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Chapter 2

The major universal human rights instruments and the mechanisms for their implementation

Facilitator's Guide

Learning objectives

- To familiarize the participants with the major universal human rights treaties and their modes of implementation and to highlight the contents of some other relevant legal instruments
- To provide a basic understanding of how these legal resources can be used by legal practitioners principally at the domestic level but also to some extent at the international level

Questions I

- Have you, in the exercise of your professional activities as judges, prosecutors and/or lawyers, ever been faced with an accused person, defendant, respondent or client alleging violations of his or her human rights?
- What was your response?
- Were you aware that the international law of human rights might provide guidance in resolving the problem concerned?

Questions II

- Were you aware that the alleged victim might ultimately bring his or her grievances to the attention of an international monitoring organ?
- If not, would this have changed your manner of responding to his or her alleged human rights violations?
- Have you ever brought a case against your country before an international organ on behalf of an alleged victim of a human rights violation?
- If so, what was the outcome of the case?
- What was your experience of making such a complaint?

Major universal human rights treaties I

- The International Covenant on Civil and Political Rights, 1966, and its Protocols, 1966 and 1989
- The International Covenant on Economic, Social and Cultural Rights, 1966, and its Protocol, 2008
- The Convention on the Rights of the Child, 1989, and its two Protocols, 2000
- The Convention on the Prevention and Punishment of the Crime of Genocide, 1948

Major universal human rights treaties II

- The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, and its Protocol, 2002
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979, and its Protocol, 1999
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- The International Convention for the Protection of All Persons from Enforced Disappearance, 2006
- The Convention on the Rights of Persons with Disabilities, 2006, and its Protocol, 2006

International treaty-based control mechanisms I

- International treaty-based control mechanisms in the human rights field consist of reporting procedures and the adjudication of individual or inter-State complaints.
- International procedures for the adjudication of individual complaints for the protection of human rights and freedoms are *subsidiary* to procedures existing in the national legal system of every State.

International treaty-based control mechanisms II

- International procedures can never be considered a substitute for efficient domestic legal procedures for the protection of human rights.

The need for positive action to ensure civil and political rights

- In order to respect and ensure civil and political rights effectively, it may not be sufficient for States to adopt an attitude of abstention. States may have to take strong positive actions to comply with their legal duties in this field.

Undertakings by State parties to human rights treaties

- On ratification of a treaty aimed at the protection of human rights and fundamental freedoms, States have a legal duty to modify their legislation so that it conforms with their new international obligations
- States must also ensure that the legal obligations are effectively implemented by all relevant organs, including all courts of law
- States must implement treaties and the obligations arising from them in good faith and cannot invoke national law in order to modify or not to carry out their international obligations

Permissible limitations on the exercise of rights under the International Covenant on Civil and Political Rights I

The criteria to look for in order to know whether the exercise of a right has been lawfully limited under the International Covenant on Civil and Political Rights are:

- The principle of legality, in that the restrictive measure must be based in law
- The principle of a legitimate aim in a democratic society; restrictions on the exercise of human rights cannot be lawfully justified under the Covenant for reasons not expressly contained therein or for purposes alien to the effective protection of human rights

Permissible limitations on the exercise of rights under the International Covenant on Civil and Political Rights II

- The principle of necessity is that the interference with the exercise of the individual's right must be necessary for a legitimate purpose; it is not sufficient that the measure is simply reasonable or advisable
- The principle of proportionality requires a reasonable relationship between the purpose of the limitation, the scope of the envisaged limitation and the right affected

Permissible derogations from legal obligations under the International Covenant on Civil and Political Rights

- In certain exceptional situations amounting to a threat to the life of the nation, the State parties to the International Covenant on Civil and Political Rights may derogate from their legal obligations to the extent strictly required by the exigencies of the situation.
- Such derogations must also comply with the principles of non-derogable rights, non-discrimination and consistency with the State's other international obligations, as well as the principle of international notification.

Implementation mechanisms under the International Covenant on Civil and Political Rights

The implementation mechanisms of the International Covenant on Civil and Political Rights are:

- The reporting procedure (art. 40)
- Inter-State communications (art. 41)
- Individual communications (First Optional Protocol)

Permissible limitations on the enjoyment of rights guaranteed by the International Covenant on Economic, Social and Cultural Rights

The enjoyment of the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights may be subjected only to such limitations as are:

- Determined by law
- Compatible with the nature of these rights
- Aimed at promoting general welfare in a democratic society

The International Covenant on Economic, Social and Cultural Rights contains no provision allowing for derogations from the legal obligations incurred.

