

What Are Human Rights

**Teach Yourself
Human Rights**

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for the Hong Kong Human Rights Monitor

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OHCHR **PREFACE**

As the change of sovereignty approaches, Hong Kong people are becoming more concerned about their human rights situation after 1997. Both the Sino-British Joint Declaration and the Hong Kong Basic Law promised that the two international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) will continue to be effective in Hong Kong after 1997. The enactment of the Hong Kong Bill of Rights in 1991, however, drew strong criticisms from China. As a result, Hong Kong people have become quite confused about the meaning of human rights and their protection. The aim of this booklet is to briefly explain the concept of "Civil and Political Rights."

All human beings have certain rights by virtue of their humanity. This is the simplest definition of human rights. The notion of human rights has long existed both in Eastern and Western cultures. However, these rights have not been formalized internationally until after the Second World War when the United Nations was established. As a general revulsion at the atrocity of war, especially the Holocaust of six million Jews, the international community felt it necessary to define and promote basic human rights, and to enshrine them in law. These efforts led to the Universal Declaration of

Human Rights, and the two international treaties mentioned above.

As a result of the hard work of many people over the years, the value and importance of human rights have generally been accepted. No country in the world now openly takes pride in human rights abuses. Governments everywhere boast they are strong defenders of human rights and that their country has excellent human rights record. Nevertheless, the issue of human rights still generates conflict between governments.

Human rights in general can be divided into "active" and "passive" rights. Active rights are also sometimes known as "welfare". These include many of the economic, social and cultural rights. Their implementation requires resources provided by the government. Examples of active rights include free education, free medical services, and unemployment and disability benefits. Some active rights are very costly and therefore cannot be provided by all governments. However, when it is not the lack of resources but rather the mismanagement of them that deprives citizens of such rights, citizens have a legitimate claim on their government.

Passive rights on the other hand do not depend on government resources and therefore can be afforded by all

countries. Examples of these rights are freedoms of speech and religion, and freedom of the press. All individuals are entitled to these rights whether they live in a rich or poor country. Not only is the provision of these rights cheap and free but on the contrary it is the suppression of these rights that requires government spending. The sad fact is, often it is those countries which claim they cannot afford to improve the welfare of their citizens that devote a large amount of their resources to suppress passive rights. Large sums are wasted in maintaining secret police forces and running media censorship.

Some countries challenge the universality of human rights. They argue that since countries differ in their social and economic development, it is not possible to agree on or implement the same set of rights. They claim that differences between developing and developed countries means the former may not be able to implement the rights enjoyed by the latter.

However, as the Universal Declaration of Human Rights makes plain, human rights concern certain basic standards which no country can amend or adapt to its own national situation. While it is understandable that citizens in certain developed countries enjoy more welfare benefits provided by their government, such as the right to free tertiary education, free medical services, etc., this is not an excuse

for countries that cannot afford to offer these rights to its citizens to ignore the basic minimum standards on civil and political rights. Nor is it an excuse to absolve themselves from taking those steps which are possible within their resources to realize their citizens' economic, social and cultural rights.

Over two thousand years ago the Chinese philosopher Mencius observed: "people are the most important asset of a country; next comes the institution of the government; the monarch comes last." Despite that the notion of human rights has yet to flourish in China. Very often, Chinese people's most basic rights are ignored or violated. We should all seriously reflect on this situation. At this historical juncture of the return of Hong Kong to China, when we ponder on the future of our nation, one of the things we must do is to firmly entrench respect for human rights in our society.

WHAT ARE HUMAN RIGHTS?

A right is an entitlement you own. It is a claim by you against another to the extent that by exercising your right, you do not stop someone else from exercising theirs.

It has been said: your right to swing your arm ends where the other person's nose begins. It has also been said that one person's right is another person's duty.

A right is determined by human needs that make life fulfilling and are essential for keeping us alive – like health, it is most valued when it is lost.

A human right is an entitlement or legal claim you have – by virtue of being human – against the State.

You say a human right is a legal claim. Does that mean it is a part of law?

