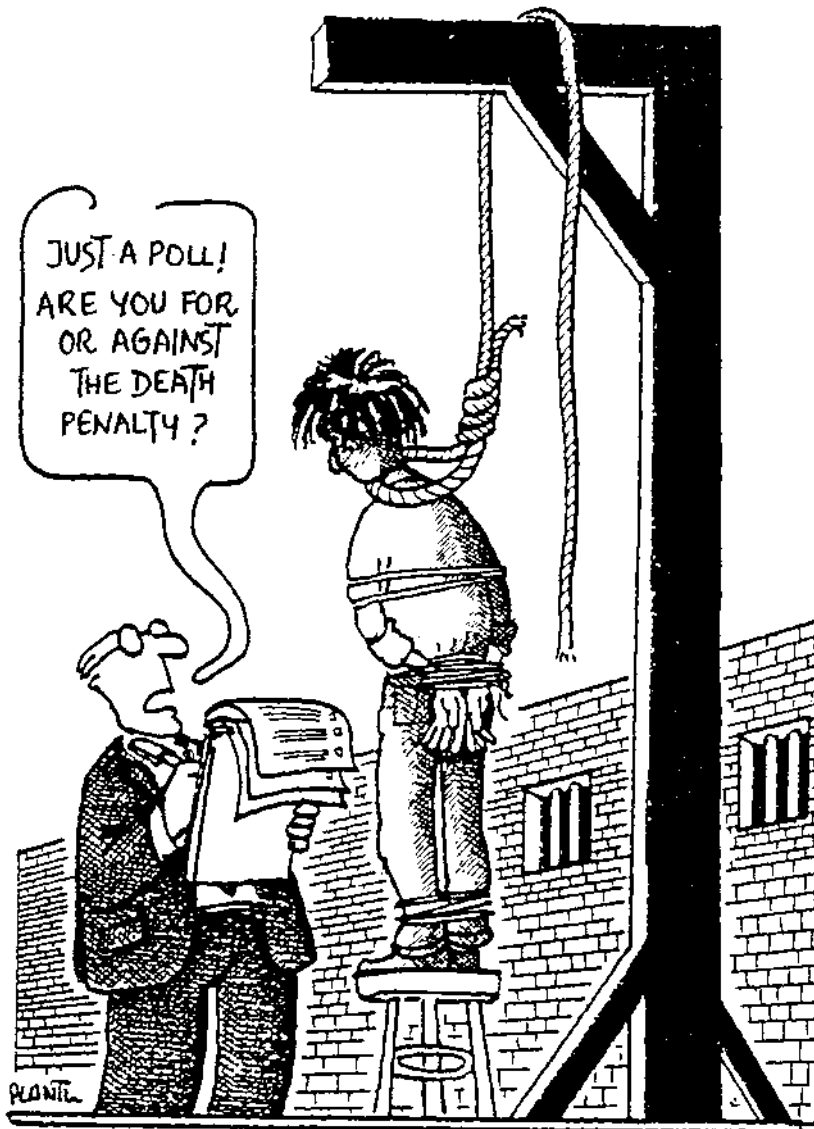
Even though the protection of these rights is the duty of the State, they are persistently violated by some governments in many parts of the world. There is extensive evidence over recent years of deaths in detention, as well as unaccounted disappearances of people.

The United Nations now reports regularly on enforced or involuntary disappearances and arbitrary and extra-judicial executions in many countries of the world. There is no evidence that the overall number of people victimized by these phenomena is decreasing. Together with torture, these constitute the gravest violation of human rights, demanding the continual attention of the world community. In some cases the violation of the right to life goes as far as killing or harming physically or mentally with intent to destroy, wholly or in part, a national, ethnic, racial or religious group. Such acts are called genocide and

represent an international crime, in conformity with the International Convention on the Prevention and Punishment of the Crime of Genocide (see also Part I, Question No. 23).

What if the laws of a State allow for the taking of human life through capital punishment?

Capital punishment exists in many countries because of the belief that the death penalty is a just punishment for the taking of a life and that it acts as a deterrent to others who might be tempted to commit similar crimes. There is no substantial evidence to support the belief that the death penalty has a deterrent effect. Moreover, mistakes cannot be put right and there are many examples of innocent persons being executed even after the most rigorous of trials. Public opinion for or against capital punishment changes with circumstances. People sometimes oppose the death penalty when innocent people have lost their lives after a miscarriage of justice or as a result of the excesses of a repressive regime, while a single sordid crime or the occurrence of 'new' crimes like hijacking, political terrorism or kidnapping can sway opinion the opposite way. Opinion about the death penalty is influenced strongly by emotional factors. States also make laws to meet their momentary needs. 'States of Emergency' and 'States of Siege' often include provision for the death penalty to be instituted and applied by military tribunals or even by order of the government. The Commission on Human Rights (see also Part I, Question No. 50) has undertaken a study on the risks of such legislation for human rights.



The death penalty is, and often has been, used by repressive regimes as a tool of oppression against any opposition, and as an instrument for sustaining social injustice and racist policies.

Are there any international instruments aimed at the abolition of the death penalty?

Recognition that this issue is an international human rights concern is reflected by both international and regional instruments aimed at its abolition. These are: the Second Optional Protocol to the International Covenant on Civil and Political Rights (1989) (see Part I, Question No. 11, for the list of States Parties); the Protocol to the American Convention on Human Rights adopted by the Organization of American States (1990);⁷⁵ and Protocol No. 6 to the European Convention on Human Rights adopted by the Council of Europe in 1983 and which entered into force in 1985.⁷⁶ These instruments are applicable to all States which have ratified them.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

What does slavery mean today?

Today's slavery is not the brutal practice historically associated with the capture of humans, bound in chains, and sold on the open market. That type of slave trade has long since been abolished and the practice of slavery is outlawed in every country of the world, although vestiges of chattel slavery are still occasionally encountered. Nevertheless, it is possible to identify many millions of people living in a state of servitude, mirroring in essence the same exploitation of humans by humans, in many countries of the world. Contemporary slavery remains a callous negation of human dignity. Deeply rooted in economic and social structures, poverty, discrimination, ignorance, tradition and greed, these practices remain extremely difficult to eliminate.

Such practices, similar to slavery but called by other names, are insidious and affect the weakest and most deprived strata of society. They are defined by the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)⁷⁷ such as debt bondage, serfdom, exploitation of children and servile forms of marriage. Debt bondage is a condition arising from an exchange of personal service for debt, and the redemption of the debt thereby. It takes many forms and often operates in ways which hide the exploitative nature of the relationship. Found in many parts of the world, it is associated mainly with agriculture and migrant labour, and in many cases is institutionalized, thus ensuring a servile and defenceless labour force. In its worse form, when the debt is not redeemed, it can result in permanent servitude inherited by child from parent. In some situations, where peasants have tried to rebel against this practice, they have been violently repressed. At the root of this problem is the need for land reform. However, in some countries where land reforms which should help to abolish these forms of serfdom have been undertaken, political power is in fact in the hands of those who themselves exploit the tenants and it is rare for governments to make a real effort to enforce the land reform legislation they have passed.

The exploitation of child labour is a worldwide problem and sometimes directly linked to the sale of children. ILO studies confirm that a very large proportion of the world's children are forced to work from an early age, although there is a lack of reliable comprehensive data to determine precise global dimensions of this problem. Child labour is often considered as an aggravated form of forced labour. Work conditions are often very bad and remuneration minimal or non-existent. Such children are for the most part deprived of education and subjected to conditions detrimental to their health and welfare. Special United Nations programmes are concerned with Action for the Elimination of Child Labour and for the Prevention of the Sale of Children, Child Prostitution and Child Pornography (see also Part I, Question No. 33).

Women are also among those particularly affected by such practices. Servile marriages relate to situations where women have no rights to refuse marriage or may be transferred from one person to another upon the death of a husband. Another slavery-like

practice particularly affecting women and children is that of traffic in persons. This is covered by the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), which only about seventy countries have ratified by now. Of particular concern in recent years has been the burgeoning of practices in connection with the promotion of tourism for purposes of sexual exploitation.

What can be done to eradicate slavery in all its forms?

