

## PART I

# Theoretical Foundations

- Chapter 1** Principles of Human Rights
- Chapter 2** Human Rights and Intersectionality
- Chapter 3** Human Rights and Philosophy
- Chapter 4** Critiques of Human Rights



# 1

# Principles of Human Rights

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## Learning Outcomes

After reading this chapter, you will be able to:

- Identify and define the core principles of human rights.
- Explain the significance of the *International Bill of Human Rights*.
- Explore the distinctions between and interrelatedness of individual and collective rights, providing an example of each.
- Describe the rights and duties of individuals, groups, and States.
- Explore how you experience privilege and disadvantages in your daily life.
- Define non-discrimination and intersectionality, providing examples of each.



These children of United Nations staff members are getting a closer look at the Universal Declaration of Human Rights, adopted on December 10, 1948. All nations in the world were invited to set aside December 10 every year as Human Rights Day and through programs in schools and community centers to pay homage to the principles of freedom and human dignity.

## Introduction

Human rights serve as a cornerstone of global justice, dignity, and equality. The *Universal Declaration of Human Rights*,<sup>1</sup> adopted by the United Nations (UN) in 1948, represents a pivotal moment in human history, establishing a shared foundation for the protection and promotion of fundamental rights. The UDHR laid the groundwork for international human rights law, catalyzing the development of binding **UN human rights treaties** that outline a broad range of freedoms and entitlements inherent to all human beings, regardless of nationality, gender, race, or creed. This chapter provides an in-depth exploration of human rights principles, examining their evolving nature and the challenges involved in their implementation. It begins by defining the core principles of human rights—universality, inalienability, indivisibility, interdependence, and non-discrimination—and their role in shaping international law and societal norms. It then discusses the distinction between **individual rights** and **collective rights**, emphasizing how these categories intersect and support each other in promoting human dignity.

This chapter also addresses the relationship between rights and duties, particularly the responsibilities of States and individuals in safeguarding human rights. By understanding the dynamic role of the State as both protector and violator of human rights, we gain insights into the mechanisms of accountability that ensure justice. Further, the chapter delves into the concept of **non-discrimination**, which remains central to protecting marginalized groups and ensuring equitable access to rights for all. As we confront contemporary issues of privilege and disadvantage, intersectionality emerges as a key framework for understanding how overlapping social identities—such as race, gender, and class—impact human rights experiences. Through this lens, we can better appreciate the complexity of human rights challenges and the necessity of developing policies that address the multifaceted nature of oppression. By the end of the chapter, readers will gain a comprehensive understanding of human rights, from their philosophical underpinnings to their application in modern society, as well as the ongoing struggle to make these rights a lived reality for all.

## Defining Human Rights

Although not legally binding, the UDHR stands as the inaugural standard-setting instrument establishing the fundamental human rights to be universally safeguarded and remains the foundation for all international human rights law.<sup>2</sup> The UDHR established the footing for drafting the (legally binding) Covenants: the *International Covenant on Civil and Political Rights*<sup>3</sup> and the *International Covenant on Economic, Social and Cultural Rights*;<sup>4</sup> together, these three documents form the **International Bill of Human Rights**. Human rights are political in the sense that they connote political engagement, reaffirmed in the willingness of States to recognize, respect, and protect human rights and work together toward their

implementation. The concept of universal human rights is rooted in the belief that all human beings, by virtue of their humanity, possess inherent rights that must be respected and protected. These rights are universal, meaning they apply to everyone, regardless of nationality, race, religion, or other status. Judicial consideration of human rights is based on the coherence of a legal system featuring written laws that guide human rights provisions.<sup>5</sup>

The study of human rights places the human body at the centre of social and political theory and employs the notion of embodiment as a foundation for defending universal human rights.<sup>6</sup> Perceiving human rights primarily, if not solely, as originating from the domain of law (judicial) or politics (political) detracts from their broader implications. However, there is international consensus that human rights conform to universalist notions of dignity, fairness, respect, and equality.<sup>7</sup> **Universality, inalienability, indivisibility, interdependence, equality**, and non-discrimination are the fundamental principles of human rights.

Universality posits that human rights apply to everyone equally, regardless of location, gender, race, religion, or cultural background. Under article 1 of the UDHR, “all human beings are born free and equal in dignity and rights.”<sup>8</sup> Article 2 of both Covenants affirms the universality of rights by prohibiting discrimination based on “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status” in relation to **civil and political rights or economic, social, and cultural rights**. Inalienability means people’s rights cannot be taken away or “alienated” except in specific situations and according to due process, the circumstances under which are discussed below.<sup>9</sup> Human rights are inherent and cannot be compromised, withdrawn, or forfeited.

Indivisibility implies that a life of dignity cannot be achieved without the full spectrum of globally acknowledged human rights. All human rights have equal status. Whether they pertain to civil, cultural, economic, political, or social issues, they are essential to human dignity. The denial of one right invariably affects the enjoyment of other rights. For example, the right to an adequate standard of living cannot be compromised at the expense of health or education rights.

Interdependence and interrelatedness imply a symbiotic relationship among rights. They engage with one another, culminating in a collective entity that surpasses the mere aggregation of its components. Human rights are also intertwined and interconnected. That is, the fulfillment of one right often depends on the fulfillment of others. Violating one form of human rights can be detrimental to the accessibility of other rights. For example, the right to health may depend on development, education, or access to health-related information.

Finally, as per the principle of equality and non-discrimination, all individuals are equal in dignity and rights. Discrimination based on race, gender, age, religion, or other **analogous grounds** is unacceptable. Human rights cut across all international laws and treaties, with an emphasis on equality.<sup>10</sup>

Globally, these principles portray the inherent multidimensional nature of human rights and guide the fulfillment, protection, and promotion of those rights.

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Despite the acknowledged importance of these fundamental human rights principles, there remains a lack of consensus on effectively implementing them in policies or within the legal framework of States and multilateral fora such as the UN.<sup>11</sup> Under international human rights law, certain rights have been designated as inviolable and unrestricted, regardless of emergency circumstances. These include the right to life; protection against torture; freedom from slavery or forced labour; immunity from being jailed because of debt; safeguarding against laws that penalize actions retroactively; dignity of the human person; acknowledgment as a person under the law; and liberty of thought, conscience, and religious belief. However, there are legal and practical constraints on exercising rights in a manner that avoids infringing upon the rights of others or undermining human rights provisions, as is explored below in Case Study 1.1 in the context of tensions between individual and collective rights.

## Modern Liberal Human Rights

Human rights have become a central feature of global politics. Accordingly, they do not stem from a single philosophical or religious source; instead, they are grounded in many foundations and draw from a rich tapestry of moral, ethical, and political thought, spanning from ancient traditions to contemporary legal frameworks. The normative foundations of universal human rights are built on various philosophical traditions, including **natural law**, **Enlightenment ideals**, **positivist legal theory**, and the concept of **human dignity**. These diverse philosophical strands converge to form the basis for the modern international human rights regime. A key philosophical foundation for universal human rights is the natural law tradition, which asserts that certain rights are inherent in human nature and can be discerned through reason. This tradition dates to ancient Greco-Roman philosophy, notably from philosophers such as Aristotle and the Stoics, who believed that moral principles could be understood through reason and applied to all humans.<sup>12</sup> The natural law tradition provides a normative foundation for the idea that human rights are inherent and inalienable because they are derived from human nature itself and not contingent upon any particular legal system or government. This philosophical foundation was critical in shaping the views of Enlightenment thinkers on rights and played a pivotal role in the formulation of the modern human rights framework.