Yes.

Which law?

The international law of human rights which is stated in the International Bill of Human Rights is the primary source. Human rights are also

protected in the Constitutions and national laws of many States around the world. In addition, human rights are further protected by the many Treaties, or Agreements, governments have signed which oblige them to ensure these rights and freedoms.

Is a 'freedom' the same as a 'right'?

Yes, in law they are the same. Your freedom from torture is your right not to be tortured.

Why are these laws universally recognized to be so important?

The reasons are best stated in the preamble to the Universal Declaration which,

recognizes that the inherent dignity and ... equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and that disregard and contempt for human rights resulted in barbarous acts.

The Preamble goes on to give a warning:

...it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...

How old is this area of law?

The principles have been in existence for ages. It was not until the end of World War II that the Member States of the newly established United Nations agreed on the Universal Declaration of Human Rights and set down for the first time a list of human rights and fundamental freedoms. These were considered by the community of nations to be minimum standards by which governments should treat their citizens.

Who has these rights?

You do, I do, everyone has them: they belong to every human being. They are **UNIVERSAL**: male and female, rich and poor, black and white, religious and non-religious. They belong to everyone **EQUALLY**.

But what about someone who has done something terrible. Surely this person does not deserve to have any rights when s/he has shown no regard for the rights of others?

Everyone is born with the same human rights. They cannot be taken away, lost or surrendered whatever a person does or whoever that person is: they are **INALIENABLE**. The terrible person you talk of is, before the law, just a human being. S/he is entitled to a fair trial where s/he is presumed innocent until proved guilty; if convicted, s/he is entitled to appeal and anyway to be kept detained in humane conditions. S/he has these rights and they must be respected.

Respect: what do you mean?

To respect the rights of another person is to value that person's humanity rather than personality. Respecting human rights involves:

a conscious effort to find our common essence beyond our apparent divisions, our temporary differences, our ideological and cultural barriers.

(Boutros Boutros-Ghali, UN Secretary-General, in opening the World Conference on Human Rights 1993)

Even someone who has shown no humanity to others: who has tortured, raped and murdered people? Why should I respect that person's rights?

Because s/he is still a human being. Everyone has the right to be presumed innocent until proved guilty, otherwise how do we know that s/he committed these serious crimes? Everyone has the right to a fair and public hearing before an independent and impartial tribunal and to be sentenced according to law if found guilty. This is what is meant by the 'rule of law'.

This is not enough for me: I want an eye for an eye.

Of course criminals should be brought to justice. However, the law is not about passion or emotion. It is about establishing what happened

and attempting to ascertain the truth. This involves listening to each side and giving the person a chance to explain his/her actions. This can take time because the evidence is not available or the political situation does not permit it. Justice can be slow in coming.

What of these other words you use – equality, for example?

Equality may perhaps be a right, but no power on earth can ever turn it into a fact.

(Balzac)

Each of us is different, unique. We have various talents. You may run quicker than I; I may jump higher than you. How then can we say we are equal? We cannot.

Human rights teach us in a direct, straightforward manner that we are at the same time identical and different.

(Boutros Boutros-Ghali)

Human Rights law is not about establishing equality, but protecting individuals from discrimination. You should not be discriminated against simply because of who you are or what you believe in. The law applies equally to rich and poor. The migrant worker is entitled to equal pay for equal work alongside the national of the country in which s/he works. Women have the same rights as men.

But a woman's place is in the home caring for her family!

In many cultures this is the traditional role of women. And if a woman wishes to be in the home that is her right. It is also her right to work outside the home if she wishes and receive equal pay for her work. It is the duty of the State to make this opportunity available.

When you talk of the duty of the State, I thought States could do what they wanted inside their own country and tell other States to mind their own business and not interfere in the affairs of others?

This is what is called 'national sovereignty', which calls on States to respect each others' borders and political independence. However, there is a difference between meddling in the internal affairs of others and taking steps aimed at getting governments to observe standards of conduct to which they have committed themselves.