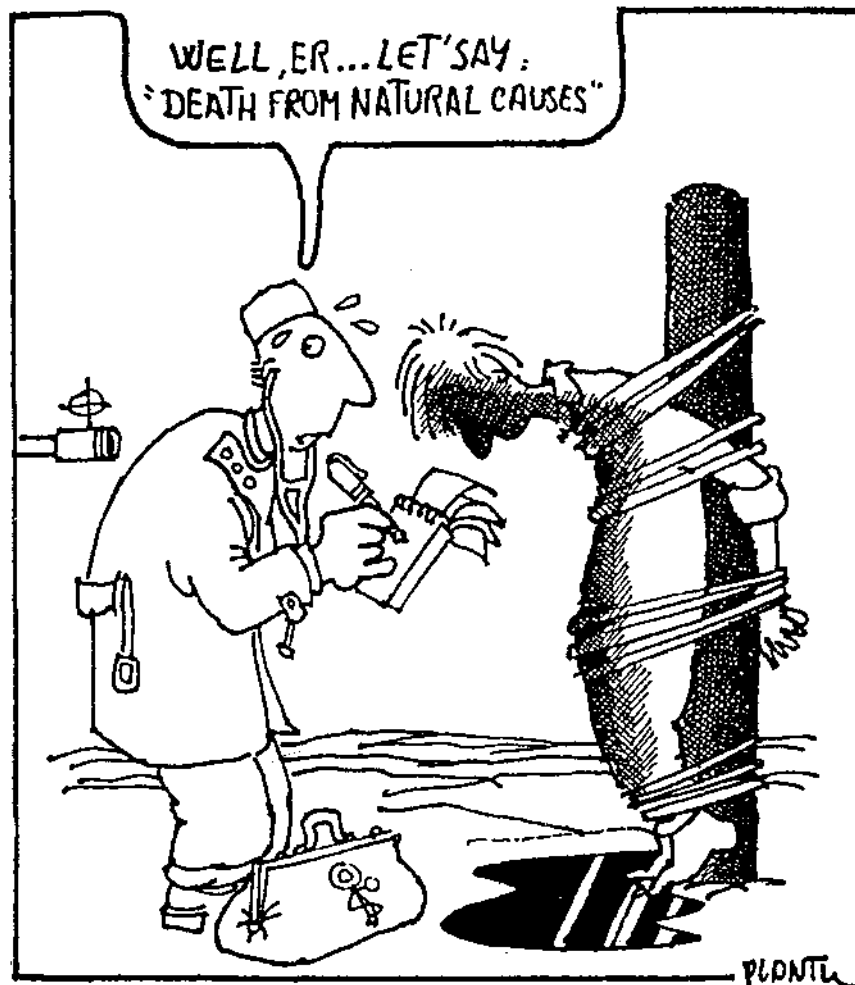
Slavery and slavery-like practices constitute a very complex problem, which is complicated by the fact that many people deny its existence. The United Nations receives information about such situations through evidence submitted to the Working Group on Slavery. This Working Group, comprising five members of the Sub-commission on the Prevention of Discrimination and Protection of Minorities, is a subsidiary body of the Commission on Human Rights, to which it reports. More than 110 States have ratified the Supplementary Convention on the Abolition of Slavery (see note 77). However, their adherence ultimately depends upon implementation at national level. This could be positively encouraged by the establishment of a new and effective mechanism for the implementation of the Convention. Significant progress towards the eradication of these practices will depend upon political will, wide-scale education, social reform and economic development.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

What is meant by torture?

The Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment, which was adopted by consensus on 10 December 1984 by the United Nations General Assembly, defines torture 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, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions’ (Article 1). The Vienna Declaration and Programme of Action (1993) emphasized that ‘one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities’ (para. 55).



What is meant by cruel, inhuman or degrading treatment?

No internationally accepted definition of this phrase is yet available. International organizations and experts often include under this rubric such practices as corporal punishment, internment in dark cells, restraint by means of shackles or other pain-causing devices, interrogation under duress, biomedical experiments on prisoners, the use of drugs on prisoners, castration, or practices such as female genital mutilation, reduction of diet, solitary confinement, force-feeding, etc.

Where is torture practised, why is it practised and who are the torturers?

Torture knows no geographical boundaries, nor can it be ascribed to a single political ideology or to one economic system. Non-governmental organizations like Amnesty International and the International Commission of Jurists have substantiated thousands of cases of torture from all parts of the world.

Torture today is not merely the occasional lapse of legal restraints in a few isolated incidents; rather, it reflects a conscious choice of the highest governmental officials to

destroy the legal restraints that would inhibit the excesses of that power. Some governments (and some insurgency movements) use torture as a means of gaining information, of forcing confessions, and of terrorizing the general population.

Can torture be justified?

No, neither morally nor legally. Most national legal systems as well as international law explicitly forbid the use of torture. All Member States of the United Nations are bound by Article 5 of the Universal Declaration of Human Rights which prohibits torture. Some will argue that, under exceptional circumstances, the use of torture is justified. Should not the State use every means available, they will ask, to obtain information from a terrorist who has put innocent lives in danger? Apart from the clear moral and legal principles that forbid torture categorically, the argument for torture is misguided on several grounds: first, torture can produce false confessions and erroneous information; second, torture offends the principles of just punishment; third, the use of torture in a single case creates a precedent for its use on a much broader scale and at the discretion of the State.

What can be done to stop torture?

The granting of full legal rights to a detainee is the obvious means of preventing torture. An independent judiciary and adequate access by the detainee to legal and medical counsel of his or her choice are essential. At the international level, publicity about torture and interventions by governments, intergovernmental and non-governmental organizations on behalf of individuals in danger of torture can help to ensure that the national legal system offers adequate protection to a particular person. Codes of ethics and conduct have been established to both guide and protect the law-enforcement officers, lawyers or medical personnel who most frequently come into contact with the victims of torture and upon whose courage may depend the exposure of torture cases.

What are the main provisions of the United Nations Convention against Torture?

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984, came into force on 26 June 1987 after it had been ratified by twenty States. By now more than ninety States have ratified the Convention.

States Parties agree to take effective legislative, administrative, judicial and other measures to prevent torture and make it a punishable offence. The Convention envisages no derogation from this undertaking and no circumstances, whether a state of war or a threat of war, internal political instability or any other public emergency, can be invoked to justify torture. Provisions are made to establish a 'universal penal jurisdiction', which means that the State where the offender is found should extradite or prosecute him. States Parties must ensure legal provisions with a view to ensuring for victims of torture an enforceable right to fair and adequate compensation, including the means for rehabilitation and redress.

Which mechanism ensures the implementation of the Convention against Torture?

The Convention provides for the establishment of a Committee against Torture consisting of ten experts who serve in their personal capacities. The members of the Committee are elected by the States Parties by secret ballot from a list of persons nominated by the States.

The Committee has the competence to monitor the implementation of the Convention in the following ways: it examines reports from States Parties on the measures they have taken to give effect to the Convention; it receives and considers communications from individuals (or on behalf of individuals) and States alleging violations, provided that the State or States concerned have made declarations recognizing these functions of the Committee. By now about forty States have made both declarations.⁸⁰ The Committee has the power to initiate confidential inquiries, in co-operation with the State Party concerned, into alleged situations of systematic torture. The findings of the Committee are transmitted to the State Party under examination, and a summary account of the inquiry may, after consultation with the State Party, be included in the Committee's annual report to the United Nations General Assembly.

In order to establish a preventative system of regular visits by experts to places of detention in the territories of States Parties, an optional protocol to the Convention is being prepared.

Are there any other United Nations mechanisms to prevent torture?

The Special Rapporteur on Torture, who has been operative since 1985 (see also Part I, Question No. 51), has a worldwide remit to examine questions relevant to torture and he may seek and receive credible and reliable information and respond without delay. An urgent action procedure allows for prompt action in circumstances where there is an identifiable risk of torture. The Special Rapporteur's 1993 report to the Commission on Human Rights concluded that the elimination of torture is a matter of political will and its persistence is testimony to the failure of political will.

Are there any regional instruments to deal with torture?

