

# The evolution of human rights

## Promises, promises

Our leaders have made a huge number of commitments on our behalf! If every guarantee that they had signed up to were to be met, our lives would be peaceful, secure, healthy and comfortable; our legal systems would be fair and would offer everyone the same protection; and our political processes would be transparent and democratic and would serve the interests of the people.

So what is going wrong? One of the small things that is going wrong is that politicians are like the rest of us and will often take short cuts if they can get away with it! So we need to know exactly what promises have been made on our behalf and to start making sure that they are kept.



**Do you always do what you have said you will do? Even if no-one reminds you?**

## Which rights do we possess?

We know that we are entitled to have all human rights respected. The UDHR, the ECHR and other international treaties cover a wide range of different rights, so we shall look at them in the order in which they were developed and were recognised by the international community. The 'normal' way of classifying these rights is into 'first, second and third generation' rights, so we shall follow this for the time being but, as we shall see, such a classification has limited use and can even be misleading at times.

## First generation rights (civil and political rights)

These rights began to emerge as a theory during the seventeenth and eighteenth centuries and were based mostly on political concerns. It had begun to be recognised that there were certain things that the all-powerful state should not be able to do and that people should have some influence over the policies that affected them.

The two central ideas were those of **personal liberty**, and of **protecting the individual against violations by the state**.

- **Civil** rights provide minimal guarantees of physical and moral integrity and allow individuals their own sphere of conscience and belief: for example, the rights to equality and liberty, freedom to practise religion or to express one's opinion, and the rights not be tortured or killed.
- **Legal** rights are normally also classified as 'civil' rights. They provide procedural protection for people in dealing with the legal and political system: for example protection against arbitrary arrest and detention, the right to be presumed innocent until found guilty in a court of law and the right to appeal.
- **Political** rights are necessary in order to participate in the life of the community and society: for example, the right to vote, to join political parties, to assemble freely and attend meetings, to express one's opinion and to have access to information.

"All rights are universal, indivisible and interdependent and interrelated."

*Vienna Declaration*

"Being imprisoned is not the problem. The problem is to avoid surrender."

*Nazim Hikmet*

"The shocking reality... is that states and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action."

*Statement to the Vienna Conference by the UN Committee on Economic, Social and Cultural Rights.*

The categories are not clear-cut, but are simply one way – among many – of classifying the different rights. Most rights fall under more than one category. The right to express one's opinion, for example, is both a civil and a political right. It is essential to participation in political life as well as being fundamental to our personal liberty.



### Are all political rights also civil rights?

The civil and political rights today are set out in detail in the International Covenant on Civil and Political Rights (ICCPR) and in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). These rights have traditionally been regarded by many – at least in the 'West' – as the most important, if not the only real human rights. We shall see in the next section that this is a false view.

During the Cold War, the countries of the Soviet block were severely criticised for their disregard of civil and political rights. These countries responded by criticising the western democracies, in turn, for ignoring key social and economic rights, which we shall look at next. There was at least an element of truth in both criticisms.

## Second generation rights (social, economic and cultural rights)

These rights concern how people live and work together and the basic necessities of life. They are based on the ideas of **equality** and **guaranteed access to essential social and economic goods, services, and opportunities**. They became increasingly a subject of international recognition with the effects of early industrialisation and the rise of a working class. These led to new demands and new ideas about the meaning of a life of dignity. People realised that human dignity required more than the minimal lack of interference proposed by the civil and political rights.

- **Social rights** are those that are necessary for full participation in the life of society. They include, at least, the right to education and the right to found and maintain a family but also many of the rights often regarded as 'civil' rights: for example, the rights to recreation, health care and privacy and freedom from discrimination.
- **Economic rights** are normally thought to include the right to work, to an adequate standard of living, to housing and the right to a pension if you are old or disabled. The economic rights reflect the fact that a certain minimal level of material security is necessary for human dignity, and also the fact that, for example, a lack of meaningful employment or housing can be psychologically demeaning.
- **Cultural Rights** refer to a community's cultural "way of life" and are often given less attention than many of the other types of rights. They include the right freely to participate in the cultural life of the community and, possibly, also the right to education. However, many other rights, not officially classed as 'cultural' will be essential for minority communities within a society to preserve their distinctive culture: for example, the right to non-discrimination and equal protection of the laws.