The mechanism of implementation of the International Covenant on Economic, Social and Cultural Rights

- The mechanism of implementation of the International Covenant on Economic, Social and Cultural Rights consists of a reporting system. For States that have ratified the Optional Protocol, there is also an individual communications procedure.

State parties' obligations under the Convention on the Rights of the Child

- The State parties to the Convention on the Rights of the Child must respect and ensure the rights guaranteed without discrimination of any kind.
- The guiding principle throughout the Convention is that the *best interest of the child* must be given primary consideration.

Limitations on the exercise of rights under the Convention on the Rights of the Child

- The Convention on the Rights of the Child contains no general limitation provision. Specific limitation provisions are linked only to the exercise of the freedom of expression, the freedom to manifest one's religion and belief, and the freedoms of association and peaceful assembly.
- In general, the interpretation of the terms of the Convention must primarily aim at the best interests of the child but should take into account the rights and duties of his or her parents.

Limitations on the exercise of rights under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families contains no general limitation provision. However, specific limitation provisions are linked to the nature of certain rights and freedoms, and to the status of the migrant worker (regular or irregular situation).

Implementation mechanisms under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The implementation mechanisms of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families are:

- The reporting procedure (arts. 73 and 74)
- Inter-State communications (art. 76)
- Individual communications (art. 77)

Convention on the Prevention and Punishment of the Crime of Genocide

- The Genocide Convention aims at the prevention and punishment of genocide, including conspiracy, incitement and attempts to commit, or complicity in, the crime of genocide.
- The obligations set out in the Convention are binding on all States, even without ratification of the Convention, because they constitute obligations under international customary law.

International Criminal Court

- The International Criminal Court provides the first international, permanent and independent judicial body for the purpose of ending impunity for acts of genocide, crimes against humanity, war crimes and the crime of aggression.

International Convention on the Elimination of All Forms of Racial Discrimination I

- The International Convention on the Elimination of All Forms of Racial Discrimination prohibits such discrimination in the enjoyment of human rights in all fields of public life.
- State parties must also ensure that, whenever private institutions influence the exercise of rights or the availability of opportunities, the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.

International Convention on the Elimination of All Forms of Racial Discrimination II

The International Convention on the Elimination of All Forms of Racial Discrimination is being implemented at the international level through:

- The reporting procedure
- Inter-State complaints
- Individual communications

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment I

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment confirms the well-established rule in international law that no circumstances whatever, not even wars or other public emergencies, can justify the resort to torture or other forms of ill-treatment.
- An order from a superior cannot be invoked as a justification for torture.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment II

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is implemented at the international level through:

- The reporting procedure
- The Committee's activities under article 20 (3)
- Inter-State communications
- Individual communications

Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women provides a comprehensive legal framework for the elimination of discrimination against women in their enjoyment of human rights and fundamental freedoms *in both public and private life*.

At the international level, the Convention is implemented through:

- The reporting procedure
- Individual communications

Major resolutions adopted by the General Assembly I

1. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981
2. The Basic Principles for the Treatment of Prisoners, 1990
3. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988
4. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990

Major resolutions adopted by the General Assembly II

5. Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982
6. The Code of Conduct for Law Enforcement Officials, 1979
7. The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), 1990
8. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), 1990

Major resolutions adopted by the General Assembly III

9. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985
10. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985
11. The Declaration on the Protection of All Persons from Enforced Disappearance, 1992
12. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998

Instruments adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

1. Standard Minimum Rules for the Treatment of Prisoners, 1955
2. Basic Principles on the Independence of the Judiciary, 1985
3. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990
4. Basic Principles on the Role of Lawyers, 1990
5. Guidelines on the Role of Prosecutors, 1990

Extra-conventional mechanisms for human rights monitoring I

- In addition to the international treaty-based mechanisms, the Human Rights Council has established special procedures aimed at dealing with particularly serious human rights violations. These procedures are aimed at creating cooperation with Governments for the purpose of redressing such violations.

Extra-conventional mechanisms for human rights monitoring II

- The extra-conventional procedures of the Human Rights Council consist of thematic and country procedures involving working groups and special rapporteurs or independent experts. They also include the Complaint Procedure, which deals with allegations of consistent patterns of gross violations of human rights. The Complaint Procedure deals with situations in countries rather than individual complaints.