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) entered into force on 1 February 1989. The Convention established the Committee for the Prevention of Torture, which is made up of independent experts (every State Party is represented by one member). States Parties must allow members of the Committee to visit places of detention in their countries. The experts report on their findings regarding the implementation of the Convention. Information from non-governmental organizations provides important additional material for the Committee. The reports are sent to the governments concerned, but otherwise remain confidential unless a Government in question fails to take remedial action, in which case the Committee can make its concern public.

The Inter-American Convention to Prevent and Punish Torture, adopted in 1985 by the Organization of American States, entered into force in 1987. Under this Convention, the

Inter-American Commission is entitled to analyse the situation concerning the prevention and elimination of torture in the region and to report annually on this.

Is there any international code for the treatment of prisoners?

In 1955 the First United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted Standard Minimum Rules for the Treatment of Prisoners. They were subsequently amended and approved by ECOSOC in 1957 and in 1977. The purpose of these rules was not to describe in detail a model for penitentiary systems but to establish principles and standards in respect of the treatment of prisoners. In 1979 the United Nations General Assembly adopted a Code of Conduct for Law Enforcement Officials and, in 1988, a Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In 1990, the eleven-point Basic Principles for the Treatment of Prisoners were approved (Resolution 45/111 of the General Assembly) in order to facilitate the full implementation of the Standard Minimum Rules. All these instruments are important guides for States in the treatment of prisoners, although none of them is binding.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

This article is considered together with Article 2 above.

Article 8,

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 6 is the first in a series of articles which cover the more ‘legalistic’ human rights. The phrase ‘person before the law’ refers to the recognition which States should give to the right of all individuals to make, for example, agreements or contracts which courts will enforce, and start proceedings before courts to ensure that their legal rights are enforced.

A very important part of these articles is the word ‘everyone’. It indicates that no difference or distinction may be made by a State between any of its own citizens, foreigners or stateless persons in the enforcement of all the rights which a ‘person before the law’ possesses.

What can a person do when his or her constitutional or legal rights are violated?

The aim of Article 8 is to create a right of recourse to a domestic tribunal or a court for a person who feels that his or her constitutional or legal rights have been violated. It does

not relate to rights contained in the Universal Declaration, but only to those rights which are guaranteed by the constitution or laws of a nation-state itself.

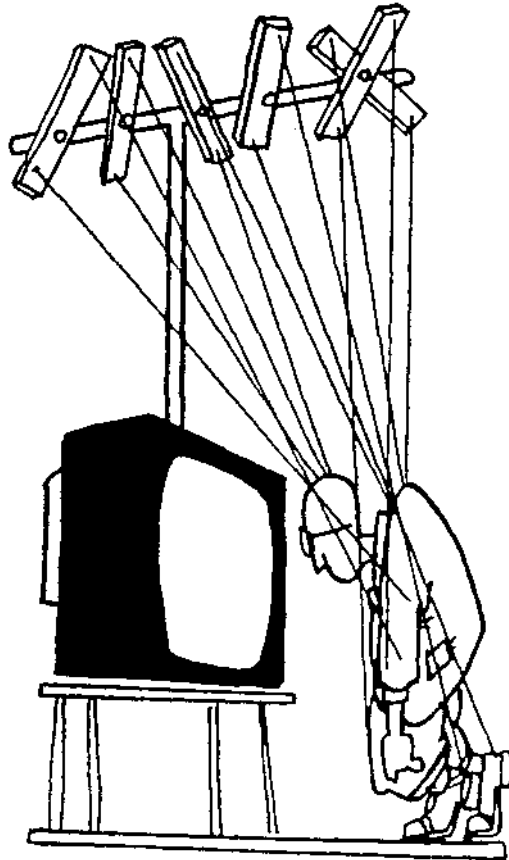
It means that no situation should ever arise where a person is without a remedy when his or her rights are violated. Further, the fact that 'everyone' is specifically mentioned means that the right to a remedy (for example, the right to sue) may not be restricted to certain groups of people. The word 'competent' refers to courts which have been designated for a certain purpose (thus a person who claims that his or her industrial rights have been violated should petition to a court specialized in this question and not to a court which deals, say, with family law).

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Can such treatment ever be justified?

This article is the first of three "articles which deal with the fundamental legal safeguards which all legal systems should offer to individuals: freedom from arbitrary arrest, the right to a fair and prompt trial and the presumption of innocence. The meaning of Article 9 is self-evident except perhaps for the term 'arbitrary'. Two possible interpretations of it are frequently advanced: one is that persons may only be arrested, detained or exiled in accordance with legal procedures; the other is that nobody should be subjected to arrest, detention or exile of a capricious or random character, where there is no likelihood that he or she committed an offence.



The first interpretation seems inadequate as laws often allow sweeping powers of arrest and because legal procedures may often themselves be arbitrary or abused. The protection thus offered by such an interpretation is not adequate to meeting such threats to human dignity. The second interpretation is therefore the only valid one. It is particularly so due to the fact that arbitrary, albeit procedurally legal, arrest often may be followed by the wrongful treatment or torture of a detainee.

Article 10.

Every one is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

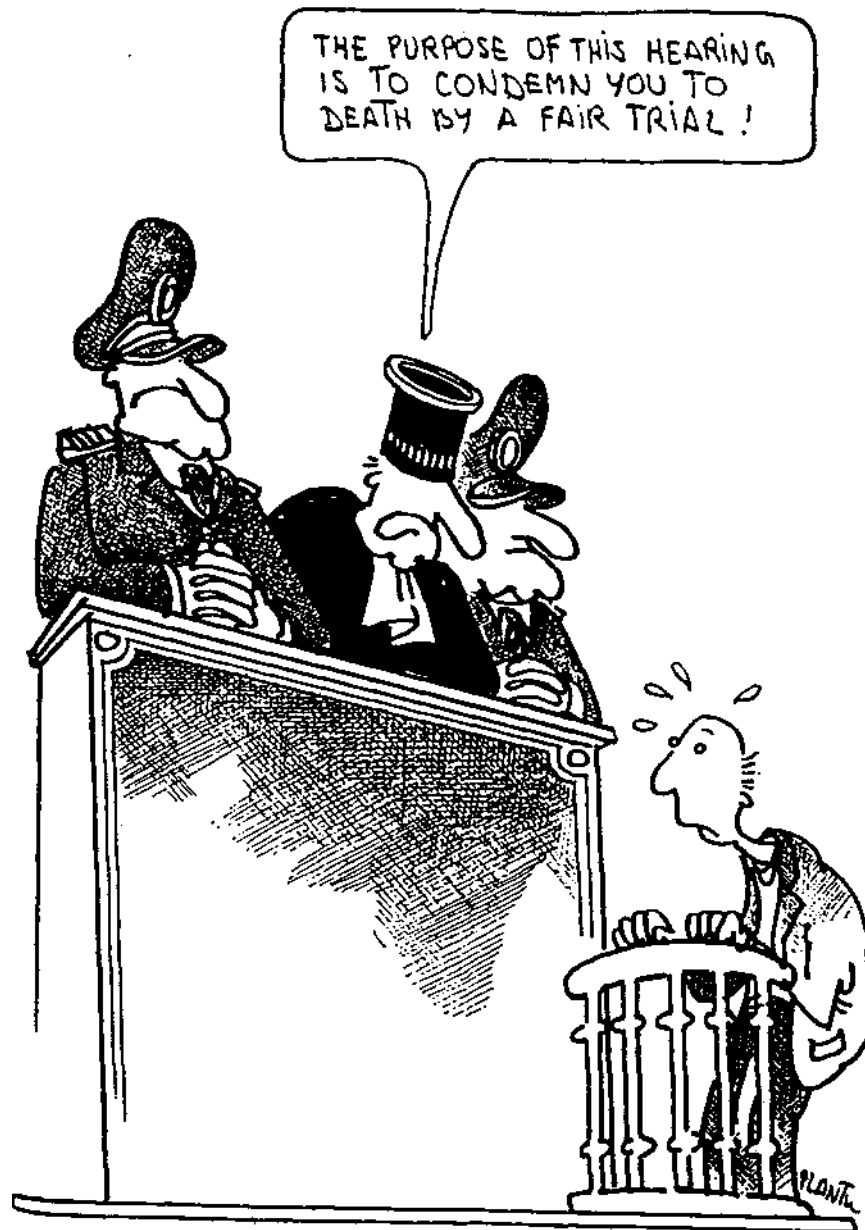
Article 10 provides for the basic right to a fair trial. It refers not only to criminal cases but also to civil disputes where one person sues another. The purpose of the article is to guarantee a fair hearing by an independent and impartial tribunal to all those who appear in court.