Seventeenth- and 18th-century Enlightenment ideas significantly influenced the development of human rights philosophy. Thinkers like John Locke, Jean-Jacques Rousseau, and Immanuel Kant expanded upon natural law ideas, arguing that individual rights stem from rationality and the social contract.<sup>13</sup> The Enlightenment's focus on reason, individual autonomy, and the social contract provided the intellectual foundation for modern human rights declarations, such as the American *Declaration of Independence* (1776) and the French *Declaration of the Rights of Man and of the Citizen* (1789).<sup>14</sup>

Human dignity emphasizes the inherent worth of each individual, which must be respected and protected.<sup>15</sup> It provides a moral foundation for human rights

that transcends cultural and national differences and suggests that there is a universal ethical standard based on respect for the inherent worth of all individuals. Emphasis on human dignity became central to postwar human rights discourse and is explicitly mentioned in key international documents such as the UDHR. This diversity of normative and philosophical underpinnings gives human rights a broader practical impact than any single philosophy or religion could offer. Human rights play a pivotal role in nearly all major avenues leading to social justice and upholding human dignity.<sup>16</sup> On a global scale, the language of human rights has become recognized as a response to injustice.<sup>17</sup>

During the early 20th century, widespread violence and irreversible harm underscored the urgent need for human rights protection, prompting the international community to initiate efforts toward establishing a binding system for safeguarding human rights. For the first time in history, a universal code of human rights was established. Chaired by Eleanor Roosevelt, widow of U.S. President Franklin D. Roosevelt, the UN Commission on Human Rights tasked the Drafting Committee with negotiating and preparing the UDHR in 1946. Composed of members from a wide variety of cultural, political, and legal backgrounds, the Drafting Committee's membership reflected the global aspirations of the document.<sup>18</sup> Prominent committee members included René Cassin of France, Charles Malik of Lebanon, Peng-chun Chang of China, and Hernán Santa Cruz of Chile. These individuals brought a wide array of philosophical and cultural viewpoints to the table. Cassin, who is often credited with drafting much of the text, was a French jurist and Nobel Peace Prize Laureate who had been deeply influenced by the devastation of the Second World War and sought to incorporate strong protections for human dignity and justice.<sup>19</sup> Malik, a Lebanese diplomat and philosopher, brought a Christian personalist perspective, emphasizing the spiritual and moral dimensions of human rights.<sup>20</sup> Chang, a Chinese philosopher and playwright, was instrumental in ensuring that the Declaration reflected not only Western but also Eastern ethical traditions, incorporating Confucian values into the discussions. Santa Cruz, a Chilean diplomat, advocated for the inclusion of social and economic rights, emphasizing the importance of collective welfare in addition to individual rights.<sup>21</sup> Still, the international human rights framework, as codified in documents such as the UDHR, has been criticized for predominately reflecting the world view and interests of Western powers and sometimes being used to impose Western values on non-Western societies. Therefore, there have been calls for definitions and interpretations of human rights anchored in universalist notions of human dignity.<sup>22</sup>

Adopted by many nations, the UDHR contains the main elements of modern liberal human rights through its

emphasis on freedom and liberty, dignity and equality, the importance of the rule of law, freedom from slavery and torture, and the presumption of innocence; the ownership of private property, freedom of religion and expression, and the right to take part in the government of one's country (liberty rights);

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and, more controversially, rights to adequate standards of living, education, and cultural participation (welfare rights).<sup>23</sup>

Although the UDHR sets the foundation for modern liberal human rights, it is important to note that while 48 **UN Member States** voted in favour of the UDHR and none against it, there were eight abstentions: the Belorussian Soviet Socialist Republic, Czechoslovakia, Poland, Saudi Arabia, South Africa, the Soviet Union, the Ukrainian SSR, and Yugoslavia. The UN now has 193 Member States, many of which were created following independence from **colonizers** and did not have the opportunity to vote for the UDHR directly. Even so, the nine core international human rights treaties are legally binding on ratifying States and contain language building on principles found in the UDHR. This is particularly significant because each of these instruments is paired with a **UN treaty body**, as shown in Table 1.1 and discussed further in Chapter 8, International Human Rights. A UN treaty body is assigned to each core international human rights treaty to monitor and report on State implementation of human rights.

Human rights discourse has become a common theme in both bilateral and multilateral diplomatic relations. Furthermore, the norms and values associated with human rights are progressively permeating most modern societies. Human rights standards are dynamic and evolving, incorporating new concepts adopted by the international community and integrated into States' human rights obligations. Similarly, the demands of human rights are not static; they are constantly escalating and evolving. The changes inherent in human rights are deployed in various forms on an international scale. These changes are primarily based on the ever-evolving dynamic of State and non-State actors in contemporary global society. Because of the evolving nature of human rights, human rights provisions and implementation must align with changes in a specific environment. Refusal to conform to such unavoidable changes could lead to omissions, neglect, and denial of certain human rights. For example, the recognition of human rights principles has featured global awareness on racial injustice and gender-based violence issues by movements such as Black Lives Matter and #MeToo. These, along with further examples, are explored in greater detail in Chapter 11, Non-State Actors and Human Rights.

Establishing a culture of human rights in a specific society is contingent upon integrating human rights into its national law, whether through legislation or, particularly in the realm of common law, through the judicial enforcement of internationally acknowledged human rights standards in national courts. Codifying human rights as **Constitutionally entrenched** elevates the legal status of human rights by preventing easy modification. For example, the **Canadian Charter of Rights and Freedoms**,<sup>24</sup> enacted in 1982, requires agreement from seven of ten provinces, representing at least 50 percent of the voting population, to amend the Constitution<sup>25</sup> via referendum.<sup>26</sup> Entrenched rights are incorporated into national and international legal systems, which specify mechanisms and procedures for holding the duty-bearers accountable and providing redress for alleged victims of human rights violations.<sup>27</sup>

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**TABLE 1.1 Nine Core International Human Rights Treaties and UN Treaty Bodies**

INTERNATIONAL HUMAN RIGHTS TREATY	UN TREATY BODY
<i>International Covenant on Civil and Political Rights</i>	Human Rights Committee
<i>International Covenant on Economic, Social and Cultural Rights</i>	Committee on Economic, Social, and Cultural Rights
<i>Convention on the Rights of the Child*</i>	Committee on the Rights of the Child
<i>Convention on the Elimination of All Forms of Discrimination against Women</i>	Committee on the Elimination of Discrimination against Women
<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>	Committee on the Elimination of Racial Discrimination
<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**</i>	Committee against Torture
<i>Convention on the Rights of Persons with Disabilities</i>	Committee on the Rights of Persons with Disabilities
<i>International Convention for the Protection of All Persons from Enforced Disappearance§</i>	Committee against Enforced Disappearances
<i>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</i>	Committee on the Rights of Migrant Workers

\* United Nations General Assembly, *Convention on the Rights of the Child*, 20 November 1989.

\*\* United Nations General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984.

§ United Nations General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006 [CPED].

