

Exercises

Comprehension

- 1 Compare the use of referenda in two countries.
- 2 What is the purpose of separation of powers?
True or false?
 - a France, Britain and the United States all have constitutions.
 - b British citizens are protected by a bill of rights.
 - c In Germany and Ireland, it is more difficult to change the constitution than other laws.

Discussion

"It is not constitutions, but politics, that determine citizens' rights."

Write a paragraph containing two arguments for and two against this statement. Then discuss your answer with other students.

18 Human rights

In 1960, Peter Benenson, a British lawyer, read about two students who had been sentenced to seven years' imprisonment for drinking a toast to freedom during the Salazar dictatorship in Portugal. He joined with others to start a campaign for prisoners of conscience—people who had never used or advocated violence and were simply in prison because of their political or religious beliefs. This was the beginning of Amnesty International, the largest of many organizations in the world which put pressure on governments to observe human rights. By gathering information, creating publicity and writing letters, Amnesty has helped to speed up the release of such prisoners all over the world. It also campaigns for fair trials for political prisoners, an end to torture and inhumane treatment, and the abolition of the death penalty. Amnesty and other groups, such as the Anti-Slavery Society and Index on Censorship, have helped make more and more people aware of the concept of human rights—rights that go beyond the laws of one country.

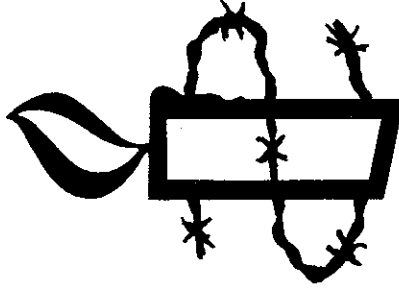


Figure 18.1 Amnesty International: the human rights organisation.

Yet, not everyone agrees that merely being born as a human being entitles someone to certain freedoms and treatment, and those who do agree have different opinions as to what these rights are. Many of the rights of citizens mentioned in Chapter 17 are also considered human rights. What needs to be considered here more than the nature of such rights is to whom they apply. A constitutional right is one which a state guarantees to its own citizens and, sometimes, to foreigners who are within its jurisdiction. But a human right is one to which people all over the world are entitled, whatever their nationality and wherever they live.

Law and politics

Most of the law in the world is made by individual governments for their own people. But human rights transcend political divisions. They are basic minimum standards of freedom and security for all. When governments fail to meet these standards, they are criticized by their own citizens, individuals in other countries, and even by foreign governments. Alleging human rights violations, some countries have imposed economic sanctions against others. Many countries have restricted trade to South Africa because of its policy of apartheid. Human rights have been cited as a reason for military intervention against foreign countries—for example, by the Indians in former East Pakistan, the Vietnamese in Cambodia—although there were undoubtedly other reasons for such intervention.

Cultural differences

Is criticism of, and even intervention against, another country justified? There is both a moral and a legal side to this question. Opponents of interference argue that moral standards are the products of different cultures and it is wrong for one culture to impose its values on another. In reply to criticism of its policies in China and Tibet, the Chinese government has repeatedly argued that international human rights organizations make judgments based on the values of Western capitalist nations, and that China has its own values which put more emphasis upon economic security and community solidarity. The governments of some Islamic states have defended the veiling of women and cutting off the hands of thieves as practices founded in their religion and which ensure a safe society. On the legal side, some have argued that the independence of nation states is the basis of the United Nations, the fundamental body of international law and order, and that when one country interferes in the affairs of another it is because its economic and military power, not its human rights policies, is superior.

International agreements

On the other hand, human rights organizations argue that basic moral standards should not depend upon where a person happens to live, especially since many of the governments of the world do not have popular political support among their citizens. Morality and legality become connected when governments violate their own constitutions and when their policies cause citizens to flee over the border into other countries.

Moreover, in purely legal terms, most countries of the world have signed international agreements concerning the treatment of individuals.

Two examples of such agreements are the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948 without a dissenting vote, and the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966. Article 1 of the UDHR declares that all human beings are born free and equal in dignity and rights, and Article Two states that entitlement to rights does not depend upon race, color, sex, language, religion or any other difference among people. Further articles refer to specific rights, such as freedom from slavery (Article 4), torture and cruel punishment (5), and arbitrary arrest and detention (9); the right to a fair, independent and public hearing of a criminal charge (10); the right to own property and to choose employment (17.23); and the right to express one's opinions (19) and to take part peacefully in assemblies (20). The 1966 ICCPR is not as comprehensive as the UNHR 1948, but is more important because it carries the force of a treaty obligation. Among other things it has provisions about racial and sexual equality (2); torture and slavery (7 and 8); freedom of movement (12); and freedom of thought, conscience and religion (17). However, only half of the members of the United Nations have so far signed the Convention, and only 34 countries have agreed to an Optional Protocol which allows individuals to seek redress in a court of law against violations of the Convention.