Although it is sometimes argued that notions of 'fair', 'independent' and 'impartial' differ from country to country, it is clear that everybody must have a fair chance to state his or her case. The Basic Principles on the Independence of the Judiciary⁸⁴ are expected to be taken into account by States.

Article 11.

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.



Article 11 covers four basic principles:

The presumption of innocence. This is a simple but important concept.[^] It means that anyone who is charged with a criminal offence should not be treated as being guilty until his or her guilt has been proved. In some countries it is the basis of the right to have bail, which means that an accused person may retain his or her liberty pending trial.

The right to a defence. The word ‘guarantee’ in Article 11 includes, for example, the obligation of a State to ensure that an accused person has both legal representation and proper possibilities to establish his or her innocence, including the right to call witnesses.

The right to a public hearing. The maxim ‘justice should not only be done but should be seen to be done’ is implicit here. To ensure confidence in the law it is necessary to give people a possibility to see that the law is applied openly, and to witness how legal machinery works in practice. If trials are held in secret there is no guarantee that fundamental rights are being respected. This part of Article 11 imposes a duty on States to show that the law is being fairly and properly applied.

Non-retroactivity of law. This cumbersome phrase involves a very simple idea. A person shall not be punished for those acts which were legal when they were committed. It also means that, if an act was punishable in one way when committed, a later change in the law may not increase the punishment given. The inclusion of ‘international law’ in paragraph 2 of this article is a reference to, in particular, the Nuremberg and Tokyo trials of the major war criminals which took place at the end of the Second World War. War crimes and crimes against humanity were tried before international tribunals on the basis of laws of worldwide applicability (international law) rather than the specific laws of nation-states.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Laws vary as do customs and cultures. The legal interpretations and limitations imposed by governments or local laws and traditions are equally varied when it comes to ‘privacy’, ‘family’ ‘home’, ‘honour’ and ‘reputation’. The implementation of this right is therefore eventually to be found in national legislation. Particular problems arise as a result of modern electronic technologies, such as illicit access to confidential information in data banks or the practice of ‘wire-tapping’ private telephone conversations. Abuses are all the more difficult to detect and prove. However, in a number of countries, well-elaborated legislation exists to protect these fundamental freedoms, and nongovernmental organizations and mass media fight against their violations.

Article 13.

- 1. Everyone has the right to freedom of movement and residence within the borders of each State.*
- 2. Everyone has the right to leave any country, including his own, and to return to his country.*

Article 12 of the International Covenant on Civil and Political Rights elaborates further this right and adds that

the only possible restrictions are those ‘which are provided by law, are necessary to protect public security, public order (*ordre public*), public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in the . . . Covenant’. These rights, according to Article 4 of the same Covenant, may be suspended ‘in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed’. These exceptions should be of a temporary nature and based on the legitimate need to protect the safety of others. Thus a natural disaster, epidemic or war would necessitate certain restrictions on this right. Other restrictions may be made in order to prevent someone with charges pending under the domestic laws from leaving his/her country; similarly those in prison would have to serve their sentences before being free to leave the country. None of these exceptions implies, however, the acceptance of any form of arbitrary or permanent restriction of this right.

In which ways can freedom of movement be restricted?

There are many ways in which freedom of movement, both within and between countries, is restricted by governments. Some governments, for political reasons, restrict internal movement of their own citizens, as well as that of foreigners. Arbitrary detention (see Article 9, above) continues to be practised, and labour camps persist as a means of confining citizens because of their political opposition or dissent. Such practices are hidden when governments claim spurious legitimate reasons to justify these illegitimate practices.

In times of internal strife and/or armed conflict, extensive internal displacements of people as well as massive exoduses occur, all of which are by and large coerced movements, with no guarantee of the right to return to their homes, thus constituting a denial of the principle of freedom of movement. Sadly, there are all too many examples of these occurrences, which stem in the first instance from gross violations of basic human rights and fundamental freedoms.

Article 14.

1. *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

2. *This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

What is meant by asylum?

Asylum implies the provision of refuge and protection for persons who have left their own country for fear of being persecuted (see also Part I, Question No. 45).

The right to asylum is not yet codified universally. The only regional instruments which exist are Conventions adopted by the Organization of American States: OAS

Convention on Asylum adopted in 1928 and entering into force on 21 May 1929; OAS Convention on Political Asylum adopted in 1933 and entering into force on 28 March 1935; OAS Convention on Diplomatic Asylum adopted in 1954; and entering into force on 29 December 1954; and OAS Convention on Territorial Asylum adopted in 1954 and entering into force on 29 December 1954. However, the granting of asylum is a sovereign prerogative of the State to exercise at its discretion. While some States interpret the article in a very narrow sense, others are more generous, and often allow applicants with serious reasons to remain.

Article 15.

- 1. Everyone has the right to a nationality.*
- 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*

Why do people need a nationality?

If the world were one State and all people had the same rights under universal laws there would be no need for a nationality. Since this is not so, nationality is one of the attributes necessary both for the material as well as the spiritual well-being of persons within society. Nationality provides the individual with an identity. In a material sense, this identity is related to a geographic location and the implicit entitlement to the protection of the laws in operation within the jurisdiction of the State. The State also has responsibilities for the protection of its nationals on the territory of other States, his terms of identity, a nationality provides the individual with a sense of belonging and a sense of self-worth. Article 24 of the International Covenant on Civil and Political Rights explicitly provides for the right of every child to acquire a nationality.

What protection is there for people deprived of their nationality?

Political controversy and conflicts often surround the whole question of nationality. In recent times ethno-nationalism has been significant factor in many violent conflicts. The emergence of new States has sometimes gone hand in hand with persecution and expulsion of people, and the escalation of statelessness. Minorities, who form a significant sector of the contemporary refugee population, are particularly affected.

The Convention on the Reduction of Statelessness (1961)⁸⁵ seeks to oblige a State to provide a nationality for anyone born in its territory who would be made stateless thereby. Under no circumstances may a person be deprived of his or her nationality on racial, ethnic, religious or political grounds.

Article 16.

- 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Attitudes in respect of marriage differ and family laws are often based on religious, cultural and social patterns. The notion of 'free and full consent' raises special problems for certain cultures and the rules relating to this matter have been set out in greater detail in the United Nations Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) and the Recommendation on the same subject adopted by the United Nations General Assembly in 1965.

The notion of family varies widely from that of the Western-based 'nuclear family', and indeed the single-parent family, to that of the extended family in many other parts of the world. Nevertheless, it does constitute a basic element in any society, and States have the obligation to protect it, formulated in Article 10 of the International Covenant on Economic, Social and Cultural Rights and Article 23 of the International Covenant on Civil and Political Rights (see also Part I, Questions No. 12 and 17).

Article 17.

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Property was placed on the same level as freedom, security and resistance against oppression in the French Declaration of the Rights of Man and of the Citizen (1789). After nearly 200 years of social and economic history, the concept of ownership in relation to human rights has evolved and is still a complex and controversial matter. Due to the ideological confrontation which prevailed at the time of the adoption of the International Covenants, the right to property is the only one mentioned in the Universal Declaration of Human Rights which was not included in the Covenants. However, any discrimination concerning the right to own property, as well as the protection of intellectual property, falls clearly within international human rights law.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Freedom of thought, conscience, religion or belief are fundamental freedoms which may not be suspended, even in states of emergency. The same protection is due to religious believers as to non-believers. No one may be discriminated against because of his/her religion and belief, nor forced to adhere to any other. This freedom to practise one's religion or belief (either alone or in community with others) is related to a broad range of activities and customs (specific ceremonies, dietary regulations, distinctive clothing, freedom to establish religious schools and seminaries and to distribute religious texts and publications, the right to have specific places of worship, etc.

