



HUMAN RIGHTS IN THE UNITED STATES

A DICTIONARY AND DOCUMENTS

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ECONOMIC HUMAN RIGHTS

Definition: A category of human rights that is concerned with ensuring that human beings have the means to obtain and maintain a minimum decent standard of living that is consistent with human dignity. Economic human rights include the right to food, health care, social security, and work, and to form and participate in trade unions.

Significance: There are five categories or types of human rights: civil, political, economic, social, and cultural.

Economic rights seek to ensure the everyday needs of humans. Without these basic needs, such as food, their very life and enjoyment of any human rights is in danger. Human beings can only realize their full dignity and worth if they have the means to live a decent life.

Conceptually, economic human rights are considered programmatic and progressive. "Programmatic" means that government "programs," such as health, housing, or financial assistance, are required to fulfill the state's obligation. "Progressive" refers to requiring "progressive" government measures, such as building schools or creating jobs over the course of time, to fulfill the state's obligations. These rights are to be contrasted with "immediate" human rights obligations, such as civil and political rights. These can be enjoyed immediately upon a state's treaty ratification and usually require no implementing measures.

Historically, economic human rights are part of what are known as "second generation human rights," along with social and cultural human rights. This type of human rights was promoted internationally by communist countries and for resulting political reasons, was not accepted by the United States as legitimate. The United States feared that recognition of economic human rights would give rise to claims to receive monetary and material benefits from society for nothing. It thought that economic human rights would require a massive expenditure of public funds, which the taxpayers would have to pay to sustain the "have-nots," or worse, the lazy who seek a free lunch.

In theory, economic human rights do not require the state to provide basic necessities for free to all who need them. It does require that the state take measures to see that the structures exist within which individuals can obtain their needs. This may be done while still requiring recipients to fulfill their duties to society by working or seeking employment and by paying taxes. In theory, a capitalistic economy as well as a socialist one can create a system in which economic human rights can be realized. Up until the mid-1990s, the U.S. government continued to be cold toward economic rights.

EFFECTIVE DOMESTIC REMEDY

The principal human rights instruments setting forth economic human rights are the UDHR (Articles 22, 23, 25) and ICESCR (especially Articles 6–12). Economic rights are also treated in the Vienna Declaration and Programme of Action of 1993, particularly under the principles of indivisibility, interrelatedness, and interconnectivity of all human rights.

Beginning with the administration's position at the 1993 Vienna Conference on human rights, the U.S. position changed. It unofficially recognized economic, social, and cultural rights. In the aftermath of the Cold War and the demise of communism, formal opposition to economic human rights, properly understood, is diminishing. There is still, however, significant opposition to the acceptance of economic human rights, mainly among conservatives.

See also: Aid Conditionality; Basic Human Rights; Bill of Rights; Convention on the Rights of the Child; Cultural Human Rights, Culture of Human Rights; Expropriation; "Four Freedoms"; Fundamental Rights/Freedoms; Human Right(s); Illegal Alien; Indigenous Peoples or Populations; Internally Displaced Person; International Bill of Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; International Financial Institution Legislation; International Human Rights Law; Minority/Minority Rights; National Self-Interest; Reparations; Second Generation Human Rights, Social Human Rights; Social Justice; Standard Setting; Universal Declaration of Human Rights; Worldview.

Document and Appendix References: Declaration of Independence, Document 1; UDHR, Articles 22, 23, 25, Document 5; ICCPR, Document 6; ICESCR, Articles 6–12, Document 16, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, Document 24; Draft Declaration on the Rights of Indigenous Peoples, Document 25; CEDAW, Document 26; CRC, Document 27; Convention Relating to the Status of Refugees, Document 28; Vienna Declaration and Programme of Action, Document 43; ADHR, Document 46; ACHR, Document 47; Helsinki Final Act, Document 50; List of Substantive Human Rights Found in the International Bill of Rights, Appendix D; Restatement (Third) of the Foreign Relations Law, Selected U.S. Legislation, Appendix G; *Cherokee Nation v. United States*, Selected Case Decisions, Appendix H.