The European Convention on Human Rights (ECHR) was first adopted in 1950 and has now been signed by every country of Western Europe. Individual citizens of these countries have the right to bring a complaint before the European Commission if they think their government has broken the Convention. If the Commission agrees, it may try to persuade the country in question to rectify the breach, or it may refer the matter to the European Court of Human Rights, which has the right to order a change of law in that country. Covering countries with similar cultures and economic conditions, the ECHR is more practical than many international human rights agreements. However, individual governments still manage to delay making changes to their laws by claiming special national interests.

When the laws of a country violate human rights, groups like Amnesty International protest to the government on moral grounds. But whenever possible, legal arguments are also used—references to the constitution of the country itself and to any relevant international agreements which its government has signed. But despite the development of legally binding national and international conventions, millions of people in the world still do not enjoy human rights.

Human rights violations

In 1978, Saïda Botan Elmi was arrested by the Somali government. She was held in prison for six years and frequently tortured. Torture is defined in the 1949 Geneva Convention, as "the deliberate, systematic or wanton infliction of physical and mental suffering." Sometimes it is used to extract information from prisoners, and sometimes it is used for no other reason than to hurt and frighten them. The use of torture violates international human rights laws, no matter what crime a prisoner has committed. In the case of Saïda Botan Elmi, her only crime was to want to join her husband, who had resigned as a judge and left Somalia rather than implement laws that he believed were unfair. She was adopted as a prisoner of conscience by Amnesty International.

In 1982, Saul Godinez Cruz disappeared in Honduras after leaving home for work. Someone saw a military officer take him away, but he was never seen again. The government never acknowledged his arrest or detention. Between 1980 and 1988, the United Nations investigated over 15,000 similar disappearances in 40 countries. Governments sometimes kill civilians because of their political beliefs, race, or even because they were in the wrong place at the wrong time; they then cover up any information about the killing in order to avoid responsibility. In the case of Saul Godinez Cruz, the Inter-American Court of Human Rights held, in 1989, that the government of Honduras was in breach of the UDHR and should pay his family compensation of \$75,000.

In 1973, Shabaka Waqlimi tried to rob a bank in Florida, gave up, and the next day gave himself up to the police. But he was charged with the murder of an attorney's wife, which he knew nothing about. His robbery accomplice gave false evidence against him to avoid prosecution himself. In addition, one member of the all-white jury is reported to have made racist remarks during the trial. Mr. Waqlimi was sentenced to death and spent over thirteen years on a prison death row before the truth of his innocence finally emerged. Human rights groups work to ensure that all trials are fair: that judges and juries are independent and unbiased; that suspects have access to adequate legal advice; and that prisoners are not held in jail for too long before a trial takes place. Amnesty has received reports of people held in Syrian prisons for eighteen years without ever having a trial. In the case of trials of political prisoners, Amnesty insists that they be held in public and that observers from independent countries be allowed to observe the proceedings.

A very large area of human rights law is concerned with refugees. Over fifteen million people have fled from their own countries because of

human rights abuses, political pressures or economic hardship, they need international guarantees that they will be treated fairly and humanely in foreign countries. Many are seeking **political asylum**—the right to live in a new country—because of fears of what will happen to them if they are returned. In 1987, Sri Lankan refugees organized a dramatic demonstration at Heathrow airport, claiming that British immigration authorities gave them no opportunity to explain why they were seeking asylum and no access to legal representation. Many Rohingas refugees who fled to Bangladesh in 1991 have been threatened with forcible return to Myanmar.

As human rights issues grow, they provoke more and more debate. Is freedom from economic hardship, as many socialist countries claim, the most important right? Are economic refugees, as some of the Vietnamese in camps in Hong Kong appear to be, entitled to asylum in a foreign country? Is the death penalty, as Amnesty has argued since 1977, always a violation of human rights? What about the right not to be sentenced to corporal (physical) punishment? The right to practice one's religion in a public place? The right to have a homosexual relationship? The right to medical treatment?

Racial and sexual discrimination

Few people would disagree with the right to racial equality, but what about sexual equality? In 1990, a group of women in Saudi Arabia deliberately broke the law by driving cars in a country where only men are permitted to drive. They were arrested and only released from prison when male members of their family promised to "keep them out of trouble." Political and legal discrimination against women includes lesser voting rights (in parts of Switzerland); official discouragement from entering politics (Singapore); and the need for a wife to get her husband's consent when she applies for a passport (Egypt). In Japan, where only seven of the nation's 1,257 detention centers have any female guards, there have been reports of women being strip searched even for traffic offences. Many women are arrested in Japan are illegal foreign workers, and this makes it less likely that their human rights will be observed. Women also suffer economic and social inequality throughout the world, either doing less well-paid work than men or being paid less for doing the same work. In addition, they are underrepresented in parliaments and on boards of directors. There is debate about how much legal reform can actually help solve social problems like these.