This freedom may be threatened by States whose attitude towards religion differs widely, ranging from encouraging all to adhere to an official religion to discouraging any religious belief. There is also the controversial problem of the relation of the conscience of the individual to the social and political context in which he or she lives. Despite the controversial perceptions of this freedom, the international community's concern regarding intolerance and discrimination in these spheres is manifested in the adoption of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (United Nations General Assembly Resolution 36/55 of 25 November 1981).

To promote the implementation of this Declaration, a Special Rapporteur on Religious Intolerance was appointed by the Commission on Human Rights in 1986 (see also Part I, Question No. 51). The report presented in 1995 by the Special Rapporteur states that complaints had been received from virtually all regions of the world, ranging from denial of the right to have a religion or belief of one's own choice to discrimination on these grounds by the State. Special difficulties have been encountered by the propagation of extremist and fanatical opinions, and the acts perpetrated in pursuance of these, which include threats to life, liberty and security of persons, arbitrary arrest, detention and torture. The United Nations General Assembly recently once again condemned 'all instances of hatred, intolerance and acts of violence, intimidation and coercion motivated by religious extremism and intolerance of religion or belief (Resolution 49/188 of 23 December 1994, adopted without a vote).

The Commission on Human Rights recognized conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion (Resolution 1993/84). The resolution appeals to States in which compulsory military service exists to introduce alternative forms of public service for conscientious objectors.

Article 19.

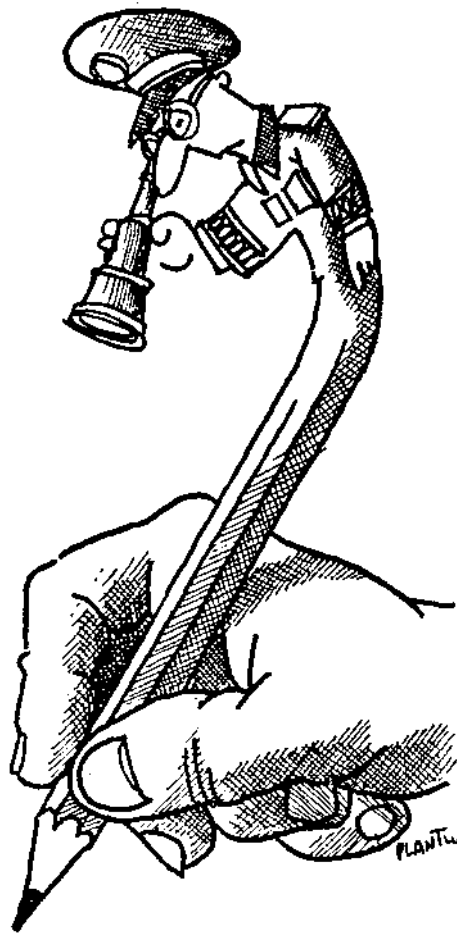
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The protection and exercise of these rights are essential components of a democratic society (see also Article 21). The freedom to 'seek and impart information and ideas through any media' calls for the media to be free and independent.

The underlying motive behind repression of freedom of opinion and expression is fear: fear of the challenge presented by alternative views and fear which derives from the knowledge that freedom of opinion and expression is a basic tool for securing every other fundamental freedom. While governments do succeed in restricting these freedoms within their own jurisdiction, there is no way in which they can ultimately stifle free thought, opinion and expression. Banning books does not erase them, and prohibiting their publication does not preclude them from being published and read elsewhere, or from being circulated secretly in another form.

Are there any international safeguards for freedom of the media and of information?

The action of the United Nations and its Specialized Agencies has been mainly in support of professional bodies and non-governmental organizations which work actively in defence of freedom of expression and freedom of the media. Since 1989, UNESCO has adopted a New Communication Strategy 'to encourage the free flow of information at international as well as national levels and its wider and better balanced dissemination without any obstacle to the freedom of expression'. Under this strategy, UNESCO has organized regional seminars for media professions in Eastern and Central Europe (Paris, 1989 and 1990); Africa (Windhoek, 1991); Asia (Almaty, 1992); Latin America and the Caribbean (Santiago de Chile, 1994); and in the Arab States (Sana'a, 1996). IN countries undergoing transition to democratic structures, UNESCO actively assists in advising on media legislation. For countries in conflict, UNESCO supports independent media to promote non-partisan reporting and thereby contributes to creating an atmosphere for dialogue and peace.

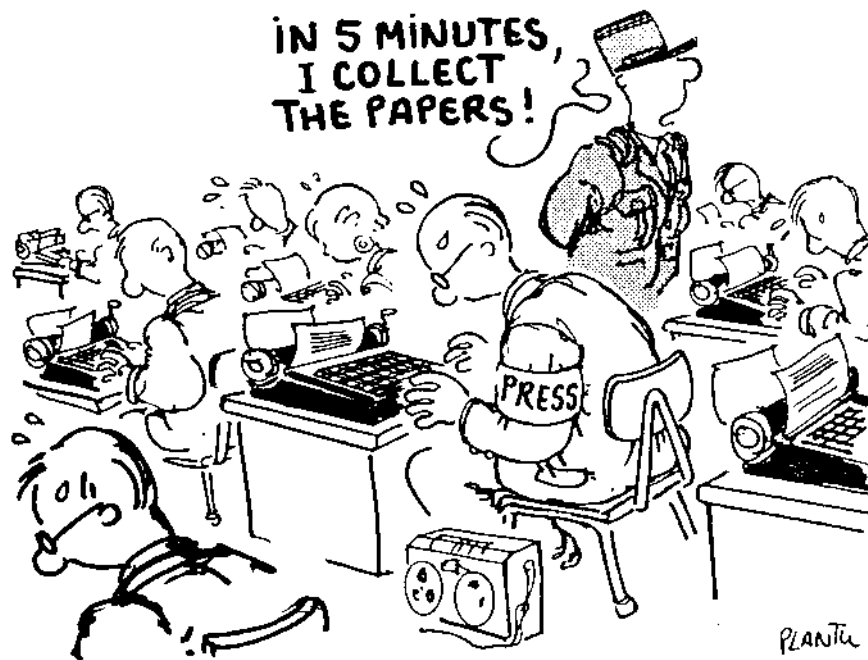


A Special Rapporteur on the right to freedom of opinion and expression was appointed by the Commission on Human Rights in 1993 (see also Part I, Question No. 51) in order make practical and action-oriented recommendations as to how these rights can be better protected.

The issues of freedom of expression and information have been considered on a number of occasions by the European Court of Human Rights and the Inter-American Court of Human Rights (see Part I, Questions No. 68 and 80) and their decisions have served the development of customary law in this sphere.

Are these freedoms absolute?

The International Covenant on Civil and Political Rights states that the exercise of freedom of opinion and expression ‘carries with it special duties and responsibilities’, and may thus be ‘subject to certain restrictions but these shall be such as provided by law and are necessary for the respect of the rights and reputation of others, for the protection of national security or public order or of public health or morals’ (Article 19). The Covenant also prohibits ‘any propaganda for war’ or ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’ (Article 20). Freedom of expression is therefore not absolute, but in general terms any restriction must meet the criteria of legitimacy, legality, proportionality and democratic necessity. Clear rules should protect the individual’s reputation and privacy in relation to the media.



Article 20.

1. *Every one has the right to freedom of peaceful assembly and association.*
2. *No one may be compelled to belong to an association.*

Freedom of association is the only way in which people can collectively express their aims, exercise pressure as a group and protect their own interests or the interests of others. No positive action by the Government is required to ensure this freedom. On the other hand, governments may restrict it. Though there are some legitimate reasons why

this might be done in certain circumstances, such restrictions are all too frequently exercised as a means of repression. Many violations of this freedom by States in all parts of the world may be witnessed.