The modern State has surfaced as both the primary impediment to the realization of human rights and the crucial entity for their effective execution and enforcement. Despite the typically contentious relationship between human rights proponents and States, it is essential to underscore both aspects.<sup>28</sup> Governments and societies as a whole play crucial roles in fulfilling human rights; a government's legitimacy in the international sphere often depends on how effectively it enforces and safeguards the rights of citizens and populations within its jurisdictions.

## Individual Rights Versus Collective Rights

Within the realm of human rights, a distinction is often made between individual rights and collective rights. Understanding these two dimensions is crucial for comprehensively protecting the rights of both individuals and communities. Individual rights are the liberties and entitlements that belong to each person by virtue of their being human. These rights are designed to uphold human dignity, protect individuals from abuses, and ensure their ability to participate fully in society. Core individual rights include the right to life, liberty, personal security, freedom of expression, a fair trial, and privacy. These rights are enshrined in various international documents, such as the *International Bill of Human Rights* and other core international human rights treaties.

Collective rights, on the other hand, pertain to groups of people, particularly those who share common characteristics such as ethnicity, culture, language, or geographical location. These rights recognize the importance of preserving the identity and integrity of communities and include rights to self-determination, cultural heritage, and natural resources. Collective rights are particularly emphasized in documents like the *United Nations Declaration on the Rights of Indigenous Peoples*,<sup>29</sup> which will be discussed more in the subsection on individual and collective rights below, as well as in Chapter 5, Indigenous Peoples and Human Rights, and the ICESCR, detailed further in Chapter 9, Economic and Social Rights. The *International Bill of Human Rights* lists five collective rights, which include two rights of peoples (**self-determination** and permanent sovereignty over natural resources) and three rights of ethnic, religious, and linguistic minorities.<sup>30</sup>

The distinction between individual and collective rights is reflected in the conventional categories of **generational rights**. First- and second-generation rights, which are liberty-oriented and security-oriented rights, are considered individual rights. The third generation of solidarity rights, such as the **right to development**, are primarily collective rights.<sup>31</sup> A common criticism of international human rights law and practice is that rights tend to be excessively individualistic, overshadowing the collective dimensions of human rights. However, international human rights law recognizes both dimensions of rights. For example, the UN *Declaration on the Right to Development*<sup>32</sup> encompasses the rights of individuals to participate in; contribute to; and enjoy economic, social, and cultural development. At the same time, it recognizes that achieving development often requires collective efforts and benefits whole communities and societies.<sup>33</sup>

Although individual and collective rights are distinct, they are also deeply interconnected. Fulfillment of collective rights often directly impacts the realization of individual rights and vice versa. Mutuality between the individual and collective dimensions of human rights becomes more evident when illustrated with specific human rights guarantees. For example, although the right to health is an individual right, its full realization is deeply connected to a nation's development policies, which are collective in nature.<sup>34</sup> Similarly, the right to education is not just about

individual access to schooling but also about the availability and quality of educational infrastructure, which is a product of collective investment and policy.<sup>35</sup> Collective rights to natural resources and land are crucial for the economic stability of communities. In turn, this ensures that individuals have access to food, shelter, and livelihoods, thereby fulfilling their individual rights to an adequate standard of living.

Rights of Indigenous peoples provide another example of the links between individual and collective rights. Individual members' rights to housing and sustenance are supported by the right of Indigenous communities to their ancestral lands as a collective right. Another example of the nexus between individual and collective rights is the collective right to self-determination, which empowers groups to govern themselves and make decisions that affect their well-being. This enhances the individual's right to participate in public affairs and access fair and representative political processes. The significance of collective rights lies in their function of safeguarding individuals from potential compromises to their integrity—a protection indirectly offered by preserving the integrity of the communities or groups with which these individuals are affiliated.<sup>36</sup> Case Study 1.1 below illustrates the relationship between individual and collective rights in the context of the *Charlie Hebdo* attack in France.

### CASE STUDY 1.1

#### Individual and Collective Rights in the Charlie Hebdo Controversy

The Charlie Hebdo case exemplifies the tension between individual rights (freedom of expression) and collective rights (protection from hate speech). In early 2015, the satirical French magazine *Charlie Hebdo*, known for its provocative cartoons and irreverent social commentary, published a series of cartoons depicting the Prophet Muhammad, which some in the Muslim community in France considered offensive and blasphemous. In January 2015, two Islamist extremists attacked the *Charlie Hebdo* offices in Paris, killing 12 people. The attackers cited the magazine's cartoons as their motive.<sup>37</sup>

Although there was near universal condemnation of the attacks, opinions were divided on balancing the individual right to free speech and the collective right to protection from hate speech. Supporters of *Charlie Hebdo* emphasized the importance of the individual right to free speech, defending the right to publish controversial content. The popular rallying cry "Je suis Charlie" (I am Charlie) became a global symbol of solidarity with the victims and support for free expression.<sup>38</sup> On the other hand, critics argued that some of the cartoons crossed the line into hate speech, perpetuating stereotypes and fuelling anti-Muslim sentiments, thereby infringing on the collective rights of the Muslim community.<sup>39</sup> Both freedom of speech and protection against hate speech are affirmed in applicable international, regional, and national human rights laws.

The *Charlie Hebdo* case brings into focus articles 19 and 20 of the ICCPR. Article 19 guarantees the right to freedom of expression, while article 20 prohibits

“any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.” The challenge lies in balancing these rights: how does one safeguard freedom of speech while protecting against speech that could incite hatred and violence? Additionally, this case could be examined under article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination*,<sup>40</sup> which requires states to criminalize the dissemination of ideas based on racial superiority or hatred. Although this case could have been resolved in the form of an **individual complaint** to a treaty body, it was instead litigated before the European Court of Human Rights (ECtHR), which adjudicates cases involving Member States of the Council of Europe.

While the UDHR serves as a great starting point for analysis, it is important to then look to the corresponding source of that right under the core international human rights treaties outlined in Table 1.1, above. When a State ratifies an international human rights treaty, it agrees to be bound by that treaty, rather than simply adopting the UDHR as a standard-setting document. The first step is determining whether this is a civil and political or economic, social, and cultural right and then moving to the corresponding covenant. Since freedom of expression and the prevention of hate speech are civil and political rights, articles 19 and 20 of the ICCPR apply. In addition, given that the hate speech could be considered to be racialized in nature, article 4 of the ICERD could also apply. Although this case could have been resolved as an individual complaint to a treaty body (see Chapter 10, Case Study 10.2 as an example), it was instead litigated before the ECtHR.

Since France is part of a regional court system adjudicated by the ECtHR, it was subject to similar provisions under the *European Convention on Human Rights*.<sup>41</sup> In a series of rulings, the ECtHR has clarified that freedom of expression is not absolute in its interpretation of article 10 of the ECHR, which guarantees the freedom of speech and outlines the conditions under which restrictions may be placed on speech. While the Court acknowledges that free speech is essential in a democratic society, it also recognizes that the right to freedom of expression may conflict with the exercise of other fundamental rights.<sup>42</sup> Specifically, in cases where speech incites violence or hatred against specific groups, the Court has found that such speech may justifiably be limited.<sup>43</sup>

In the aftermath of the crisis, France maintained its commitment to free speech and strengthened its hate speech laws, reflecting an attempt to balance the individual right to freedom of speech and the collective rights of communities to protection from hate speech. French law already had robust provisions against incitement to hatred, which prohibits hate speech against individuals based on their race, religion, or national origin.<sup>44</sup> However, the events surrounding *Charlie Hebdo* prompted additional measures, including strengthened legal frameworks to combat hate speech, particularly online. Notable among these was the passage of the 2017 *Law for Equality and Citizenship*,<sup>45</sup> which strengthened penalties for hate speech by introducing mechanisms to combat online hate speech more effectively.

