

Commonwealth Model Diploma Course in Human Rights

'Building Awareness of a Rights-based approach to Development'

For the purpose of this course a **'Rights-Based Approach to Development'** may be understood as follows:

Rights are to be protected, respected and fulfilled for their own sake, as a matter of principle. But rights are also enabling and empowering instruments to ensure the capacity of all people to meaningfully participate in the process of development and to access and enjoy the benefits of development. Lack of capacity to participate in and enjoy human and economic development is to be seen and addressed as a human rights issue.

Model Length:

Up to 12 months.

Course design objective:

A model for an adults' diploma-level course (primarily for teachers, office holders, community and civil service workers, police prisons and military officers, judges, practicing lawyers), in the concepts and vocabulary of human rights, the history and operation of international human rights standards and mechanisms, national mechanisms for the protection of universal rights, and developing a rights-based approach to development. The course is intended to equip students to confidently and competently raise human rights awareness in their community, or to approach community or government advocacy, work or decision-making on a rights-conscious basis.

Recommended Materials:

Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Commonwealth Declaration of Principles (Harare 1991), Convention on the Rights of the Child, and Convention for the Elimination of all forms of Discrimination Against Women, national constitutional provisions as appropriate, samples of policy documents, legislation, national reservations to the international human rights conventions, relevant cases, reports of various commissions, media cuttings, etc.

Note – developed by the Human Rights Unit, Commonwealth Secretariat, with the assistance of the Commonwealth Legal Education Association, to assist in improving the number and quality of human rights courses offered. This is designed to provide a simple model for a course structure and course outline document, to be adapted by each teacher according to national and institutional circumstances and requirements. See also the more comprehensive Commonwealth Model Human Rights Curriculum.

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Expected Outcomes

This course is designed to provide a comprehensive grasp of the nature and operation of human rights and the significance of a rights-based approach to national development.

For completion, student should be able to demonstrate solid understanding of:

- The basic concepts of rights, their inherent, indivisible and universal nature, how duties correspond to rights, how and when rights can be limited.
- The core concepts of equality and non-discrimination. (These values would be reflected through the manner in which the course is conducted with utmost respect towards participation, accountability, non-discrimination, equality and linkages of every day activities to the human rights standards.)
- The historical development of international human rights standards, guarantees and systems, and how these create obligations for Country X.
- The way in which (and extent to which) universally valid rights are given expression and protection at national level in Country X through national laws and protective mechanisms.
- Contemporary debates in human rights internationally and in Country X, including a critical evaluation of the problems and possibilities of human rights standards and mechanisms.
- The significance of a rights-based approach to human development.

Some Key Concepts and Terms

Access

Accountability

Capacity and Capability

Citizenship

Development: Economic and Human, and Sustainable Development

Discrimination and mere differentiation

Diversity and Common Humanity

Duties (of State organs and officials; of individuals; of countries)

Duties (respect, protect, promote, fulfill the human rights of others)

Equality and equal treatment

Human rights as entitlements of individuals

Human rights as limitations on the state authority

Inalienable, indivisible, inherent character of human rights

Judicial Review

Marginalisation and Exclusion

Mechanisms: monitoring, standard setting, reporting, promotion, enforcement

Participation

Remedy and Relief for Violation of Rights

Rights-based approach to development

Sources of Law: Treaties, Conventions, UN Charter, Treaty Protocols and Reservations

State Sovereignty (Domestic Jurisdiction)

Universality and Relativity / Difference

PART ONE (A) - Basic Concepts in Human Rights and Development

Time: Four Topics, at least 4 sessions (approx.)

Materials: Universal Declaration of Human Rights; ICCPR & ICSCER;

Objective: to gain in-depth understanding of the nature and operation of human rights, their universal validity and application, the fundamental concepts of equality and non-discrimination, and the significance of rights in the process and attainment of national human and economic development.

Topic 1 – What is a ‘rights’ issue? What are rights, and who has them?

- (i) What are Human Rights? Students’ ideas and experiences
- (ii) What constitute current ‘human rights’ issues in Country X? In the world? Is underdevelopment a question involving human rights?
- (iii) Participant’s list of universal basic human needs and entitlements: introducing (a) universality and (b) inherent dignity by virtue of humanity.
- (iv) What do these terms mean: rights are ‘inherent’, ‘universal’, ‘inalienable’, ‘indivisible’ (*Universal Declaration Preamble*)?
- (v) Who bears and should enjoy rights? (individuals, children, women, groups, minorities).