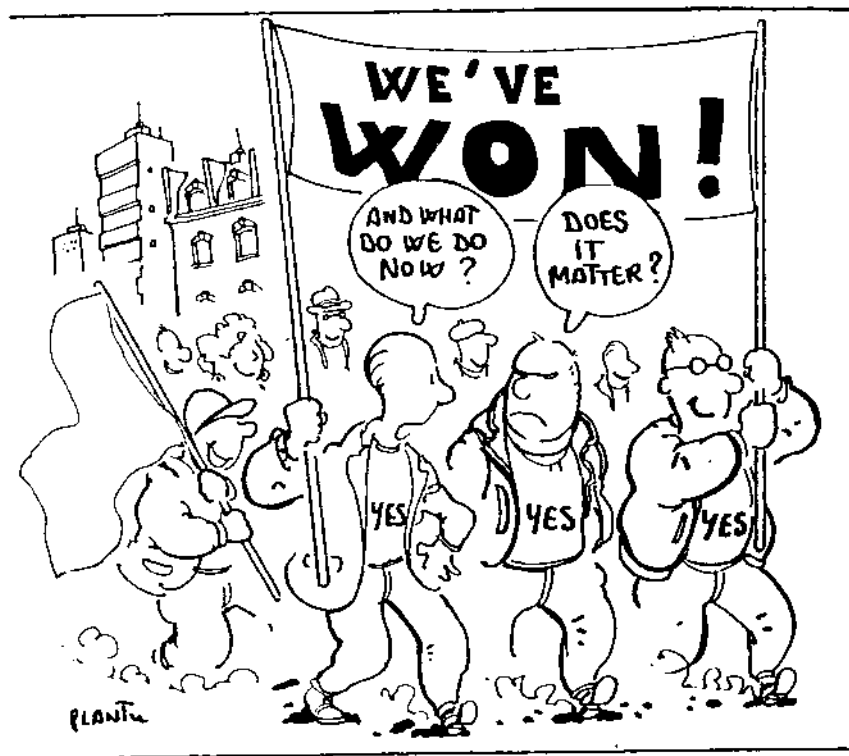
The International Labour Organization (ILO, see also Part I, Question No. 63) has adopted several conventions on the particular right to association for workers which have been ratified by a great number of countries.

Article 21.

1. *Even/one has the right to take part in the Government of his country, directly or through freely chosen representatives.*

2. *Everyone has the right of equal access to public service in his country.*

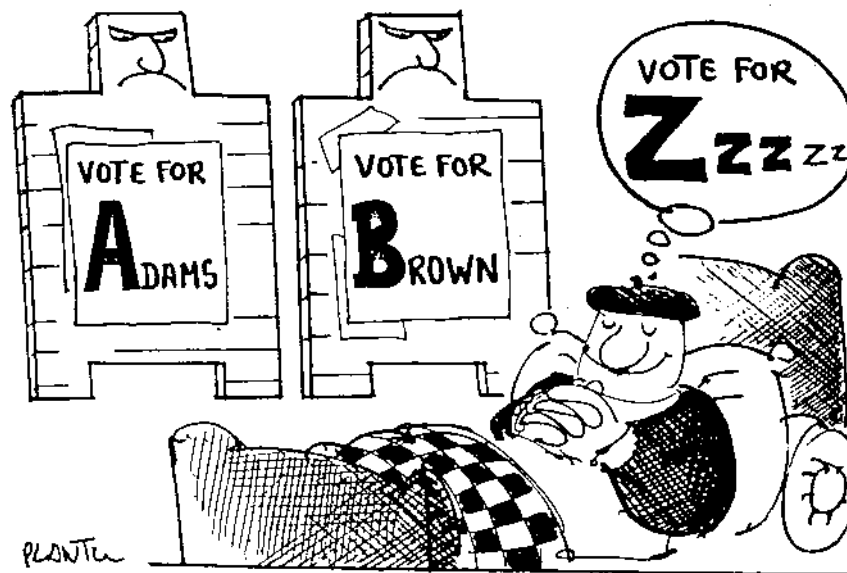
3. *The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*



This article reflects an endorsement of the principles of democratic government in that 'the will of the people shall be the basis for the authority of government'. This is to be achieved through 'genuine elections', i.e. free and fair elections based on universal suffrage. While such elections are a crucial element in the process of democratization, protection of human rights and the rule of law constitute other integral requirements. The Montreal Plan of Action (see Part I, Question No. 86), which underlines that 'democratic values are required for the enjoyment of human rights', was the first internationally accepted document uniting education for human rights and education for democracy. The

Vienna Declaration and Programme of Action (1993) (see Part I, Question No. 9), reflecting global consensus, confirmed that the relationship between human rights and democracy was ‘interdependent and mutually reinforcing’. It called on the international community ‘to support the strengthening and promotion of democracy’ in the recognition that the protection and promotion of human rights and fundamental freedoms and the rule of law is best achieved in all States through the application of democratic principles. Moreover, democracy and respect for human rights were recognized as necessary conditions for the achievement of the right to development (see Article 28).

By its Resolution on Representative Democracy (1991), the Organization of American States (OAS) committed itself to hold a high-level political meeting within ten days of the interruption of the democratic process in any one of its Member States. This Resolution underlines the recognition by the OAS of the intrinsic link between human rights and democracy.



Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

This article, as well as Articles 23-27, deal with economic, social and cultural rights, which aim at the realization of both material and non-material human needs to ensure the full development of the human potential. The implementation of these rights requires positive action on the part of the State and the international community to ensure that these rights become a reality for all.

One-fifth of the world’s population is afflicted by poverty and hunger. Disease, illiteracy and social insecurity are ever-increasing phenomena. The massive denial of

basic social, economic and cultural rights merits equal outrage from the international community to that accorded to the denial of civil and political rights.

Moreover, democracy, stability and peace cannot be sound unless there is full recognition of the interdependence of economic, social, cultural, political and civil rights. Economic growth, although essential, is not sufficient in itself to ensure the general well-being of peoples. Its advantages do not inevitably benefit all strata of the population. Hence national efforts and international co-operation to promote economic and social advancement should also be concerned with creating fairer conditions to ensure the maximization and equitable enjoyment of economic, social and cultural rights. In aspiring to these rights, each country has to take into account its own resources and priorities and to make all efforts to achieve the standards prescribed.

The right to social security also means that a society is responsible for ensuring basic rights for its vulnerable and disadvantaged members.

Article 23.

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone without any discrimination has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

What international provisions safeguard the conditions of work and the rights of working people?

The above provisions have been further codified in the International Covenant on Economic, Social and Cultural Rights (see Part I, Question No. 17), and their implementation is followed up by the Committee on Economic, Social and Cultural Rights (see also Part I, Questions 18-20). As has already been mentioned, the International Labour Organization (ILO, see also Part I, Question No. 63) has the special responsibility of protecting working people. Its supervisory bodies publish reports every year on how ILO Conventions are respected, and the Organisation also provides practical help to promote and protect these rights. It should be noted that many important ILO Conventions have not been ratified by all countries, which should be encouraged to do so.

Migrant workers are a particularly vulnerable category of workers, as they do not enjoy all the rights of citizens. In order to improve their situation, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families was adopted in 1990 by the United Nations General Assembly. It has not come into force, as it has not yet been ratified by the requisite number of States.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Although organized labour has progressively obtained recognition of the limitation of working hours, it is still the fate of millions in the world to work without adequate human rights protection. Through the efforts of the ILO, limitations on the working week have gained international recognition. Doubts have been expressed about the status of rest and leisure as human rights, but this article of the Universal Declaration of Human Rights, as well as Article 7 of the International Covenant on Economic, Social and Cultural Rights, make it very clear that they are included among universally recognized human rights.

Article 25.

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.



What is meant by the right to an adequate standard of living?

Different people would give different answers to this question. But no one can deny that the very least it means is that every person is entitled to satisfy the basic human needs of food, shelter, clothing, household requirements and community services in respect to water, sanitation, health and education. It also means that everyone should have the right to work in order to achieve a decent standard of living and that security should be provided for those who cannot do so.

Those who are in greatest need should be considered first and development objectives should give priority to the poorest, the most underprivileged and those who suffer deprivation through discrimination.

Article 26.