### Are different cultural groups in your society restricted in their rights? Which religious holidays are given national significance?

The social, economic and cultural rights are outlined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and also in the European Social Charter.

"The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised."

*Article 1, UN Declaration on the Right to Development*

## Are some rights more important than others?

Social and economic rights have had a difficult time being accepted on an equal level with civil and political rights, for reasons which are both ideological and political. Although it seems evident to the ordinary citizen that such things as a minimum standard of living, housing, and reasonable conditions of employment are all essential to human dignity, politicians have not been so ready to acknowledge this. One reason is undoubtedly that ensuring basic social and economic rights for everyone worldwide would require a massive redistribution of resources. Politicians are well aware that that is not the type of policy that wins votes.

Accordingly, they offer a number of justifications for why the second generation rights are of a different order. The first claim often made is that social and economic rights are neither realistic or realisable, at least in the short term, and that we should move towards them only gradually. This is the approach that has been taken in the ICESCR: governments only need to show that they are taking measures towards meeting these aims at some point in the future. The claim, however, is certainly open to dispute and appears to be based more on political considerations than anything else. Many independent studies show that there are sufficient resources in the world, and sufficient expertise, to ensure that everyone's basic needs could be met if a concerted effort was made.

A second claim is that there is a fundamental theoretical difference between first and second generation rights: that the first type of rights require governments only to refrain from certain activities (these are so-called "negative" rights); while the second require positive intervention from governments (these are "positive" rights). The argument goes that it is not realistic to expect governments to take positive steps, at least in the short term, and that they are therefore not obliged to do so. Without any obligation on anyone's part, there can be no right in any meaningful sense of the word.

However, there are two basic misunderstandings in this line of reasoning.

Firstly, civil and political rights are by no means purely negative. In order, for example, for a government to guarantee freedom from torture, it is not enough just for government officials to refrain from torturing people! Genuine freedom in this area would require a complicated system of checks and controls to be put in place: policing systems, legal mechanisms, freedom of information and access to places of detention – and more besides. The same goes for securing the right to vote and for all other civil and political rights. In other words, these rights require positive action by the government in addition to refraining from negative action.



### What positive action does a government need to authorise in order to ensure genuinely free and fair elections?

Secondly, social and economic rights, just like civil and political rights, also require that governments *refrain* from certain activities: for example, from giving large tax breaks to companies, or encouraging development in regions that already possess a relative advantage, or imposing trade tariffs which penalise developing countries – and so on.

In actual fact, the different types of rights are far more closely connected with each other than their labels suggest. Economic rights merge into political rights; civil rights are often undistinguishable from social rights. The labels can be useful in giving a broad picture but they can also be very misleading. Almost any right can fall into almost any category under different conditions.

"Human rights start with breakfast."

Léopold Senghor

"First comes the grub then the morals."

Bertold Brecht

"Culture is what lives on in man when he has forgotten everything."

Emile Henriot

### Third generation rights (collective rights)

The list of internationally recognised human rights has not remained constant. Although none of the rights listed in the UDHR has been brought into question in the 50 or so years of its existence, new treaties and documents have clarified and further developed some of the basic concepts that were laid down in that original document.

These additions have been a result of a number of factors: they have partly come about as a response to changing ideas about human dignity, partly as a result of technological changes and often as a result of new threats emerging. In the case of the specific new category of rights that have been proposed as a **third generation**, these have been the consequence of a deeper understanding of the different types of obstacles that may stand in the way of realising the first and second generation rights. Increasing globalisation has also revealed the possibility for resources to be diverted towards the removal of these obstacles.



#### What are the main obstacles to people's rights being fully respected in developing countries? Which rights are under most threat?

The idea at the basis of the third generation of rights is that of **solidarity**; and the rights embrace **collective rights of society or peoples** – such as the right to sustainable development, to peace or to a healthy environment. In much of the world, conditions such as extreme poverty, war, ecological and natural disasters have meant that there has been only very limited progress in respect for human rights. For that reason, many people have felt that the recognition of a new category of human rights is necessary: these rights would ensure the appropriate conditions for societies, particularly in the developing world, to be able to provide the first and second generation rights that have already been recognised.