Topic 2 – How do rights work? What is their source? Who has a duty to respect them?

- (i) Rights as claims that others act / refrain from acting.
- (ii) Who are the players / actors: who can bear duties? Who bears duties? (States, governments and their agents, companies and organisations, communities, individuals).
- (iii) What is the source of human rights and duties? What makes rights ‘binding’? Objective: introduction to treaty obligations in international law, and rights provisions in national law (Brief consideration of natural law, custom, and religion as the source of entitlements and duties)
- (iv) Distinction: everyone *having* rights (as human being) and everyone *enjoying* their rights (problems of access to protection, fulfillment or justice).
- (v) What sorts of duties attach to rights? *Negative duties; Positive duties*

Topic 3 – Introduction to core concepts of limitation, equality and non-discrimination

- (i) Are rights absolute or can they be limited? Article 29 *Universal Declaration*; limits ‘reasonable and justifiable in an open and democratic society’, proportionality inquiry, limit by reference to others’ rights.
- (ii) Core Concepts: Equal treatment and non-discrimination. (Distinction between ‘discrimination’ and ‘justifiable differentiation’. Impermissible grounds for different treatment: race, ethnicity, religion, gender, etc.)

- (iii) Apart from justice, what is the consequence of not respecting or fulfilling rights? The link between rights violation and poverty or conflict.
- (iv) What makes violation of fundamental human rights an 'international' issue? (Universality; link between human rights violations and unrest; treaty obligations assumed by States.)

Topic 4 – Human Rights, Good Governance and Development

- (i) Human rights, Development and Poverty Reduction:
 - a. What counts as 'Development'? Development as a *Process* and a *Destination*; Economic and Human Development.
 - b. Poverty may be understood as a function of a Lack of Awareness of Rights and Duties, Access to & Capacity to enjoy rights.
 - c. Human rights as an enabling strategy for achieving opportunities for all.
 - d. Development as a *Process*: Participation (access to process), Accountability, Non-Discrimination, Equality, Linking development goals to human rights-based participation.
 - e. Development as a *Destination*: Participation (in fruits of development)
 - f. Defining Development: development at the expense of human rights is not 'development'. Definition of 'developed' country includes level of respect for civil and political rights, and fulfillment of socio-economic rights.
- (ii) Briefly situating human rights debates in:
 - a. Global political – economic dynamics: access to trade, debt, and other issues associated with globalization.
 - b. Debates about the significance of good governance and democratic participation to the achievement of stable economic growth and living standards.

PART ONE (B) - Background: History and Theory of Human Rights

Time: Three Topics, at least 3 sessions (approx.)

Materials: Universal Declaration; UN Charter; Human Rights Timeline.

Objective: to build on discussion of basic concepts by gaining an understanding of the historical evolution of human rights and of the international institutions designed to ensure protection and fulfillment of rights; to give an understanding of the historical evolution of speaking, thinking and acting in terms of rights, the evolution of influential rights instruments and institutions, and the growing focus on the individual person as entitled to certain rights; to show the long foreign and local pedigree of human rights ideas; to address any historical and cultural objections to the universal validity of human rights; to reflect on the dichotomy between the universal existence and recognition of rights, and the universal enjoyment of these existing rights which has yet to be achieved.

Topic 5 – Why study the history of human rights? What does it reveal?

- (i) Why history matters: “the effectiveness of rights as a tool for self and group emancipation is related to their perceived legitimacy: so history matters.”
- (ii) Evolution of thinking and speaking in terms of rights: a brief ‘Western’ timeline (intended to set out an ‘orthodox’ account of the development of the international human rights framework. See Topic 7):
 - *The classic philosophers (divine or natural ‘rights of man’); The Magna Carta 1215 AD, Bill of Rights 1689: early examples of protective instruments limiting the power of King over his subjects, American Declaration of Independence 1776 and the Bill of Rights, French Revolution 1789 and the Declaration of the Rights of Man, The Anti-Slavery / Anti-Slave Trade movement, The early development of Humanitarian Law (the law of armed conflict) in 19th Century Europe, The International Labour Organisation and the League of Nations;*
 - *World War 2 war crimes trials (Nuremberg & Tokyo) and the 1949 Geneva Conventions, The United Nations Charter and the drafting of the Universal Declaration of Human Rights 1948;*
 - *Decolonisation and the evolution of the national right to self-determination, the Cold War and the ICCPR and ICSECR (1966), Democratization and the prevalence of Bills of Rights in national constitutions, gross violations of human rights: humanitarian interventions and international criminal law, increased role of NGOs and media.*