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Priorities of various countries in the field of education vary greatly. Whilst compulsory education prevails in many countries, in a large part of the world universal literacy has not yet been achieved. Nearly 1 billion persons, almost one-third of the world's adult population, are illiterate. The right to education is negated by the denial of equal access to education, which arises mainly because of deprivation, poverty, exclusion and discrimination.

Choices in education have to be relevant to the needs of a particular society, and the minimal requirement of free education is still a goal to be achieved. Even where primary and secondary education are free and compulsory, educational choice and equal opportunities may be affected by the location of schools, imbalance in financing, libraries and equipment, or standards of teacher-training.

Access to higher-level and university training in most countries is not free. Provision of scholarships, extra-mural classes, adult education courses and on-the-job training are measures whereby further education can be promoted.

How is respect for human rights promoted through education?

The universally valid wider objective in education is the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. The Preamble to the Universal Declaration of Human Rights calls on 'every individual and organ of society ... to strive by teaching and education to promote respect for these rights and freedoms....' In accordance with international human rights instruments, education should aim at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes which are directed to: **a.** The strengthening of respect for human rights and fundamental freedoms, **b.** The full development of the human personality and the sense of its dignity. **c.** The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups, **d.** The enabling of all persons to participate effectively in a free society, **e.** The furtherance of the activities of the United Nations for the maintenance of peace.

These aims should be promoted at all levels of formal education and non-formal learning, including preschools, primary and secondary schools, higher education, professional schools, training of public officials and general public information. The United Nations agencies have adopted this approach in all activities related to education and training.

In particular, UNESCO has developed these ideas in the Recommendation on Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms (1974). Pursuant to this Recommendation, UNESCO's Plan for the Development of Human Rights Teaching was elaborated in 1979 and has since been followed up in various ways.

Article 27.

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

UNESCO has elaborated specific provisions relating to this article in the Recommendation concerning the Participation by the People at Large in Cultural Life and their Contribution to it (1976), the Recommendation on the Status of Scientific Researchers {1974} and various copyright conventions.

Cultural rights include the right of access to one's own culture and to the cultural heritage of others. Participation is an important aspect of the right to culture, which includes popular culture like drama, music, traditional dancing or carnivals. The right to culture also includes the right to benefit from scientific and technological progress. Broadly speaking, it also includes the right to education. It should be noted that cultural rights are still not as well codified as other categories of human rights and are often labelled as an 'underdeveloped' category of human rights.

Article 28.

Every one is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

The very basic requirements for a life of dignity and minimal well-being are denied to a great portion of mankind (see also Article 22). For them, social justice is an illusion as they are denied the conditions in which these rights and freedoms can be realized. At the same time, global military expenditures are estimated at \$767 billion a year and the legitimate question of whether or not such a situation should be changed arises.

What chance is there for improvement?

Despite several decades of international action devoted to development, the gap between rich and poor, at both international and national levels, continues to widen. This indicates that the misdistribution of the world's resources-is reinforced by existing policies and institutions. Economic growth should not be an end in itself but a means towards meaningful development based on the human dimension and the well-being of the human person.

Developing countries see themselves stifled by economic dependence and recognize that, in order to right the inequalities, a new structure of international economic life is required, as well as relief from external debt burdens. Developed countries are uneasy

and slow to recognize that their own long-term interest in terms of peace, security and humanity lies in effecting change to the existing economic order by an act of political will.

By the United Nations Declaration on the Right to Development (1986), this right is recognized as an inalienable human right.

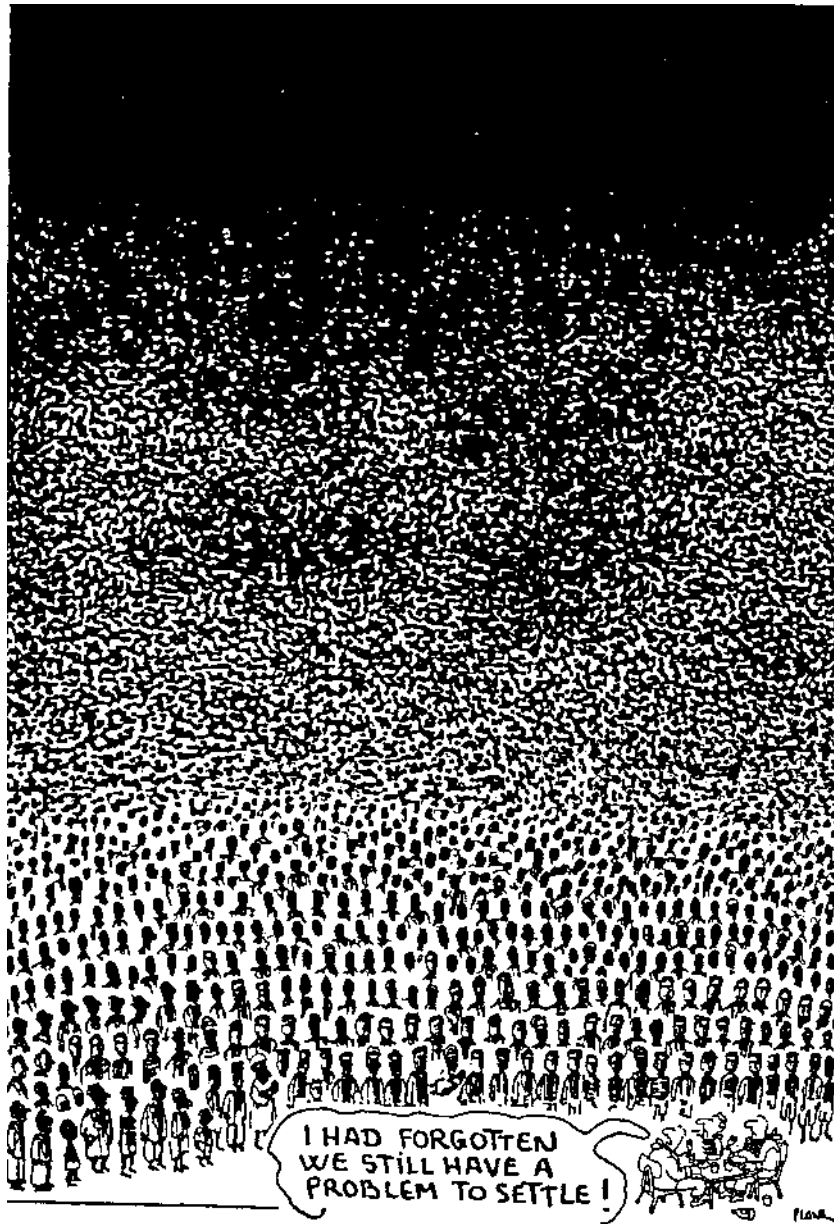
The Vienna Declaration and Programme of Action (1993) reaffirmed the right to development as reflected in the above Declaration, and called for 'effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the' international level'.

The conclusions were confirmed and further elaborated by the World Summit for Social Development (Copenhagen, 6-12 March 1995).

The participants in the World Summit confirmed once again the principle of the universality, indivisibility and interdependence of all human rights and committed themselves to create an economic, political, social, cultural and legal environment that will enable people to achieve social development. They also committed themselves to the goal of eradicating poverty in the world through decisive national action and international co-operation. They also confirmed their aim to promote social integration by fostering societies which are stable, safe and just and based on the promotion and protection of all human rights, and on non-discrimination, tolerance, respect for diversity, equality of opportunity, solidarity, security and participation of all people, including disadvantaged and vulnerable groups and persons, as well as to promote full respect for human dignity and the achievement of equality between women and men.

The World Summit also stressed the necessity to promote respect for democracy, the rule of law, pluralism and diversity, tolerance and responsibility, non-violence and solidarity by encouraging educational systems and communication media and local communities and organizations to raise people's understanding and awareness of all aspects of social integration.

