

Introduction to Human Rights

Structures and Key Terminology necessary for gaining a deeper understanding of Human Rights

When are the “Human Rights Police” coming to fix my problem??? – Eh, that’s not how it works...

“Basically we could not have peace, or an atmosphere in which peace could grow, unless we recognized the rights of individual human beings... their importance, their dignity... & agreed that was the basic thing that had to be accepted throughout the world.” Eleanor Roosevelt, 1948

There are 3 main ways in which your human rights are protected

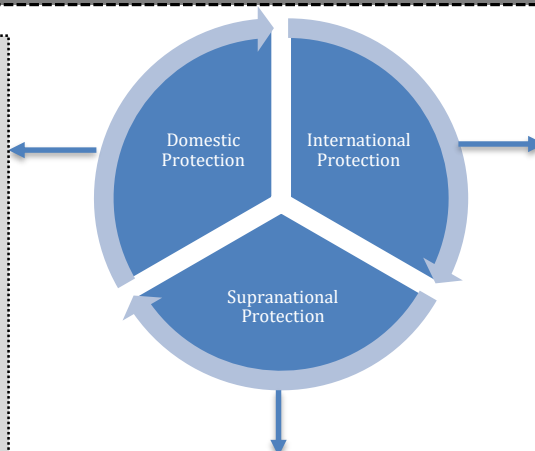
In a **Domestic setting** (i.e. Ireland), you are protected in 3 ways:

In the **Constitution**: Articles 40-44 (the ‘Irish Bill of Rights’)

In **Legislation**: such as,

- *Equal Status Act* (2000-2015) - Prohibits discrimination under NINE headings; (gender, marital status, family status, age disability, sexual orientation, race, religion, and membership of the Traveller Community)
- *Employment Equality Acts* (1998-2015)
- EU HR Conventions written into Irish Law

In **Common Law**: ‘Judge-made’ case law (where previous judgments serve as a guide for future cases)



EU law is directly applicable to Ireland
The Lisbon Treaty introduced the “*EU Charter of Rights and Fundamental Values*”. Unless a state gets a ‘**derogation**’ or agreed ‘opt out’, such as Ireland did for the 8th Amendment in the Maastricht Treaty, they must follow (think of this like a note from their mammy) those directives.

International Treaties and Conventions are the main source of *International Law* (which itself can be quite a vague term). They might include Intergovernmental organizations like the **UN** and conventions of the Council of Europe, but they don’t apply to Ireland unless the right in the convention has been made a part of the Domestic Protections by ‘*ratifying*’ all or some of the treaty’s articles.

Treaty Bodies monitor & report progress, but can otherwise only ‘name and shame’ offences. Generally, this is a ‘political’ rather than a ‘legal’ remedy to the problem. The aim is to establish a ‘**Body of Norms**’ or standards that states are bound to observe, where they account for their actions, and where individuals can seek **redress** for HR violations

Some terms you can’t get away without knowing:

Binding: Signifies an obligation, or duty to respect.

Convention/Treaty: A formal international agreement.

In Force: When a convention or treaty is ‘in force’ in a state it means that the state has ratified the instrument and its provisions now apply in the state.

Protocol: An amendment or addition to a treaty or convention.

Provision: The term ‘provision’ is often used when referring to the content of particular articles within a law.

Ratify/Ratification: An act by which a state signifies an agreement to be legally bound by the terms of a particular convention or treaty.

State Party/Party to: A ‘state party’ or a ‘party’ to a convention/treaty is a country that has ratified that particular treaty and is legally bound by its provisions.

Treaty Bodies: are committees of independent experts that monitor implementation of the core international human rights treaties.

Immediate Realization: States must take direct action to implement certain rights

Progressive Realization: means that a State’s compliance with its obligation to take appropriate measures to implement certain rights is assessed in the light of the resources—financial and others—available to it. They’ll get to it eventually.

“Human rights are, first and foremost, **moral rights**. The ultimate goal may be embedding them in constitutions, legal codes and institutions that guarantee people enjoy their human rights, but they originate in the idea that human beings can claim their rights as a matter of justice.” Graham Finlay, “The Philosophical Development of Human Rights”, in *International Human Rights; Perspectives from Ireland*. (2015)

How do we talk about the people and groups involved in this process? The **Rights Holder** is the phrase used to describe the person or group to whom the rights should apply, whereas **Duty Bearers** refers to the ‘States’ who are obliged to ensure that the Human Rights of the rights holder are respected, both by the government itself and by the citizens of the state.

How did we get here?

While the tradition of 'Natural Rights' might be considered to go back to Ancient Roman, the modern idea of individual rights was mainly articulated by John Locke (see separate handout)

However, the more modern **UN Universal Declaration of Human Rights (UDHR)** emerged at the 3rd Session of the UN General Assembly in December 1948.

That drew on Franklin Delano Roosevelt's
'4 Freedoms' speech of 1941



Freedom **'OF'** indicates a **Negative** Right

Freedom **'FROM'** indicates a **Positive** Right

Negative Rights, sometimes called **'Liberties'**, requires somebody NOT to do something.
"No one ought to stop me from..."
Give an example of your own:

Positive Rights, sometimes called **'Entitlements'** indicate that somebody has a duty to do something. In other words, they are obliged to carry out an action.
Give an example of your own:

After FDR's death his wife Eleanor became the driving force for the UDHR and chaired the **'Drafting Committee'**, whereby the "international community vowed never again to allow atrocities like those of that conflict happen again"

The committee also included René Cassin of **France**, who composed the first draft of the Declaration, the Committee Rapporteur Charles Malik of **Lebanon**, Vice-Chairman Peng Chung Chang of **China**, and John Humphrey of **Canada**, Director of the UN's Human Rights Division. **50 other states** also contributed to the final draft.

Of the then 58 members of the United Nations, 48 voted in favour, none against, eight **abstained**, and two did not vote. The UDHR was ratified in 1948.

However, the Cold War context of the UDHR became the foundation for two binding UN human rights covenants from 1966:

International Covenant on Civil and Political Rights (ICCPR)

&

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ideas of the UDHR are elaborated in international treaties such as **CEDAW** and **UNCRC**

Understanding the course requirements in context

What do we mean by saying that HRs can be understood in the following terms:

Universal - Human rights apply to all people simply on the basis of being human (non-discriminatory) _____

Inalienable - Human rights belong to every person and cannot be taken from (or given away by) a person under any circumstances _____

Indivisible - Each human right has equal importance. A person cannot be denied one right because someone decides it is "less important" than another human right. _____

Similarly, what does it mean for rights to be:

Absolute - Certain 'Absolute' rights cannot be limited for any reason. No circumstance justifies their qualification or limitation. Absolute rights cannot be suspended or restricted, even during a declared *State of Emergency*. These rights include: _____

Limited - They can only be restricted in specific situations. Other rights may be restricted if it's necessary to protect the rights of others. These rights include: _____

Qualified - A public authority can sometimes interfere with your rights if it's in the interest of the wider community or to protect other people's rights. Qualified rights may need to be balanced against other people's rights or the rights of the wider community to achieve a fair outcome. It's the courts who decide how to balance these different interests. Examples of these rights include: _____

Personal Response: Where do you stand personally on the following statements?

1. rights provide a framework that protects us all from powerful groups in society
2. rights provide a basis for ensuring equality in society
3. positive rights are unfair as they make some people pay to implement the rights of other people
4. sometimes the rights of the individual have to be set aside to protect the rights of the majority
5. rights don't go far enough because they only provide equality of access and opportunity, not equality of outcome