EFFECTIVE DOMESTIC REMEDY

Definition: A legal remedy exercisable within the national legal system, which can in fact result in the protection of one's exercise of human rights by force of national law. This is an obligation contained in most human rights treaties, so that individuals within the states parties can obtain effective legal recourse within the state's legal system and not have to resort to an international forum to protect human rights.

Significance: All states must create effective legal remedies, if they do not already exist, that individuals can use within the national legal systems when their human rights are violated. Article 8 of the UDHR states, "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Article 2.3 of the ICCPR states:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

DECLARATION ON THE RIGHTS OF MINORITY PERSONS

tion was expanded to "national or ethnic, religious or linguistic" minorities. A linguistic minority is a group of people who speak a different native language from that spoken by the majority of people in a state. The United States was very much a part of this process of formulating and promoting this declaration. The United States voted for the declaration at the General Assembly meeting in 1992, had a U.S. representative on the commission when it was handled by that body, and had an American expert on the sub-commission when its input and draft were prepared.

This declaration does not obligate the United States to do anything or to change any laws regarding minorities. It does, however, have substantial moral and political weight as an expression of most of the member states of the international community as to the human rights of these types of minorities. It can be cited as a guideline/standard for discussing social, legal, and political issues involving minorities, such as Native Hawaiians, African Americans, Native Americans, the Amish, Latinos, and Muslims. The term "ethnic" has been interpreted to include groups normally designated as "indigenous peoples." Thus, all indigenous peoples, such as Eskimos, Native Americans, and Native Hawaiians, are covered by this declaration.

Web Address: http://www.unhchr.ch/html/menu3/b/d_minori.htm

DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS OR LINGUISTIC MINORITIES

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming 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,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

DOCUMENT 24

II. The Senate's advice and consent is subject to the following understanding, which shall apply to the obligations of the United States under this Convention: That the United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.

III. The Senate's advice and consent is subject to the following declaration: That the United States declares that the provisions of the Convention are not self-executing.

DOCUMENT 24

Full Official Title: Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities

Short Title/Acronym/Abbreviation: U.N. Minority Rights Declaration/U.N. Declaration on Minorities

Subject: Declaration of specific human rights of racial, ethnic, religious or linguistic minority groups, amplifying ICCPR Article 27 and related articles of other human rights instruments affecting certain minorities.

Official Citation: G.A. res. 47/135, 47 GAOR Supp. (no. 49) at 210, U.N. Doc. A/47/49 (1993)

Date of Document: Not applicable

Date of Adoption: December 18, 1992

Date of General Entry into Force (EIF): Not applicable

Number of States Parties to This Treaty as of This Printing: Not a treaty

Date of Signature by United States: Not applicable

Date of U.S. Ratification/Accession/Adhesion: Not applicable

Date of Entry into Force as to United States (effective date): Not applicable

Type of Document: Nonlegal, nonbinding declaration

Legal Status/Character of the Instrument/Document as to the United States: Not legally binding upon the United States

Comments: This instrument adopted by the U.N. General Assembly in 1992 was actually the product of the U.N. Commission on Human Rights and its Subcommission on Prevention of Discrimination and Protection of Minorities. It was created as part of the commission's mandate to study human rights situations regarding minority groups and to seek formulation of more specific, more detailed, and more effective human rights standards. This was done because of the many places in the world where serious human rights violations were being committed against such minority groups. These situations were seen by the international community as having the potential to cause poverty and marginalization for such groups, and even to result in genocide, ethnic cleansing, war, and regional or global political conflicts. Most of the issues arose in the context of a state trying to force assimilation of the group into that of the majority in a way that would result in the minority group losing its characteristics or sense of identity as a group. This was often caught up and rooted in ethnic or religious-based nationalism.

Human rights are conceptually understood as the rights of individuals who each hold their own human rights. They are not generally accepted as held collectively by a group of people possessing a certain similar characteristic. However, because of the desire to find human rights protection for such groups, the United Nations began to move in the direction of articulating some collective or group-related human rights.

Up to the time of this declaration there were very few human rights that seemed to apply to groups or collectives of people. The prime example and first express legal norm on such rights was Article 27 of the ICCPR. This article states: "In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

This declaration is an attempt to amplify those existing human rights norms that would be used by minority groups to protect their group culture, religion, and language. The scope of the Declara-