

The Universal Declaration of Human Rights (1948)

CAL 6015

MA (Human Rights), 2021.





PART 1: THE POLITICS OF DRAFTING THE UDHR





The Process of making the UDHR

- From *UN Charter*:
The Purpose of the UN is: ... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; [Art 1.2]
- ECOSOC to formulate a bill of rights.
- Headed by Eleanor Roosevelt.
- Drafted by 9 members Human Rights Commission from 1946-1948





Voting

- 10 December 1948 UNGA passed with
48 yes votes
8 Abstentions:
South Africa (Apartheid)
Saudi Arabia (marriage and religion)
Soviet Bloc (Nazi crimes, free movement)
- Asia-Pacific voting yes: Afghanistan,
Australia, Burma, China, India, New
Zealand, Pakistan, Philippines, Siam.





Debates & Controversies

- A Declaration or Treaty?
- Include Economic, Social and Cultural rights?
- Abortion?
- How to define torture, slavery, etc?
- Should citizens have duties?
- The emerging Cold War





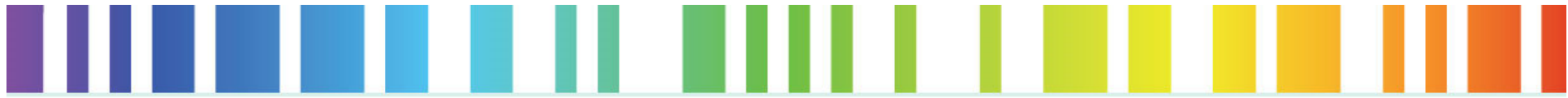
Is the UDHR legally binding?

- **Yes:** Through the UN Charter.
- **Yes:** UN demands States to respect the UDHR through mechanisms like the Universal Periodic Review.
- **Partially yes:** Some States recognize the UDHR as law (like the Philippines).
- **Partially yes:** Some rights in the UDHR are considered customary or *jus cogens* like slavery, torture, religion.
- **No:** The UDHR has not been signed and ratified by States. The principle is that treaties should be voluntary in nature.
- **No:** The articles in the UDHR do not clearly define the legal aspect of the rights



PART 2: STRUCTURE AND CONTENT

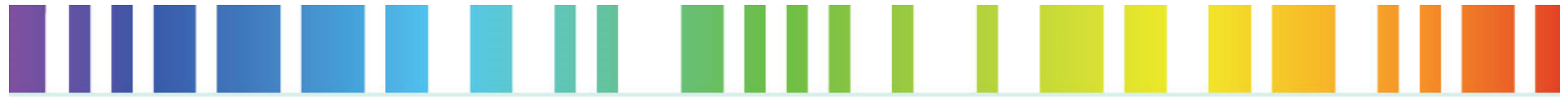




Structure of a treaty

- Title:
The Universal Declaration of Human Rights
- Adoption/Ratifying process and dates:
Adopted and Proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.
- Preamble
- Rights
- [Management of treaty]





Main Categories of Rights

- Fundamental Rights (Art 2-6)
- Rights in the Courts system (Art 7-11)
- Civil Rights (Art 12-19)
- Political Rights (Art 19-21)
- Economic Rights (Art 22-24)
- Social Rights (Art 25-26)
- Cultural Rights (Art 27)





Preamble

- [para 1] Whereas 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,
- [para 2] Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of [hu]mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

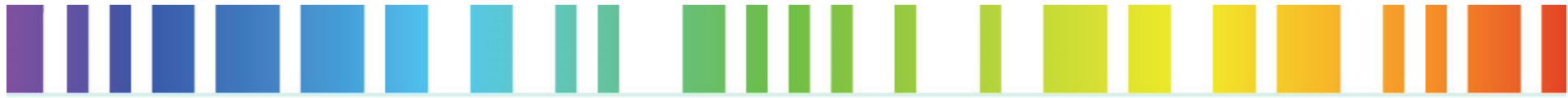




Article I

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





Fundamental Rights

- Art. 2-6
- Based on *jus cogens* or peremptory norms
- States cannot violate or limit these





Fundamental Rights

Article 2 [non-discrimination]

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind ...