So when you speak of a State's duties to the individual, these are duties that the State can agree to or reject?

First, States agree to certain Treaties, Covenants and Conventions (they all amount to the same thing) which set standards for the treatment by the State of its citizens and calls them to account for the efforts they make to implement these standards and answer allegations that may arise. Second, even if they do not agree to these treaties, as Member States of the United Nations, they pledge under the United Nations Charter to *promote respect for, and observance of*, human rights. Third,

the International Bill of Human Rights and the other human rights conventions make up a body called international human rights law. How a government treats its citizens is now the legitimate concern of the international community.

Here is what the Secretary General of the UN, Boutros Boutros-Ghali, said on opening the World Conference on Human Rights in Vienna in 1993,

It is the State that the international community should principally entrust with ensuring the protection of individuals. However, the issue of international action must be raised when States prove unworthy of this task...and when – far from being protectors of individuals – they become tormentors....In these circumstances, the international community must take over from the States that fail to fulfil their obligations.

He closes this section of his speech by asking

...whether a State has the right to expect absolute respect from the international community when it is tarnishing the noble concept of sovereignty by openly putting that concept to a use that is rejected by the conscience of the world and by the law. Where sovereignty becomes the ultimate argument put forward by authoritarian regimes to support their undermining of the rights and freedoms of men, women and children, such sovereignty – and I state this as a sober truth – is already condemned by history.

So why does the international community not stop the atrocities going on all around us?

The 'international community' is made up of States which have their own interests abroad and concerns at home. Generally, they do not care to entangle themselves in the affairs of other States. However, there is increasing pressure by the international community on these errant States to improve their human rights records. The problem is that the means are not yet available to stop other States abusing their citizens. International law has no police force and usually uses no army and no courts to enforce it.

What is the difference between a human rights violation and a criminal offence?

Both involve wrongdoing. A criminal act is an act or acts done by one or more persons that is harmful to society and has been forbidden by the domestic law of the country. A human rights violation is committed by the State through its agents (the police, armed forces and anyone acting with the authority of the State) against the individual.

When an individual commits a crime, he is arrested, charged and tried in a court of law. Who tries the State, or its agents, for human rights violations?

The domestic courts. Sometimes also the international ones.

What, a judge try the President?

Of course. This is why it is important for power in the State to be divided up: the government (executive) should be separate from the parliament (legislature) which, in turn, should be separate from the courts (judiciary), so that power is not concentrated in any one person or body and everyone is subject to the law. This is a cornerstone of the democratic process.

But where this separation of powers does not exist, who tries the State?

At present, there is no means of enforcing international law through a legal process. The United Nations can impose, through the General Assembly, economic sanctions on a country, but short of armed intervention in certain circumstances we shall go into later, there is not a great deal that can be done.

So what's the point? I'm told I have these rights but what use are they if I cannot enforce them – if my government can abuse them with impunity?

Slowly but surely governments are becoming aware of the importance of a good human rights record. A poor human rights record is highly embarrassing to governments. It is bad for the image of the country; it is bad for business. They are able to get away with it partly because

people do not know what are their rights *in law*. For this reason, the slogan of the World Conference in Vienna was:

Human Rights: Know them, Demand them, Defend them.

Educating people, informing them and the outside world of what is happening makes it difficult for the State to issue credible denials or claim ignorance and may make the international community act.

It all sounds very political. I'm not politically concerned.

When I give food to the poor, I am called a saint; but when I call on the government to feed its people, I am accused of seeking to subvert the authority of the State.

The issue of 'Human Rights' is a political issue. It concerns the relationship between the State and the individual. The International Covenant discussed in this book is called the International Covenant on Civil and Political Rights. But it is also a legal issue. Your right to life, liberty and security is your legal right not to be arbitrarily arrested, detained or 'disappeared' and killed. When you demand the government respect this or any other right, your legal right becomes a political demand.

But what of groups or individuals who use their 'rights' to bring down an elected government only to replace it with a dictatorship?