The specific rights that are most commonly included within the category of third generation rights are the rights to development, to peace, to a healthy environment, to share in the exploitation of the common heritage of mankind, to communication and to humanitarian assistance.

There is, however, a debate concerning this new category of rights. Some experts object to the idea that collective rights can be termed 'human' rights. Human rights are, by definition, held by individuals, and define the area of individual interest that is to be given priority over any interests of society or social groups. In contrast, collective rights are held by communities or even whole states.

The debate is not so much over whether these rights exist but whether or not they are to be classed as human rights. The argument is more than merely verbal, because some people fear such a change in terminology could provide a 'justification' for certain repressive regimes to deny (individual) human rights in the name of these collective human rights; for example, severely curtailing civil rights in order to secure 'economic development'. There is another concern which is sometimes expressed: since it is not the state but the international community that is meant to safeguard third generation rights, accountability is impossible to guarantee. Who, or what, is supposed to be responsible for making sure that there is peace in the Caucasus or Palestine?

Nevertheless, whatever we decide to call them, there is general agreement that these areas require further exploration and further attention from the international community. Some collective rights have already been recognised, in particular under the African Charter on Human and Peoples' Rights. The UDHR itself includes the right to self-determination and a human right to development was codified in a 1986 UN General Assembly Declaration.

"Everyone has the right [...] to share in scientific advancement and its benefits".

Article 27, UDHR

## The advance of science

Another area where new rights are being acknowledged is in medical science. New scientific discoveries have opened up a number of questions relating to human rights, in particular, in the fields of genetic engineering and concerning the transplant of organs and tissues. Questions on the very nature of life have had to be addressed as a result of technical advances in each of these fields. The Council of Europe has responded to these challenges with a new international treaty: The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (from now on, referred to as the Oviedo Convention). This treaty entered into force in December 1999.

This convention has been signed by 30 member states of the Council of Europe and ratified by ten. It sets out guidelines for some of the problematic issues raised in the previous section.

Summary of most relevant articles:

- Any form of discrimination against a person on grounds of their genetic heritage is prohibited.
- Predictive genetic tests can be carried out only for health purposes and not, for example, in order to determine the physical characteristics that a child will develop in later life.
- Intervention which aims to modify the human genome may only be undertaken for preventative, diagnostic or therapeutic purposes.
- Medically assisted procreation is not permitted where this is designed to determine a future child's sex.
- Removal of organs or tissue from a living person for transplantation purposes can be carried out solely for the therapeutic benefit of the recipient. (Article 21 – Prohibition of financial gain.)

## Biotechnology

Genetic engineering is the method of changing the inherited characteristics of an organism in a predetermined way by altering its genetic material. Progress in this area has led to an intense debate on a number of different ethical and human rights questions; for example, whether the alteration of germ cells should be allowed when this results in a permanent genetic change for the whole organism and for subsequent generations; or whether the reproduction of a clone organism from an individual gene should be allowed in the case of human beings if it is permitted in the case of mice and sheep.

The progress of biomedical technology has also led to the possibility of transplanting adult and foetal organs or tissues from one body to another. Like genetic engineering, this offers huge potential for improving the quality of some people's lives and even for saving lives – but consider some of the problematic issues that are raised by these advances:

- If a life can be saved or improved by using an organ from a dead body, should this always be attempted? Or do dead bodies also deserve respect?
- How can we ensure that everyone in need has an equal chance of receiving a transplant if there is a limited supply of organs?
- Should there be laws concerning the conservation of organs and tissues?
- If medical intervention affects an individual's genome and this results in a threat to the individual's life or quality of life, is compensation appropriate? Would a murder charge be appropriate if the individual dies?

“Any intervention seeking to create a human being genetically identical to another human being, whether living or dead, is prohibited.”

*Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being, Paris 1998*

## Unesco

Unesco has also attached special attention to the human genome and, on 10 November 1997, the Unesco General Conference adopted a Universal Declaration on the Human Genome and Human Rights. This Declaration establishes similar limits on medical intervention in the genetic heritage of humanity and in individuals.

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