Article 3

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

Article 4

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

Article 5

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

Article 6

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





RIGHTS IN THE COURT SYSTEM





Rights in the Court System

Article 7

All are equal before the law:

Equal protection, sanctions, arms

Article 8

Everyone has the right to an effective remedy

-Access to Justice

Article 9

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





Article 10

Everyone is entitled in full equality to a fair and public hearing
-(fair trial rights)

Article 11

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty





Civil Rights

Article 12: Right to **privacy**,
No attacks on honour and reputation

Article 13: right to **freedom of movement**
-within a country

-leave any country, return to your own

Article 14: right to seek and to enjoy **asylum**.

Article 15: right to a **nationality**.





Civil Rights

Article 16: the right to marry and have children

- Equality in marriage and divorce
- With free and full consent

Article 17: the right to own property

Article 18: freedom of religious belief;

Article 19: the right to freedom of opinion and expression





Political Rights

Article 20

Everyone has the right to **freedom of peaceful assembly and association.**

Article 21

1. Everyone has the right to **take part in the government,**
2. Everyone has the right to 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 ...





ECONOMIC, SOCIAL, AND CULTURAL





Economic Rights

Article 22: the right to social security...

Article 23: the right to work,
to equal pay for equal work,
to just and favourable remuneration,
the right to form and to join trade unions.

Article 24: the right to rest and leisure





Social Rights

Article 25

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 ...**

Article 26

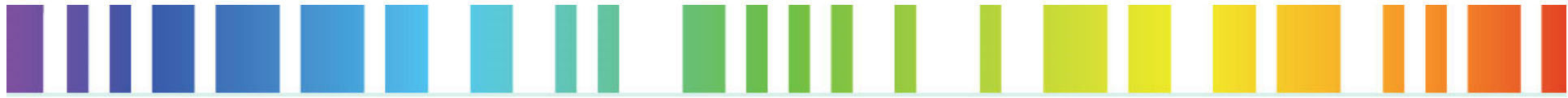
the **right to education:**

Primary education (free and compulsory)

Secondary Education (generally available)

Tertiary Education (equally accessible)





Cultural Rights

Article 27

Everyone has the right freely to **participate in the cultural life** of the community.

- speak a language
- practice a religion
- participate in cultural activities





Other Articles: 28-30

- 28: Right to an International Order
- 29: Limitations: in law and for a reason
- 30: Cannot use rights to violate other's rights





UNDERSTANDING THE UDHR



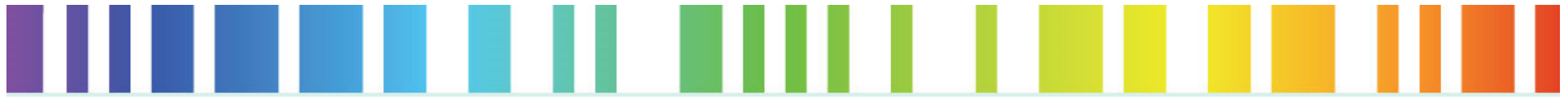


Limitations on Rights

Article 29

1. 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.





The UDHR in Asia

- States not ratifying ICCPR and ICESCR:
UDHR is the go to document
- UDHR used in UN protection mechanisms
like Universal Periodic Review
- UDHR can be used in some courts (like
the Philippines)
- UDHR is taught in schools





The Division between Civil/ Political and Economic/Social

- Ideological
Western Capitalism
free market
- Legal:
Emergency derogations
Negative duties
existing case law
- Freedom from: Cheap
- Ideological
Eastern Socialism
command economy
- Legal:
Progressive realization
Positive duties
policies not laws
- Rights to: expensive
services





Vienna Declaration and Program of Action (1993)

- Human rights are interdependent, interrelated and indivisible
- No longer have the three generations theory
 - First: Civil and Political Rights (C17th Europe)
 - Second: Economic and Social (C19th Socialist)
 - Third: Community/collective rights (1960s decolonization).
- Human Rights, Development, and democracy are mutually re-enforcing