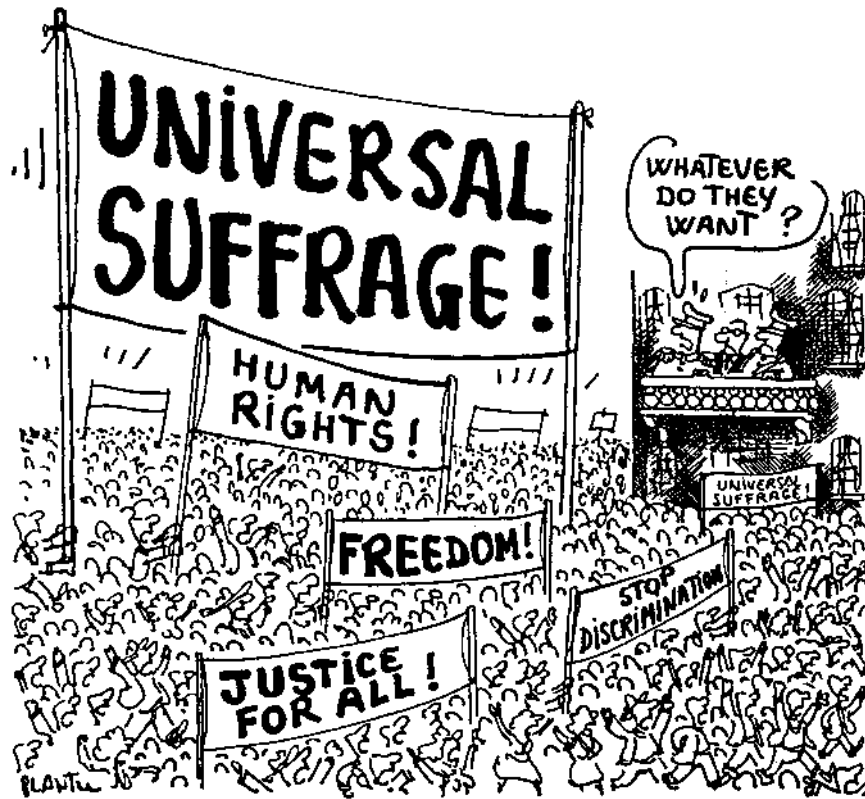
The Summit confirmed the obligation of States to reaffirm, promote and strive to ensure the realization of the rights set out in relevant international instruments and declarations, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Declaration on the Right to Development, including those relating to education, food, shelter, employment, health and information, particularly in order to assist people living in poverty.



Article 29.

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare, in a democratic society.



3. *These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.*

Is it justifiable to restrict freedom of political expression and organization in order to concentrate on the advancement of economic and social rights in areas of severe deprivation?

Many governments argue that they have conflicts of priorities in respect of the human rights enumerated in the Universal Declaration. There is no simple answer. While no direction of causality can be established between rights, there is an interdependence between civil and political rights and economic, social and cultural rights. The achievement of economic, social and cultural rights is indispensable to any form of social justice.

The Universal Declaration confirmed that freedom from fear and from want for all human beings can only be achieved if conditions are created whereby everyone can enjoy economic, social and cultural rights as well as civil and political rights.

The universality, indivisibility, interdependence and inter-relatedness of all human rights and fundamental freedoms was reaffirmed by the Vienna Declaration and Programme of Action (1993). It goes on to say: 'the international community must treat human rights globally and in a fair and equal manner, on the same footing, and with the same emphasis'. This recognition puts an end to lengthy and fruitless discussions on the priority of one or another category of rights and means that all human rights are equally important in ensuring human dignity and freedom.

What kind of duties does the individual have?

Since it is only in the community that everyone can fully and freely develop his or her personality, it is the duty of all persons in the community to uphold and demand their rights and freedoms, and respect those of others, in order to create the conditions within the community to make the full enjoyment of these rights and freedoms possible.

The second paragraph of Article 29 establishes a general rule concerning the limitations the State may place on the exercise of human rights in the collective interest. Nothing justifies the State placing undue restrictions on the exercise of the rights contained in the Universal Declaration of Human Rights. The laws of a democratic society should provide the framework within which rights and freedoms can thus be exercised. Moreover, it is the duty of the courts and the legitimate concern of everyone to ensure that any limitations placed by law upon the exercise of these rights and freedoms are used solely for a valid, recognized and just purpose.

What protection is there for individuals and groups who work to secure the promotion and respect of human rights?

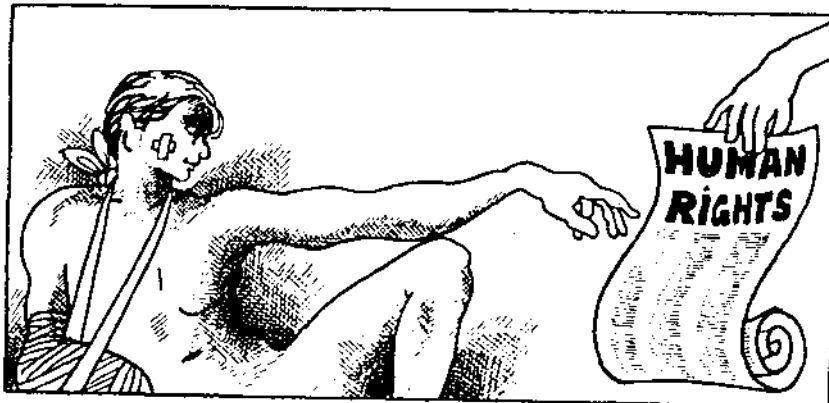
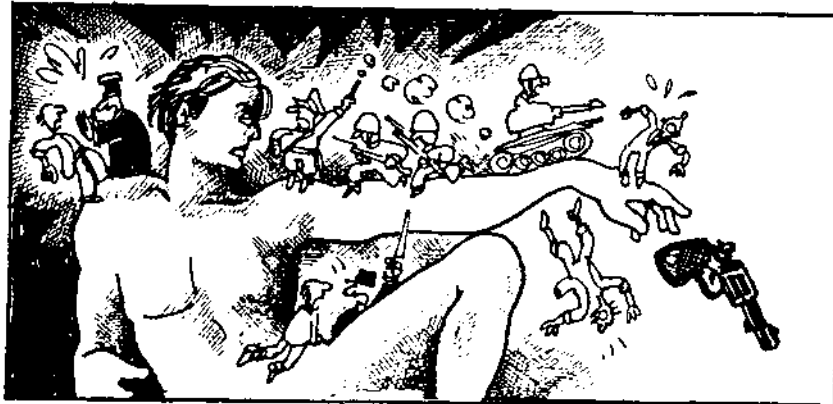
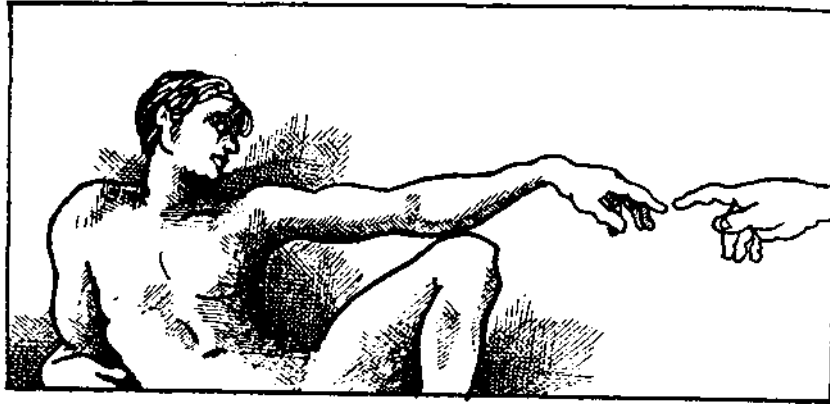
The vulnerability of such individuals and groups in some societies is well recognized,

A Working Group of the Commission on Human Rights (see also Part I, Question No. 7) has been entrusted to draft a 'declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights'. In essence this is intended to be a blueprint for the protection of human rights defenders, who in many parts of the world seek to promote and protect universally recognized human rights standards, at risk to themselves.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

This means that the Declaration in no circumstances should be used as a pretext for violating rights. This rule applies not only to States, but also to groups and individuals. Thus, no one may take an article of the Declaration out of context and apply it in such a way that other articles would be violated. This concluding article, as does the whole Declaration, requires constant vigilance and the courage to stand for one's own rights and the rights of others. This vigilance and courage are the price we must all pay so that some day human rights will apply to all members of the human family in practice as well as in theory.



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