### Discussion Questions

1. Why is freedom of speech considered to be an individual right whereas protection from hate speech is a collective right?
2. Where should the line be drawn between free speech and hate speech that encroaches on the rights of others to be free from discrimination?

## Rights and Duties

Human rights in international law are often expressed as entitlements that individuals hold against the State or other actors. If human rights are rights that pertain to individuals and groups by virtue of their humanity, it follows that every human being is a rights holder. Examples of civil and political rights held by individuals include freedom of conscience and religion; freedom of thought, belief, opinion, and expression; freedom of speech and of the press; freedom of peaceful assembly; and freedom of association.

Compared with rights, **duties** are usually less explicitly stated but implicit in realizing and protecting these rights. They can be categorized into duties to **respect**, **protect**, and **fulfill** human rights.<sup>46</sup> The duty to *respect* requires States to refrain from interfering with the enjoyment of human rights, including respecting the rights of their own citizens and those within their jurisdiction. The duty to *protect* mandates States to prevent violations of those rights by third parties, such as private actors or non-State entities. The duty to *fulfill* means that States must take positive action to facilitate the enjoyment of basic human rights by creating an enabling environment through legislation, policies, and institutions that promote and protect human rights.<sup>47</sup>

Within the context of the domestic law of States, a fundamental difference between rights and duties is that rights are based on the privilege granted to an individual by States. For every right, there is a corresponding duty bearer. Under international human rights law, States are the primary duty bearers of human rights. The fundamental human rights States are obligated to protect are typically understood as inalienable, meaning they are not contingent on corresponding duties. In other words, the fundamental rights to which a person is entitled cannot be withdrawn by the State simply because an individual has not fulfilled a corresponding duty imposed by the State or other entity. Generally, however, possessing certain rights may imply an obligation to fulfill duties. In some cases, the qualification to hold rights is intrinsically linked with the responsibility to perform duties.<sup>48</sup>

To further illustrate the concept of duties, the right to life is safeguarded under article 6 of the ICCPR as a fundamental right that all governments must protect. Rather than simply imposing a passive or **negative duty** to not deprive someone of their life outside the scope of law, the right to life imposes a **positive duty** for States to take measures to protect their citizens from unlawful deaths, including from acts by third parties, such as homicide or manslaughter. Moreover, this duty

extends to taking active or positive preventive operational measures to protect an individual whose life is at risk from criminal acts.

As another example of the relationship between individual rights and State duties, under article 19, the ICCPR guarantees the right to freedom of expression for individuals. States have a corresponding negative duty to ensure that their own organs, such as the government, public officials, or legal frameworks, do not unjustifiably infringe upon this freedom by simply refraining from such actions. The State likewise has a positive duty to introduce and enforce legislation that ensures journalistic freedoms or artistic expression are not unduly restricted or censored without a legitimate and lawful reason. Individuals have essential duties to society, many of which correspond to the rights of society. Examples of duties include paying taxes, obeying the laws or constitution, taking responsibility for oneself and family, serving on a jury, voting in elections, and protecting one's heritage and environment for the benefit of society.<sup>49</sup>

In addition to States as duty bearers, individuals and groups within societies also have duties to respect and protect human rights, as affirmed in international and regional human rights documents. Under article 29 of the UDHR, everyone has a duty to the community that is crucial to their free and full development. Regional human rights instruments also outline the duty of individuals and communities to protect and promote human rights. As set out in the *African Charter on Human and Peoples' Rights*, the individual has the duty to "respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance."<sup>50</sup> Article 29 also outlines the duty of the individual to "serve his national community by placing his physical and intellectual abilities at its service." The *American Convention on Human Rights*, adopted by the Inter-American Commission on Human Rights in 1969, states that "[e]very person has responsibilities to his family, his community, and mankind."<sup>51</sup> Similarly, the *ASEAN Human Rights Declaration*<sup>52</sup> states that the enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community, and the society in which they live.

The interaction between rights and duties in international human rights law illustrates a crucial balance necessary for maintaining social harmony and justice. As demonstrated by the provisions discussed above, this balance is not merely between individual rights and State duties but also extends to duties among individuals. For example, one individual's exercise of their freedom of expression must be balanced against another's right to reputation or privacy, leading to duties of restraint and respect. This individual duty supplements State duties connected to freedom of expression as outlined above. Therefore, the obligation to respect and protect human rights is not limited to the government.

Tension between human rights and human duties arises when the exercise of one person's rights conflicts with the duties or rights of others. For example, the right

to free speech may conflict with the duty to respect the dignity and reputation of others. Individuals have a right to free speech but also an obligation not to exercise that right in a way that harms others. The framework of international human rights law is built on a complex interplay of rights and duties. It not only allocates rights to individuals but also delineates the duties of States and individuals necessary for the comprehensive protection and realization of these rights. By understanding and implementing this dual framework, the international community can ensure a just global order where the dignity and worth of every human person are upheld.

## State Responsibility

The State is considered the central institution for implementing internationally recognized human rights effectively. State responsibility provisions hold a State accountable for breaches of international obligations committed by or attributable to the State.<sup>53</sup> As discussed in the previous section on rights and duties, every State has a threefold responsibility to respect, protect, and fulfill human rights, grounded in responsibilities set out in international human rights law.<sup>54</sup> By signing international treaties such as the ICCPR and the ICESCR, States assume obligations and duties with practical implications for the well-being of individuals.

Globally, human rights are accepted as the basis of legal systems of individual nations and of international peace.<sup>55</sup> Beyond preventing State-based wrongs, human rights principles require the State to provide certain civil, political, economic, social, and cultural rights. The preamble of the *United Nations Charter*<sup>56</sup> lists as two of the four principal objectives of the UN “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom.”<sup>57</sup> While these standards of human rights have been extensively globalized, their enforcement largely remains a national matter.

Human rights are declared to be universal, yet State responsibility for their violation is constrained by territorial boundaries and national allegiances. Every State is responsible for preventing human rights violations within its borders for citizens and non-citizens alike. State responsibility can also arise from violations of economic, social, and cultural rights by private or other non-State actors. A duty to protect human rights falls on both **host States** and **home States**. A host State is the place where the non-State actor operates, and the home State is the State where the private actor is based.<sup>58</sup> The host State is responsible for protecting human rights, but home States also have the obligation to ensure that their nationals, and other actors over whom they have control, respect human rights abroad. The recognition of home State responsibility is particularly important given that corporations that violate human rights can be sued in their home States.<sup>59</sup>

Every State can make substantial progress at realizing human rights with its existing resources, but every State also always has more to do to realize those rights

and the underlying vision of a life of dignity.<sup>60</sup> Whether a State commits to **progressive realization** of its human rights record determines the thin line between the State as a predator or protector of human rights. The exercise of human rights is centred on acknowledging the inherent dignity of human beings. Though this is not detached from resources, it is imperative that every State, irrespective of its economic condition, respects and upholds all globally recognized human rights. States with limited resources can make significant strides in advancing human rights by focusing on strategic priorities and using available support. For example, engaging international organizations, **non-governmental organizations**, and partnerships with other States can bring in the technical expertise, resources, and guidance to support human rights efforts. Strengthening domestic legal frameworks to comply with international human rights standards is also crucial, as is investing in human rights education and awareness within communities to foster a culture of respect and empowerment. These actions are vital for creating sustainable changes as they encourage individuals to advocate for their rights and hold authorities accountable. Culturally sensitive, community-based approaches can further ensure that interventions are appropriate and effective in their local contexts. Additionally, regular monitoring, reporting, and evaluating of human rights conditions help identify areas of progress and areas requiring improvement, demonstrating the State's commitment to human rights advancement.