Topic 6 – History of rights and duties in local (Country X) laws, customs and religions

- (iii) Local history of human rights at a national level: in constitutions, legislation, and judicial protection, or in ancient or modern local cultures, religions, writings
 - *Local historical rights concepts and values eg non-violence; what does the major religion or religions in Country X say about basic concepts of human dignity and entitlement and duties of individuals and leaders?*
 - *The history of human rights in Country X: pre-independence phase; making of the Constitution; post independence phase).*

Topic 7 – Dealing with historical and theoretical objections to human rights

- (iv) Universality: (does the fact that many ‘universal’ human rights were first given expression in ‘Western’ context and systems affect their universal validity?)
- (v) Universality: (if rights protect values and values differ between cultures, how can rights be the same for everyone, everywhere?)
- (vi) Modern debates about the utility and effect of rights discourses.

PART TWO (A) - Human Rights Standards: The International Bill of Rights

Materials: Universal Declaration; International Covenant on Civil and Political Rights ICCPR and International Covenant on Social, Cultural and Economic Rights. Also CERD, Genocide Convention, CEDAW, CRC, CAT, Convention on Migrant Workers, Convention on the Rights of the Indigenous People, ILO Convention no. 182.

Objective: by reference to actual rights provisions, the students would get a sense of the range of rights; discussion of the nature of ‘civil and political’ rights and ‘social and economic’ rights would reinforce their indivisibility.

Through brief examination of selected rights, discussion of the nature of duties attaching to rights, an appreciation of the in-built limits to rights, and making explicit the link between rights and development. And, by brief reference to a range of theme-specific conventions, students should get a sense of the range of rights-protective international instruments.

Topic 8 – General concepts and the way rights work

- (i) Indivisibility: categorisation of rights is a tool for understanding only: the distinction between ‘civil and political rights’ and ‘social and economic rights’ is arbitrary. Historical and Ideological (Cold War) explanations.
- (ii) Revisit Negative and Positive duties of Government: the State must sometimes refrain from acting so as not to breach the right (negative duty) and must sometimes act positively to fulfill the right (positive duty). Consideration of the core obligation Conventions common Article 2: State to take legislative (and other) measures to ensure respect, protection and fulfillment of rights.
- (iii) The significance and meaning of the core non-discrimination and equal treatment provisions in the UDHR and common Article 3 of the Conventions. The distinction between formal equality (equal treatment) and substantive equality (equal outcome).

Topic 9 – Protection and Participation rights

- (iv) The basic nature of Civil and Political Rights: (a) protection: claims held against the State, enable individual autonomy and freedom within the community, for example to be free from arbitrary detention; (b) participation: rights such as freedom of association and speech, vital to meaningful participation in the political process and in national development. Common law origins and equivalents (e.g. fair trial rights in criminal law).
- (v) Examples of Civil and Political Rights and their operation and limits, using cases and commentaries where possible.
- (vi) The limitation of rights by reference to other rights, or to considerations of public health and safety: discussion of Article 29 UDHR or e.g. Article 18(3) of ICCPR (limits to freedom of religion).

Topic 10 – Survival and Development rights

- (vii) The basic nature of Social and Economic Rights: (a) survival: claims to the basic needs of human beings: shelter, food, health, etc; (b) development: claims to the conditions and activities that allow human development and progress: education, etc;
- (viii) significance of fulfillment of social and economic rights for achievement of conditions for development and equal participation in process and fruits of development.
- (ix) Examples of Social and Economic rights and their operation and limits, using cases and commentaries where possible.
- (x) The limitations on the duty of the State: ‘progressive’ nature of the duty on the State: it is still a duty to take measures; relevance of ‘resource implications’.