Chapter 3

The major regional human rights instruments and the mechanisms for their implementation

Facilitator's Guide

Learning objectives

- To familiarize the participants with the major regional human rights instruments and their different modes of implementation
- To provide a basic understanding of how these legal resources can be used by legal practitioners principally at the domestic level but also to some extent at the regional level for the purpose of bringing complaints before the monitoring organs

Questions I

- Have you, in the exercise of your professional activities as judges, prosecutors or lawyers, ever been faced with an accused person, defendant, respondent or client alleging violations of his or her human rights under regional human rights law?
- If so, how did you respond?
- Were you aware that regional law for the protection of human rights could provide guidance for resolving the problem concerned?
- Were you aware that the alleged victim might ultimately bring his or her grievances to the attention of a regional commission or court?

Questions II

- If not, would this have changed your manner of responding to his or her alleged human rights violations?
- Have you ever brought a case on behalf of a person who alleged a human rights violation against your country, or some other country, before a regional organ?
- If so, what was the outcome of the case?
- Have you any experience of either the universal or the regional systems? If both, what differences did you perceive?

Major regional human rights treaties I

1. The African Charter on Human and Peoples' Rights, 1981
2. The African Charter on the Rights and Welfare of the Child, 1990
3. The American Convention on Human Rights, 1969
4. The Inter-American Convention to Prevent and Punish Torture, 1985
5. The Inter-American Convention on Forced Disappearance of Persons, 1994
6. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994

Major regional human rights treaties II

7. The European Convention on Human Rights, 1950
8. The European Social Charter, 1961, and the revised European Social Charter, 1996
9. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987
10. The Framework Convention for the Protection of National Minorities, 1995

African Charter on Human and Peoples' Rights I

The specificity of the Charter

- The African Charter on Human and Peoples' Rights is specific in that it protects not only the rights of individual human beings but also the rights of peoples.
- The Charter also emphasizes the individual's duties towards groups and individuals.

African Charter on Human and Peoples' Rights II

Limitations

- While some provisions of the African Charter on Human and Peoples' Rights allow for limitations to be imposed on the exercise of rights enumerated by the Charter, no derogations to rights are provided for under the Charter.

African Charter on Human and Peoples' Rights III

The competence of the Commission

The African Commission on Human and Peoples' Rights is in particular competent to:

- *Promote* human rights by collecting documents, undertaking studies, disseminating information, making recommendations, formulating rules and principles, and cooperating with other institutions;
- *Ensure the protection* of human and peoples' rights by receiving (a) inter-State communications; (b) communications other than those of the State parties; and (c) periodic reports from the State parties.

African Charter on the Rights and Welfare of the Child

- The African Charter on the Rights and Welfare of the Child protects numerous rights which have to be interpreted and applied in the best interests of the child.
- The African Committee of Experts on the Rights and Welfare of the Child promotes and protects the rights of the child.
- The implementation mechanism consists of a reporting procedure and a complaints procedure.

American Convention on Human Rights I

The duty to ensure rights and freedoms

- The legal obligation to *ensure* the rights and freedoms contained in the American Convention on Human Rights means that the State parties must *prevent, investigate* and *punish* human rights violations and that they must, if possible, *restore* the rights violated and, as warranted, provide *compensation* for damages.

American Convention on Human Rights II

Permissible limitations on the exercise of rights

Under the American Convention on Human Rights, limitations on the exercise of rights must comply with:

- The principle of legality: the restrictive measures must be based in law
- The principle of a democratic society: the measure imposed must be judged with reference to the legitimate needs of democratic societies and institutions
- The principle of proportionality: the interference with the exercise of the individual's rights must be necessary for a legitimate purpose in a democratic society

American Convention on Human Rights III

Permissible derogations from legal obligations

When derogating from obligations under article 27 of the American Convention on Human Rights, State parties must comply with:

- The condition of exceptional threat
- The non-derogability of certain obligations
- The condition of strict necessity
- The condition of consistency with other international obligations
- The condition of non-discrimination
- The condition of international notification

American Convention on Human Rights IV

The mechanism of implementation (1)

The *Inter-American Commission on Human Rights* is competent to receive petitions concerning alleged human rights violations from:

- Any person or group of persons, or any legally recognized non-governmental entity; this competence is mandatory (art. 44)
- One State party against another State party, if such competence has been recognized (art. 45)

American Convention on Human Rights V

The mechanism of implementation (2)

- The *Inter-American Court of Human Rights* is competent to examine cases submitted to it by State parties and the Commission provided that these cases have first been considered by the Commission (art. 61).