The State must also protect individuals against abuses by other individuals and groups. For example, the right to personal security is about safety against physical assaults by private actors, not just attacks by agents of the State.<sup>61</sup> In the Canadian context, the Charter, enacted in 1982, affirms the State's obligations to safeguard rights and freedoms and constitutes an integral component of Canada's Constitution. The Charter highlights seven essential categories of rights and freedoms—namely, fundamental freedoms, democratic rights, mobility rights, legal rights, equality rights, official language rights, and minority educational rights. Due process means that the government must respect all the legal rights a person is entitled to under the law. For a more in-depth discussion of the Charter, see Chapter 7, *Leading Cases Under the Canadian Charter of Rights and Freedoms*.

Every State is responsible for the actions (official and unofficial) of its executive, legislative, judicial, and other State organs and officials, including police, military, immigration, and similar officials. State responsibility can be linked to the duties and functions of all apparatuses in ensuring good governance.<sup>62</sup> In contrast, “the acts of private persons and other non-state actors are not generally attributable to the state under the principles of state responsibility”<sup>63</sup> despite the UN High Commissioner for Human Rights stressing that States “have responsibilities to protect people from violations of their human rights by state and non-state actors.”<sup>64</sup>

For centuries, the notion of State sovereignty was used as a shield by oppressive governments. Occurrences within the confines of a State's territory, regardless of the brutality or atrocity of its actions and procedures, were regarded as

strictly domestic matters, leaving the State unaccountable to any external authority.<sup>65</sup> However, current norms of State sovereignty prohibit States from acting coercively abroad against virtually all violations of human rights. Although there is recognition of State sovereignty, attention is placed on the notion and enforcement of State sovereignty as these often come with human rights violations.<sup>66</sup> The concept of sovereignty still serves to protect against some forms of State responsibility, but it is far more likely that countries will invoke the sovereignty of another State in order to remove themselves from any and all responsibility in assisting an outlaw State.

In practical terms, States have undertaken commitments to uphold and advance human rights as stipulated in the *United Nations Charter* and numerous human rights treaties, irrespective of their underlying motivations. Consequently, a system has evolved in which human rights have gradually been integrated into the accepted norms of State conduct, operating with varying degrees of effectiveness across different areas. This aligns with the commitment of UN Member States to achieve, in cooperation with the UN, the promotion of universal respect for and observance of human rights and fundamental freedoms.<sup>67</sup> This commitment is evident in the *Vienna Declaration and Programme of Action*, which states that while the significance of national and regional particularities and various historical, cultural, and religious backgrounds must be considered, it is the duty of States, regardless of their political, economic, and cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>68</sup>

The link between global human rights agreements and the fundamental principles of State responsibility is seen in the fact that UN treaty bodies have used the legal principles of State responsibility in addressing significant elements of the human rights issues presented to them. Article 12 of the International Law Commission's *Draft Articles on Responsibility of States for Internationally Wrongful Acts*<sup>69</sup> provides that "there is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character."<sup>70</sup> Accordingly, bodies that monitor human rights treaties examine the obligations of States under the relevant treaties as shown in Table 1.1, above.

The transnational enforcement of human rights has significantly expanded, classifying certain violations as crimes on both domestic and international levels. For example, the International Criminal Court prosecutes individuals for genocide, war crimes, and crimes against humanity, regardless of where the crimes were committed. Similarly, on February 28, 2020, a five-justice majority of the Supreme Court of Canada ruled that Canadian corporations can be sued in Canada for breaches of customary international law committed abroad.<sup>71</sup> This shift has transformed the landscape of State sovereignty and responsibility. These changes have fostered a more dynamic and responsive framework for State responsibility, with the protection of human rights increasingly regarded as a collective concern that transcends national borders and sectors.

## Non-Discrimination

Beyond state responsibility, there should be the active enforcement of protections that ensure fair and equal access for all individuals. This duty includes the elimination of discriminatory practices. A core feature of this commitment is non-discrimination, a principle embedded in key human rights instruments that mandate equal treatment and protection under the law. Non-discrimination under international human rights law forbids any form of public discrimination that unjustly deprives certain groups of rightfully exercising their other rights.<sup>72</sup> Article 2 of the UDHR explicitly states that everyone is entitled to all rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status. The ICCPR and the ICESCR contain similar provisions that guarantee that all persons are equal before the law and are entitled, without discrimination, to equal protection of the law.<sup>73</sup> Both Covenants also obligate each State party to guarantee that the rights enunciated will be exercised without discrimination of any kind.<sup>74</sup>

The principle of non-discrimination operates across various dimensions of international law, addressing multiple forms of discrimination. Non-discriminatory laws are often aimed at protecting the rights of minorities and vulnerable groups within society.<sup>75</sup> Among the forms of **systemic discrimination** prominently highlighted in international human rights law are racial discrimination, gender discrimination, and disability discrimination. As the main international human rights instrument that addresses racial discrimination, the ICERD is a pioneering treaty specifically focused on eradicating racial discrimination and promoting understanding among races. The Convention defines racial discrimination and commits State parties to eliminate racial discrimination in all its forms (article 1).

Gender equality and women's rights are protected under the *Convention on the Elimination of All Forms of Discrimination against Women*,<sup>76</sup> which defines discrimination against women as any distinction, exclusion, or restriction made based on sex. State parties commit to pursuing a policy of eliminating discrimination against women and upholding the principle of equality in their national constitutions or other appropriate legislation. Under the Convention, States must refrain from engaging in any act or practice of discrimination against women and ensure that public authorities and institutions meet this obligation.<sup>77</sup> Several countries, including Canada, have enacted laws to combat domestic violence and provide protection and support for women, ensuring their safety and well-being, which is a key aspect of CEDAW's focus on eliminating violence against women.<sup>78</sup>

The *Convention on the Rights of Persons with Disabilities*<sup>79</sup> promotes equality and non-discrimination, urging States to prohibit all discrimination on the basis of disability. It affirms the universality, indivisibility, interdependence, and interrelatedness of all human rights and fundamental freedoms, as well as the need for persons with disabilities to be guaranteed their full enjoyment without

discrimination. These provisions for disability rights have also been enacted in national legislation. For example, the *Accessible Canada Act*<sup>80</sup> of 2019 aims to protect the rights of persons with disabilities by identifying, removing, and preventing barriers facing people with disabilities. Although the accountability process might be complex, certain countries have strengthened their anti-discrimination laws to protect the rights of persons with disabilities. There has been a noticeable trend in national legislation aligning more closely with the principles of the CRPD through inclusive education and accessibility laws (public spaces and education).<sup>81</sup>

Despite robust international and national legal frameworks, the implementation of non-discrimination laws remains uneven globally. Regrettably, human rights laws oftentimes lack universal implementation as these laws sometimes tackle certain socially acknowledged severe or widespread systematic behaviours rather than every violation of human dignity or even every public indignity.<sup>82</sup> While significant progress has been made in articulating and codifying these rights, the full realization of non-discrimination remains a work in progress. Continued advocacy, effective legal frameworks, and international cooperation are essential to overcome existing challenges and ensure that all individuals enjoy their rights equally and without discrimination.