Topic 11 – Other issues (Part 1)

- (xi) Minority and group autonomy rights: protection for minority groups (Article 27 ICCPR).
- (xii) Exploring the tension (a) between unity and diversity and (b) between individual freedom and the will of the group and (c) in our simultaneous membership of several identity groups at one time
- (xiii) What are other minority groups (other than ethnic, religious and racial minorities) eg sexual minorities? How are indigenous rights similar or different to minority rights?
- (xiv) The Right to Self-Determination: its changing nature over time (its modern interpretation as usually justifying at most a degree of internal autonomy)

Topics 12 – 15 Other issues (Part 2) (in brief)

- (i) *International Convention on Elimination of All Forms of Racial Discrimination*
- (ii) *Convention on Elimination of All Forms of Discrimination Against Women and Protocol*
- (iii) *Convention on Rights of Child and Two Protocols*
- (iv) *Convention on Prevention and Punishment of the Crime of Genocide*
- (v) *Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment*
- (vi) ILO Convention No. 182
- (vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*
- (viii) (Draft) *Convention on the Rights of Indigenous People*
- (ix) Instruments dealing with disability rights (Draft Convention 2006)

PART TWO (B) - Human Rights in Conflict and Post-Conflict situations

Time: This section is intended to be covered briefly

Materials: Geneva conventions, Information on UN peace-keeping, Refugees Convention

Objective: to expose students to the relationship between the human rights and humanitarian law, and to understand the close relationship between them; the interdependence of international and regional bodies' consensus and coordinated action on human rights violations, and national peace and stability; to gain an understanding of the tension between the requirement for justice and prosecution / and for peace and reconciliation, after an internal or international conflict; to consider when it is justified to use force to intervene in cases of widespread serious human rights violations.

Topic 17 – Geneva Conventions

- (i) The Four Geneva Conventions
- (ii) ICRC – International Red Cross Committee

Topic 18 – Peacekeeping and Intervention

- (iii) The Security Council - Peacekeeping and Humanitarian Interventions
- (iv) Regional Actors (eg NATO) - Peacekeeping and Humanitarian Interventions

Topic 19 – War Crimes and Reconciliation

- (v) The merits of war crimes trials vs. truth & reconciliation or amnesty schemes
- (vi) Seeing the International Criminal Court and War Crimes Tribunal as human rights bodies

Topic 20 - Refugees

- (vii) Human movement and displacement as a result of persecution and conflict: a rights issue: *Refugees Convention* 1951 (and 1967 Protocol) and the role of the UN High Commissioner for Refugees
- (viii) The definition of 'refugee': what is meant by "a well-founded fear of persecution"? What grounds of persecution (race, ethnicity, etc) are recognized? When is someone ineligible for asylum?

PART TWO (C) - Human Rights Systems: The International Mechanisms

Time: Two topics – as may be necessary for coverage of issues

Materials: relevant provisions of the UN Charter, ICCPR, ICESCR, CRC, CERD, CEDAW, CAT, samples of 1503 Resolutions, selected samples of other instruments and reports eg country reports, ICC statute, European Convention and Court, materials related to the Inter-American, African & Asian systems, information about international NGOs and their reports.

Objective: To generate an understanding of the architecture & geography, function and processes of the United Nations and Treaty-based human rights institutions involved in human rights promotion and the evaluation of countries' human rights performance; to consider the monitoring and reporting mechanisms of these bodies; to set the international framework environment or background against which national development activities, and institutions and measures to protect and fulfill human rights, take place

Topic 21 – Charter and Treaty-based mechanisms

- (i) Outline of treaty formation process and treaty obligations: the primary treaty duty to other countries not to breach and to implement treaty obligations into national law.
- (ii) The UN Charter-based bodies relating to human rights (*especially the new Human Rights Council (previously the Commission) and ECOSOC / UN Sub-Commission for Promotion and Protection of Human Rights*) and analysis of the reasons for reform of the UN human rights system, including past and proposed public and confidential reporting and review procedures (1503 Resolution); Working Groups; Special Rapporteurs (Thematic and Country Specific).
- (iii) Treaties and Treaty-based bodies (*e.g. Human Rights Committee ICCPR, Rights of the Child Committee, Committee on CERD, Committee on Economic, Social and Cultural Rights, Committee on CEDAW*). The reporting and review procedures, individual and State petition mechanisms).