Inter-American Convention to Prevent and Punish Torture

- Under the Inter-American Convention to Prevent and Punish Torture, State parties must take effective measures to prevent and punish torture within their jurisdiction.
- As confirmed by the Convention, the right not to be tortured is non-derogable and no emergency situation of any kind can justify acts of torture.

Inter-American Convention on Forced Disappearance of Persons

- The Inter-American Convention on Forced Disappearance of Persons is a reaffirmation that the forced disappearance of persons is an act violating international human rights law. The forced disappearance of persons cannot be justified in any circumstances, not even in emergencies.
- Persons accused of being involved in the forced disappearance of persons shall be tried only by ordinary courts of law. They may not be tried by special jurisdictions.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women I

- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women is the only international treaty exclusively aimed at the elimination of gender-based violence.
- The Convention covers violence occurring in all spheres of society, whether public or private.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women II

- The implementation mechanism consists of:
(a) a reporting procedure to the Inter-American Commission of Women; and (b) the possibility of submitting individual petitions to the Inter-American Commission on Human Rights.
- Both the State parties and the Inter-American Commission of Women may request advisory opinions from the Inter-American Court of Human Rights on the interpretation of the Convention.

European Convention on Human Rights I

Permissible limitations on the exercise of rights

The European Convention on Human Rights and its Protocols 1, 4, 6 and 7 provide extensive protection of the rights and freedoms of the person.

Limitations on the exercise of certain rights protected by the Convention may be permissible, provided that they comply with the principles of:

- Legality
- The legitimate needs of a democratic society
- Proportionality, in that the measures to be taken must be necessary for the legitimate needs of a democratic society

European Convention on Human Rights II

Permissible derogations from legal obligations

When derogating from their obligations under article 15 of the European Convention on Human Rights, the high contracting parties must comply with:

- The condition of exceptional threat
- The non-derogability of certain obligations
- The condition of strict necessity
- The condition of consistency with other international obligations
- The condition of international notification

European Convention on Human Rights III

The mechanism of implementation (1)

The implementation of the European Convention on Human Rights is monitored by the *European Court of Human Rights*, which is a *permanent* and *full-time* body, sitting in:

- Committees of three judges
- Chambers of seven judges, or
- In a Grand Chamber of 17 judges (arts. 19 and 27 (1))

European Convention on Human Rights IV

The mechanism of implementation (2)

The European Court of Human Rights is competent to receive and examine:

- Inter-State cases (art. 33)
- Applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of the rights guaranteed by the Convention or its Protocols (art. 34)

European Social Charter, 1961 (I)

- The European Social Charter, 1961, protects a wide range of social and economic rights. While the Charter provides the Contracting States with a certain flexibility, they must accept to be bound by a minimum of five of the seven specified hard-core articles as well as an additional 10 articles or 45 numbered paragraphs.

European Social Charter, 1961 (II)

- The Charter allows for the limitation of the rights contained therein provided that such limitations are consistent with the principles of legality, a democratic society and proportionality.
- State parties may also be allowed to derogate from their legal obligations under the Charter in times of war, threat of war or other public emergency. The measures of derogation taken must comply with the principles of strict necessity and consistency with a State's other international obligations.

European Social Charter, 1961 (III)

- The European Social Charter, 1961, provides for a reporting procedure, as well as, on a more limited scale, a collective complaints procedure allowing international and national organizations of employers and trade unions to submit complaints alleging an unsatisfactory application of the Charter (Additional Protocol).

European Social Charter (revised), 1996

- The European Social Charter (revised), 1996, updates and extends the original Charter, and increases to six the number of hard-core rights that must be accepted by the State parties. They must moreover accept to be bound by no fewer than 16 other articles or 63 numbered paragraphs.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment I

- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment complements the European Convention on Human Rights by creating a system of visits for the purposes of preventing and eradicating the use of torture in Europe.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment II

- The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is authorized to make periodic visits to the State parties concerned as well as to organize such other visits as it deems required by the circumstances.

Framework Convention for the Protection of Minorities

- The Framework Convention for the Protection of Minorities is the first legally binding international treaty aimed at protecting national minorities.
- This Convention contains undertakings vis-à-vis national minorities in areas such as the right to equality before the law, freedom of expression, freedom of religion, freedom of association and assembly, linguistic freedoms, education, and the promotion of culture and national identity, as well as the encouragement of tolerance and intercultural dialogue.