Non-discrimination is a cornerstone of international human rights law, ensuring that all individuals are treated equally and fairly under the law without prejudice based on any status or characteristic. Protection from discrimination can be found in both section 15(1) of the Charter, which guarantees equality rights to every individual, and the core international human rights instruments. The Charter states that every person is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination. This includes discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. The core treaties include articles 2 and 26 of the ICCPR, which emphasize non-discrimination and equality before the law, and article 2(2) of the ICESCR, which prohibits discrimination in the enjoyment of economic, social, and cultural rights.<sup>83</sup> The ICERD focuses on eliminating racial discrimination in all its forms, while the CEDAW aims to eliminate discrimination against women in all areas. Likewise, the CRPD promotes equality and non-discrimination for persons with disabilities.<sup>84</sup>

## Confronting Privilege and Disadvantage

The inequities of privilege and disadvantage permeate societies globally, creating systemic inequalities that hinder social justice and equity. Human rights laws and principles offer a framework to confront these disparities by providing a universal standard for dignity, equality, and justice. Privilege refers to the unearned advantages that individuals or groups enjoy because of their perceived identity or status within society. These advantages often arise from factors such as race, gender, socio-economic status, nationality, religion, and sexual orientation. Privilege can

affect access to resources, opportunities, and rights, leaving marginalized groups at a disadvantage.<sup>85</sup> Privilege often goes unnoticed by those who have it, in stark contrast to the acute awareness experienced by those who suffer discrimination.<sup>86</sup> Conversely, disadvantage denotes the systemic barriers and obstacles faced by individuals or groups that prevent them from accessing the same opportunities and rights. These disparities are often deeply rooted in historical and socio-political contexts.

As outlined earlier, the principle of equal worth and dignity for all human beings underscores equality and non-discrimination and is foundational to international human rights law.<sup>87</sup> Human rights laws sometimes support measures like **affirmative action** to correct historical injustices and provide equitable opportunities for disadvantaged groups. For example, the *Constitution of the Republic of South Africa*<sup>88</sup> incorporates provisions for affirmative action to address the legacy of apartheid. Similarly, the United States and Canada employ affirmative action in education and employment to promote diversity and inclusion.<sup>89</sup> Affirmative action measures are essential to dismantling institutional barriers that have historically marginalized certain groups.<sup>90</sup> Human rights laws also provide mechanisms for legal redress against discrimination and inequality. Individuals and groups can bring cases to national and international bodies, such as the Canadian Human Rights Commission, the ECtHR, or the UN Human Rights Committee, to seek justice and accountability.

Specific international human rights instruments can be used to address the inequities of privilege and disadvantage. For example, the ICESCR emphasizes the importance of economic, social, and cultural rights in addressing disadvantage. Rights to education, health, work, and an adequate standard of living are essential for lifting individuals and communities out of poverty and marginalization. Implementing such human rights provisions can bridge social and economic inequality gaps. As the economist Amartya Sen has argued, economic and social rights are instrumental in providing individuals with the capabilities they need to lead a life of dignity.<sup>91</sup> Human rights principles advocate for free and compulsory primary education, as well as accessible secondary and higher education. Programs aimed at increasing school attendance and reducing dropout rates among marginalized communities are critical. Access to health care is a fundamental human right that can mitigate the effects of disadvantage. Policies ensuring universal health care coverage, maternal and child health services, and disease prevention programs are vital for improving health outcomes among disadvantaged populations.

Despite the framework provided by human rights laws and principles, several challenges hinder their effective implementation, including a lack of political will on the part of governments, socio-cultural barriers, and economic constraints. Governments may lack the political will to enforce human rights laws, especially when such measures threaten existing power structures or require significant economic investment. Deep-seated cultural and social norms can also impede the realization of human rights. Practices such as gender discrimination, caste

systems, and xenophobia persist despite legal prohibitions. In addition, countries in the **Global South** often face economic constraints that limit their ability to fulfill economic, social, and cultural rights. Human rights laws and principles offer a powerful framework for confronting privilege and disadvantage. By promoting equality, non-discrimination, and socio-economic rights, these laws strive to create a more just and equitable society. However, the effective implementation of these principles requires sustained political will, cultural change, and economic support. The successes of various countries in addressing historical and systemic inequalities demonstrate the potential of human rights laws to transform societies and uplift disadvantaged communities.

## Intersectionality

**Intersectionality** is a conceptual framework that seeks to understand how various social identities, such as race, gender, class, and sexuality, intersect to create unique modes of discrimination and privilege. In the context of human rights, intersectionality provides a critical lens for examining how these overlapping identities impact individuals' experiences of oppression and marginalization. Intersecting identities often produce intersecting systems of oppression based on social construct. In the case of race that categorizes people based on physical characteristics like skin colour, racism as a system of oppression would be visible. The same applies to gender as linked to sexism, class as linked to classism, and sexuality to heterosexism. The intersectionality of identities significantly increases an individual's vulnerability to human rights abuses and the barriers they may encounter. Individuals with multiple marginalized identities often endure compounded discrimination. For example, a transgender woman of colour may simultaneously face transphobia, racism, and sexism, heightening her susceptibility to violence and discrimination. Accordingly, oppression is not a singular experience but a complex, multifaceted one that necessitates comprehensive and nuanced strategies to achieve genuine equality and justice.

Legal scholar Kimberlé Crenshaw coined the term “intersectionality” to direct attention to the interaction of multiple social identities in shaping the reality of oppression and privilege. She argues that people must embrace an intersectional approach to analyze social problems and develop more effective social movement responses.<sup>92</sup> To ensure in-depth analysis, Crenshaw identifies three categories of intersectionality—structural, political, and representational intersectionality.<sup>93</sup> Each category of intersectionality helps to explain how different dimensions of intersecting identities impact individuals' experiences of oppression and marginalization. Structural intersectionality examines how various forms of discrimination and oppression intersect within social structures and institutions, affecting access to resources and opportunities and creating compounded disadvantages for those with multiple marginalized identities. Political intersectionality looks at how social and political movements can marginalize or exclude individuals with intersecting identities by focusing on a single axis of identity, emphasizing the need for inclusive and

intersectional approaches in advocacy. Representational intersectionality addresses how cultural representations and media portrayals can perpetuate stereotypes and biases about intersecting identities, highlighting the importance of diverse and accurate representations to challenge stereotypes and promote a more inclusive society.<sup>94</sup> Intersectionality can serve as a broader tool for mediating the tension between assertions of diverse identities and the ongoing necessity of group politics.<sup>95</sup>

While foundational human rights documents such as the UDHR and the international covenants (ICCPR and ICESCR) establish broad principles of equality and non-discrimination, they do not explicitly address intersectionality. However, subsequent treaties and conventions have made strides in recognizing the complexity of intersecting identities. For example, the CEDAW acknowledges that women can experience multiple forms of discrimination based on various factors, including race, socio-economic status, and other conditions. Other international human rights instruments that address violations arising from intersecting identities include the ICERD, the ICRMW, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*,<sup>96</sup> and the CRPD. Regional human rights systems, such as the Inter-American, African, and European systems, have also incorporated intersectional approaches. The *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women* explicitly recognizes the intersectional nature of violence against women, emphasizing the need to consider factors such as ethnicity, race, and socio-economic status in addressing gender-based violence.<sup>97</sup>

In terms of human rights practice, the principle of intersectionality demands a holistic understanding of discrimination that accounts for how various forms of oppression intersect. This principle is crucial in developing inclusive and effective human rights policies and practices. Human rights policies and programs must be developed with an intersectional lens to ensure they address the needs of all marginalized groups. This involves engaging with diverse communities, recognizing their unique experiences, and tailoring interventions accordingly.