Topic 22 – Regional bodies and Other international mechanisms (NGOs)

- (iv) The Commonwealth mandate: promotion of human rights and capacity building. The limited Commonwealth intergovernmental mechanism (*Commonwealth Ministerial Action Group CMAG*)
- (v) Consideration of the place and nature of various Regional Mechanisms (*e.g. European Convention and Court, the Inter-American, African & Asian systems*). *What features determine an effective regional rights system?*
- (vi) Role of NGOs in and the independent media in monitoring and evaluating human rights performance (alternate reports, lobbying, publicity, etc)

PART THREE (A) Human Rights in Country X: Constitutional Provisions

Time: Three significant topics

Materials: *Constitution of Country X*; excerpts / summaries of Court cases

Objective:

- (1) To re-cap the history of the constitution-making process in Country X so as to appreciate the rights-related contents of the Constitution in their international and national historical context.
- (2) To inform students about, and critically examine, Country X constitutional provisions for the protection and fulfillment of human rights and the duties of the State, and the interpretation and application of these rights in specific Country X cases;
- (3) To illustrate how many poverty, development and access to resources issues are human rights issues, or can be explained in the law and terminology of human rights;
- (4) To make explicit the link between international law on universal human rights, and the duties of individuals and the State at a national level under national law.

Topics 23 to 25 – Rights Provisions and their Interpretation

- Constitution of Country X
- Selected cases showing interpretation of rights provisions by courts in specific circumstances

PART THREE (B) - Human Rights in Country X: Institutions and Mechanisms

Time: Four significant topics

Materials: as appropriate

Objective:

- (1) To inform participants about, and critically examine, actual mechanisms existing locally for airing and remedying human rights complaints; the potential and problems of local mechanisms for securing rights;
- (2) To make explicit the link between international law on universal human rights, and the duties of the state at a national level under national law;
- (3) To discuss the importance of an independent judiciary and legal profession, a strong independent media, and an informed population for the attainment of human rights and development goals.

Topics 26 to 29 – Institutions for the monitoring and enforcing rights in Country X

- (1) The Role of the Judiciary – judicial independence (a) activism; the scope and limits of judicial review; judicial independence (b) the composition of judiciary and selection / nomination of judges
- (2) National Human Rights Commission, Commissions of Inquiry, Ombudsman (if any such institutions exist).
- (3) NGO's, Civil Society and Universities – human rights education and awareness; preserving the independence and sustainability of these institutions
- (4) The legal profession – the importance of an independent profession to the protection of human rights: Legal Aid to the Poor; Alternate Dispute Resolution; Public Interest Litigation; making the legal profession representative
- (5) Role of the Independent Media and importance of free speech rights (Initiatives by local newspapers, spreading awareness, investigative journalism, debates/discussions, people's views both in the press and the audio-visual media, role of the cinema, etc)

PART FOUR (A) - Case Studies on particular issues of Human Rights in Country X

Topics 30 and following: Some of the current human rights issues in Country X

Case studies / projects / field work on the following issues might be conducted (this is not an exhaustive list of possible human rights issues in Country X)

1. Human Rights and Lack of Access to Development
2. Human Rights of the Disabled (Physically & Mentally Challenged)
3. Human Rights and Un-organised Labour
4. Human Rights and Women in Country X
5. Rights of Children
6. Rights of Minority Groups
7. The issue of Bonded Labour
8. Trafficking in women and children
9. Right to Health Care; HIV/AIDS and human rights
10. Right to Shelter/Housing
11. Right to Education
12. Rights of Internally Displaced Persons (e.g. Project Affected Communities)
13. States of Emergency and Extraordinary Laws (Terrorism and legal responses to terrorism)
14. Human Rights and State Governance (transparency, accountability, participation and corruption)
15. Issues of Arrest, Detention and Custodial Violence
16. Tensions between development and healthy environment rights
17. Autonomy movements and the limits of self-determination

PART FOUR (B): Revision and Reflection; Critical Evaluation

Objective: In a lengthy course, it is necessary to *revise* the concepts, vocabulary and features of universal human rights, the notion of a rights-based approach to development, and the international and local human rights mechanisms considered in the course. It is also appropriate to reflect critically on the problems and reform possibilities identified throughout the course.