Any group engaged in any activity aimed at the destruction of any of the rights and freedoms contained in the ICCPR is acting contrary to the purposes and principles of the International Bill of Human Rights and cannot use those treaties as a shield for activities that undermine the very rights they were set up to protect.

But what can a State do when it is threatened from within? Must it continue to allow people freedom of expression and so on?

It is at these moments that the rights of the individual are most threatened. Under the International Bill, a State can declare a state of emergency and suspend some obligations to the extent strictly required by the demands of the situation. Certain obligations can never be suspended under any circumstances. Freedom from torture, for example, is one of them.

Surely if a terrorist has planted a bomb and he is caught and refuses to disclose the location, it would be justified for the police to use torture to force 'the truth' out of him?

Torture, cruel or inhuman treatment or punishment is never justified or defensible as a matter of law. Nor is it a defence to say: 'I was ordered to'.

But can't governments argue that they are forced to respond with extreme measures to extremist groups?

Any emergency measures must be reflected in changes in the national law. They must contain proper safeguards to protect those caught up in the 'extremism' but who play no active part in it. These emergency measures must comply with the standards set by international law.

Some of the worst violations of human rights have been conducted in the name of some inspiring idea, like the 'State' and 'Patriotism'; 'The People' or 'the Masses'; the 'Economy' or the 'One True Faith' which have all been used, and still are used, as a disguise or veil to conceal severe State repression.

Which of all these rights comes first?

None of them. They are all interrelated and indivisible. The pledge all Member States of the United Nations take to advance human rights is a pledge to promote *all* human rights, as the General Assembly has observed:

promotion and protection of one category of rights should never exempt or excuse States from the promotion and protection of another.

But aren't 'human rights' something imposed on the rest of the world by the West?

Human rights are not a western invention, nor do they encompass merely western values. They are to be found in each culture and in each of the

world's great religions. Emphasis may vary from region to region and from country to country.

You say this book is only dealing with civil and political rights, rather than economic, social and cultural rights. What if I am hungry, my child needs hospital treatment and my husband is unemployed – am I not entitled to demand the State recognizes these rights take precedence over a student's right to voice his/her opinion about the government?

It is sometimes the case that rights appear to conflict or compete with each other. It is argued by some, for example, that certain countries cannot 'afford' human rights; that they have to be restricted in the interest of boosting the economy. This is an argument for the reintroduction of slavery and not a justification for failing to implement basic international standards. The assertion that your right should take precedence over mine is unlikely to find favour with me if it is put in the form of a demand. All rights pose problems that call for discussion and thought as to their application in daily life.

What's the point? If I protest or raise my head to speak out at best I'll be ignored and at worst I'll be arrested or 'disappeared'.

The will of the people shall be the basis of the authority of government.

(UDHR 21)

Where a government ignores the will of the people and goes further and seeks to suppress the will of the people, it becomes a tyranny. As such, it loses the legitimacy by which it pretends to govern.

Yes; but who am I to challenge a government?

Man dies in all who keep silent in the face of tyranny

(Wole Soyinka)

*First they came for the Jews
and I did not speak out –
because I was not a Jew.*

*Then they came for the communists
and I did not speak out –
because I was not a Communist.*

*Then they came for the trade-unionists
and I did not speak out –
because I was not a trade-unionist.*

*Then they came for me –
and there was no-one left to speak out for me.*

(Pastor Martin Niemoller)

Some useful telephone numbers...

United Nations Human Rights Committee (Geneva, Switzerland)	41-22-9173965
Human Rights Watch /Asia	2574 6275
Amnesty International Hong Kong Section Limited	2300 1250
Refugee Concern Hong Kong	2695 1742
Society for Community Organisation	2713 9165
Free Legal Advice Office	2852 3002
Duty Lawyer Office	2526 5969
Legal Aid Department	2537 7677
Office of the Ombudsman	2629 0555
Equal Opportunities Commission	2511 8211
Appeal Board on Public Meetings and Processions	2810 2747
Complaints Against Police Office (CAPO)	2574 4219
LegCo Complaints Division	2526 4027

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