Effective intersectional human rights practice requires comprehensive data collection and analysis that captures the multiplicity of identities and experiences. The Office of the High Commissioner for Human Rights (OHCHR) emphasizes the importance of disaggregated data, stating that its collection “is vital for understanding the specific needs and challenges faced by different population groups and for designing targeted interventions.”<sup>98</sup> Intersectionality has been crucial in understanding and addressing human rights violations such as gender-based violence and systemic socio-economic inequalities. For example, Indigenous women, women of colour, and 2SLGBTQIA+ individuals often face unique forms of violence that intersect with other forms of discrimination. To be effective, programs aimed at combatting gender-based violence must consider these intersections. Similarly, economic and social policies must account for the intersecting identities that influence individuals’ economic opportunities and outcomes. Women of colour and women with disabilities, for example, often face compounded economic

disadvantages. Intersectional approaches to economic rights involve creating targeted employment, education, and social protection policies that address these compounded inequities. Below, Case Study 1.2 exemplifies how the intersectional experience of Black women in health care creates systemic disadvantages to accessing their right to “the highest attainable standard of mental and physical health” as per article 12 of the ICESCR.

**CASE STUDY 1.2****Intersectionality: Experiences of Black Women in Health Care**

*Older Black women may face unique challenges related to accessing health care for reasons closely tied to intersectionality.*

The experiences of women of colour are mostly the products of intersecting patterns of racism and sexism that shape structural, political, and representational aspects of violence and depict their subordination and marginalization in many areas. Considering intersectionality in the experience of an older Black woman details challenges compounded by racism, ageism, and sexism. In broad terms, women of colour have argued that in understanding their experiences, the variables of race, class, gender, and sexuality cannot be separated.<sup>99</sup> For example, an older Black woman may face unique challenges related to accessing health care for reasons closely tied to intersectionality. Her age places her at a higher risk for chronic diseases, which may require more medical attention. Her race and gender expose her to systemic biases within the health care system. She may also face barriers in accessing care because of mobility issues, a lack of technological literacy, or ageist attitudes among health care providers.

Studies have shown that Black women are often under-treated for pain and are less likely to receive preventive health care services, leading to unnecessary suffering and poorer health outcomes. As patients, women of colour are less likely to have their needs met than women who are racially privileged. Sometimes, their health concerns are not taken seriously. They often report feeling unheard or dismissed by health care providers, thereby reiterating their powerlessness, invisibility, exclusion, and disadvantage. In 2001, Health Canada released a report, *“Certain Circumstances”: Issues in Equity and Responsiveness in Access to Health Care in Canada*, that exposed how “health professionals [were] disregarding feelings of pain by black women when performing routine procedures during the birthing process ... [and] beliefs by health professionals that black skin is ‘tough.’”<sup>100</sup> Black women rank the highest in maternal mortality in the United States and the United Kingdom as they are four times as likely to die during pregnancy and childbirth as women who are not Black.<sup>101</sup> Black women are under-represented in medical research, and the lack of Black women in health care professions can lead to feelings of isolation and mistrust.

Intersectionality reveals how overlapping identities like race, gender, and class shape experiences of oppression, requiring nuanced strategies like toleration, intersectional approaches, equal protection, and multiculturalism for human rights advocacy. Adopting an intersectional perspective when assessing the needs and experiences of women of colour is, therefore, essential to ensuring the full protection of their rights.

### Discussion Questions

1. What effect does systemic discrimination have on access to the right to health for older Black women in Canada?
2. Why is using an intersectional lens necessary when addressing situations of discrimination involving a person with multiple social identities?
3. Identify a set of other intersectional identities and systems of oppression and explain how those identities may influence an individual's experiences in the workforce, health care system, or justice system.

Intersectionality offers a vital framework for understanding and addressing the complex nature of discrimination and privilege in human rights. The exploration of intersectionality reveals the complex layers that constitute identities. It is essential to rethink the nature of oppression and recognize how race, class, and gender form interconnected frameworks for analysis. The crucial next step is to overcome these divisions by shifting our perspective to view these categories as points of convergence, fostering bonds and alliances that are instrumental in driving societal transformation.<sup>102</sup> By incorporating intersectional principles into laws, policies, and practices, human rights advocates and practitioners can develop more inclusive and effective interventions that address the needs of marginalized groups.

## CHAPTER SUMMARY

- Human rights are universal, inalienable, indivisible, interdependent, and non-discriminatory. Despite the legal recognition of these rights, challenges persist in implementing these principles globally and ensuring all rights are upheld without infringing on others.
- Modern liberal human rights encompass a broad range of civil, political, economic, social, and cultural rights that are encapsulated in international human rights instruments such as the UDHR, ICCPR, and ICESCR. These documents emphasize freedoms and welfare rights, with human rights discourse becoming prevalent in diplomacy and influencing both State and non-State actors. Further protections are found under the core international human rights treaties, each with its own UN treaty body to monitor State implementation.
- Individual rights are inherent in individuals, while collective rights belong to groups. Both are essential for dignity and justice, but their interplay is complex. Critics argue that human rights focus too much on individuals and overlook the collective. Yet collective rights protect communities, indirectly upholding individual integrity. Balancing competing individual and collective rights claims remains a global challenge.
- Human rights are often expressed as entitlements while duties are implicit in realizing these rights. States are the primary duty bearers, responsible for respecting, protecting, and fulfilling human rights. This includes preventing violations by third parties and taking positive measures to promote rights. The interplay of rights and duties ensures social harmony and justice, with individuals and groups also holding responsibilities to respect and protect human rights.
- States must respect, protect, and fulfill human rights, balancing their role as enforcers and potential violators. Despite historical uses of State sovereignty as a shield against accountability, current norms emphasize international cooperation and collective responsibility for human rights.
- Non-discrimination is a fundamental principle of international human rights law, ensuring equal and fair treatment for all individuals without prejudice based on any status or characteristic. This principle is enshrined in core international human rights instruments, such as the UDHR, ICCPR, and ICESCR, which prohibit public discrimination and guarantee equal protection under the law.
- Privilege and disadvantage create systemic inequalities that hinder social justice worldwide, with human rights laws offering a framework to address these disparities. Privilege, often unnoticed by those who possess it, provides unearned advantages based on identity, while marginalized groups face barriers to opportunities and rights because of factors like race, gender, and socio-economic status.
- Recognizing the complexity of intersecting identities is crucial for developing inclusive human rights policies and practices. Intersectionality is vital for understanding and addressing issues like gender-based violence and systemic socio-economic inequalities. Challenges to implementing human rights principles highlight the need for ongoing efforts, political will, and cultural change to address systemic inequalities and fully realize human rights for marginalized and disadvantaged groups.

## DISCUSSION QUESTIONS

1. How are the principles of human rights applicable to all human beings?
2. Why are human rights important in modern societies?
3. What are the differences between individual rights and collective rights?
4. What is the relationship between rights and duties in international human rights principles? What actions must States take as part of meeting the international principle of State responsibility? Are these positive obligations, negative obligations, or both?
5. Discuss how non-discrimination ensures that individuals from all backgrounds are treated equally under the law and the significance of this principle in promoting fairness and justice worldwide.
6. In what ways do intersectionality and/or privilege reflect or manifest in your lived experiences?

## GLOSSARY

**affirmative action**

Proactive measures aimed at cultivating an environment that ensures equal access to opportunities for all individuals. This encompasses implementing policies designed to address and rectify historical injustices experienced by those who have been unfairly treated or marginalized.

**analogous grounds**

Grounds similar to those protected from discrimination under human rights law (race, religion, ethnicity, etc.) may receive equal protection, even if not expressly mentioned under applicable legislation (e.g., sexual orientation).

**Canadian Charter of Rights and Freedoms**

An integral component of the Constitution that entrenches Canada's obligations to safeguard basic rights and freedoms.

**civil and political rights**

Basic rights that guarantee fundamental freedoms and protect individuals from unfair treatment by the government, organizations, or other people. Some of these rights include the right to religion, the right to vote, and freedom of expression, among others.

**collective rights**

Liberties and entitlements that belong to groups of people, particularly those who share common characteristics such as ethnicity, culture, language, or geographical location. These rights recognize the importance of preserving the identity and integrity of communities and include rights to self-determination, cultural heritage, and natural resources.

**colonizers**

People or groups who invade and establish political and economic control over a new territory and its resources.

**constitutionally entrenched**

Guaranteed by a country's constitution. Entrenched rights enjoy a higher legal status than those under other legislation in Canada because the amendment process requires seven of the ten provinces to agree.

**duties**

Responsibilities or obligations of individuals as required by the law or societal norms, especially to respect and uphold the rights of others. Examples of duties include paying taxes, obeying the laws or constitution, and serving on a jury.

**economic, social, and cultural rights**

These rights ensure that everyone has access to the necessities of life such as food, water, housing, and health care. These rights include the rights to education, work, and cultural activities.

**Enlightenment**

Also known as the Age of Reason, it emphasized reason, science, and the power of human thought as the primary sources of authority and legitimacy.

**equality**

The same access to rights, protection, and opportunities for everyone. It posits that all people should be treated fairly and without discrimination.

**fulfill**

Requires individuals and States to take positive action to facilitate the enjoyment of basic human rights by creating an enabling environment through legislation, policies, and institutions that promote and protect human rights.

**generational rights**

Interconnected human rights that have expanded over time to include more aspects of life, reflecting the changing needs and values of society. They are divided into three generations.

**Global South**

The developing countries.

**home States**

States where State actors have the obligation to ensure that their nationals, and other actors over whom they have control, respect human rights abroad.

**host States**

States where the non-State actor operates and that are also responsible for protecting human rights.

**human dignity**

A fundamental concept in human rights philosophy, asserting that every individual possesses an inherent worth simply by being human.

**inalienability**

People's rights cannot be taken away, transferred, or alienated except in specific situations and according to due process.

**individual complaint**

A formal complaint made by a person who believes their human rights have been violated. This complaint is usually sent to a court or a special human rights organization, which reviews the case and decides if action should be taken to protect the person's rights.

**individual rights**

Liberties and entitlements that belong to each person by virtue of their human dignity. These rights are designed to protect individuals from abuses and ensure their ability to participate fully in society. These include the right to life, liberty, personal security, and freedom of expression.

**indivisibility**

Holds that human rights have equal status and importance, and no single right can be ignored, excluded, or treated as less important than another. Whether they pertain to civil, cultural, economic, political, or social issues, they are essential to human dignity. Denial of one right invariably affects the enjoyment of other rights.

**interdependence**

Implies a symbiotic relationship among rights culminating in a collective entity that surpasses the mere aggregation of its components. No right stands alone;

violating one form of human rights can be detrimental to the accessibility of other rights.

### ***International Bill of Human Rights***

A set of foundational international human rights instruments comprising the UDHR, ICCPR, and ICESCR.

### **intersectionality**

A conceptual framework that seeks to understand how various social identities, such as race, gender, class, and sexuality, intersect to create unique modes of discrimination and privilege. Intersectionality provides a critical lens for examining how these overlapping identities impact individuals' experiences of oppression and marginalization.

### **natural law**

A philosophical tradition and normative foundation asserting that certain rights are inherent in human nature and can be discerned through reason.

### **negative duty**

The obligation to avoid actions that could cause harm to, restrict, or violate someone else's rights. It signifies the responsibility to not interfere with others' rights and freedoms. The State ensures that their own organs do not unjustifiably infringe upon rights and freedoms.

### **non-discrimination**

A cornerstone of international human rights law, ensuring that all individuals are treated equally and fairly under the law without prejudice based on any status or characteristic. That is, everyone has the same access to rights, services, and opportunities, regardless of their background or identity.

### **non-governmental organizations**

Independent groups that work to solve social problems and support communities without government control. They focus on diverse human right issues with the core purpose of helping people in need and advocating for positive change.

### **positive duty**

The active responsibility to protect and promote the rights and well-being of others. States implement policies and practices that protect people's rights. The right to life imposes the responsibility for States to take measures to protect their citizens from unlawful deaths, including from acts by third parties, such as homicide or manslaughter.

### **positivist legal theory**

A school of thought in legal philosophy that emphasizes the importance of written laws and legal statutes created by human beings, rather than moral considerations.

### **progressive realization**

A principle in international human rights law that acknowledges that while every State can make substantial progress in realizing human rights with its existing resources, there is always more to be done to fully achieve these rights, particularly economic, social, and cultural rights, which may require time and resources to be fully realized.

### **protect**

Mandates individuals and States to prevent violations of those rights by third parties, such as private actors or non-state entities.

### **respect**

Requires individuals and States to refrain from interfering with the enjoyment of

human rights, including respecting the rights of their own citizens and those within their jurisdiction.

### **right to development**

The right of individuals to participate in, contribute to, and enjoy economic, social, and cultural development.

### **self-determination**

The power of individuals and nations to make decisions without external influence, interference, or control.

### **systemic discrimination**

A type of discrimination embedded in institutions that feature unfavourable policies that affect certain groups of people. It includes hidden or unconscious biases that are part of the way systems operate, often without people realizing it.

### **UN human rights treaties**

International agreements established under the auspices of the United Nations to promote and protect human rights.

### **UN Member States**

Countries that are part of a global agreement to follow the rules and principles set by the United Nations to promote peace, security, and cooperation on a global scale.

### **UN treaty body**

Independent experts who serve as watchdogs to ensure countries comply with core international human rights treaties and offer guidance and advice to countries regarding human rights issues.

### ***Universal Declaration of Human Rights***

A landmark document adopted by the United Nations in 1948 establishing a shared foundation for the protection and promotion of fundamental rights.

### **universality**

Human rights apply to everyone equally without exception, regardless of location, gender, race, religion, cultural background, or other analogous group membership.

## **ENDNOTES**

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