

THE RIGHT TO ASYLUM UNDER INTERNATIONAL LAW

HUMAN RIGHTS: ITS HISTORY
AND DEVELOPMENT

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Introduction

“I know my rights!”

This phrase is often uttered by individuals in liberty-threatening circumstances. Being human, we have a natural sense of what is right and wrong; not only because the law states so, but also by what is inculcated in us starting from a young age.

Then, what are these rights that we are keen on defending and why are they so important to us?

Echoing the words of Charles Dickens in a *Tale of Two Cities*,

“A wonderful fact to reflect upon is, that every human creature is constituted to be that profound secret and mystery to every other.”

Indeed, he makes an excellent observation. Each person is different from the other and so are their intentions. Without appropriate measures to direct our thoughts and actions, we would be living in a *man-eat-man society*, where Charles Darwin’s theory of *Survival of the Fittest* would apply and thrive.

Thus, the legal recognition and protection of human rights in the world makes it possible for persons to live and coexist in peace. This is through the declaration that **we are all equal no matter what**. A deeper understanding of the history behind the development of human rights will make this more intelligible.

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A Brief History of Human Rights Codification

Before the 20th Century, most societies already had a simple understanding of human rights, even though they were not explicitly referred to using these words.

To begin with, our basic comprehension of human rights flows from natural law, which is what we are taught from a young age. That is, to do good and avoid evil. Mostly, this is done through religious teachings. For example, the Christian Bible illustrates, “*Do unto others as you would have them do unto you.*” This simple phrase is also embodied in the Hindu Vedas, the Babylonian Code of Hammurabi and the Muslim Quran.² Though these teachings are recognized as foundations of human rights, this was not the case at the beginning of time. These dictates were simply followed in order to propagate peaceful life in a community.

The first-ever documented evidence of simple human rights codification is noted in Babylon. King Cyrus the Great conquered the city, abolished slavery and made declarations stating that every person was racially equal and they had the freedom to choose their religion.³ These declarations were embedded in the *Cyrus Cylinder* where it was later translated into the official United Nations (UN) languages. It forms the basis of the first four articles of the Universal Declaration of Human Rights.⁴

Nevertheless, the need for a written enactment in individual societies emerged, leading to the main precursors to the 20th Century human rights documents. This meant that human rights were first affirmed at the domestic level and, as a result, such national laws inspired international instruments.

² Nancy Flowers, (University of Minnesota Human Rights Resource Center) <<http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm>> accessed 21 September 2020.

³ Youth for Human Rights, 'The Background of Human Rights' (Youth for Human Rights) <<https://www.youthforhumanrights.org/course/lesson/background-of-human-rights/the-background-of-human-rights.html>> accessed 21 September 2020.

⁴ Youth for Human Rights, 'The Background of Human Rights' (Youth for Human Rights) <<https://www.youthforhumanrights.org/course/lesson/background-of-human-rights/the-background-of-human-rights.html>> accessed 21 September 2020.

With that, the Magna Carta is the earliest official and written document, which was signed by the King of England and came into force in 1215, after King John violated several ancient laws and customs by which England had been governed.⁵ Upon closer examinations, the *Great Charter* enumerates various fundamental rights and freedoms that later became known as “human rights”. One of these rights included the right of all free citizens to own and inherit property. Albeit the simplicity of this document, it is viewed as a crucial turning point of modern human rights.⁶ It paved the way for the enactment of other documents, which aim to ascertain individual rights in a community, such as:

- The Petition of Right (1628)
- The United States of America (US) Constitution (1787)
- The French Declaration of Rights of Man and of the Citizen (1789)
- The US Bill of Rights (1791)

The aforementioned enactments are also written precursors of many of the international human rights documents existing today.

However, because humans are dynamic in nature, these rights and freedoms appeared too vague to envision all the potential violations that may occur in any society. In addition, it became apparent that the relationships between states would be affected where one of them did not have written recognition of human rights. This was evident especially in times of war. Hence, there was a need for a comprehensive code that could be applied in every nation.

In 1863, what was going to become the *International Committee of the Red Cross* was born and soldiers could receive equal medical treatment in times of war. Subsequently, in 1864, the first Geneva Conference was held, upon the invitation of the Swiss Federal Council, to adopt a *Convention for the Amelioration of the Condition of the Wounded in Armies in the Field* (also known as the First Geneva Convention). This is seen as the first international effort to codify human rights for states.

The fully developed concept of human rights emerged after the Second World War (1939-1945). This catastrophic period consisted of war crimes and mass murders without any form of

⁵ Youth for Human Rights, 'The Background of Human Rights' (Youth for Human Rights) <<https://www.youthforhumanrights.org/course/lesson/background-of-human-rights/the-background-of-human-rights.html>> accessed 21 September 2020.

⁶ Youth for Human Rights, 'The Background of Human Rights' (Youth for Human Rights) <<https://www.youthforhumanrights.org/course/lesson/background-of-human-rights/the-background-of-human-rights.html>> accessed 21 September 2020.

hope for future generations. For instance, only in one day, on September 23 1939, the assassination of two thousand Romanian Iron Guards took place.⁷

“In times of war, the law falls silent”

(Silent enim leges inter arma)

- [Marcus Tullius Cicero](#)

As a result, in 1945, delegates from 50 countries met in San Francisco, US, and propagated the birth of the United Nations (UN). The UN Charter was subsequently drafted and came into effect in October 1945. The main goal of the UN is to save future generations from the scourge of war, *“which twice in our lifetime had brought untold sorrows of mankind”*.⁸ The UN Charter also played a crucial role in reaffirming faith in fundamental human rights, in the dignity and worth of human beings, in the equal rights of men and women, and of nations large and small.⁹ Thereafter, solid codification and international recognition of fundamental human rights and freedoms began its uphill journey¹⁰.

Examination of Existing Human Rights Documents

After World War II, the international community gathered legal experts and scholars to examine the earlier and simpler forms of human right codifications. Thereafter, the birth of several other human rights conventions occurred.

*“Human Rights are **rights inherent to all human beings**, regardless of race, sex, nationality, ethnicity, language, religion or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. **Everyone is entitled to these rights without discrimination.**”*

- [United Nations](#)

⁷ C Welch, *From the case files of The People and Daily Mirror, War Crimes*, Haynes Publishing, UK (2014) 31.

⁸ Charter of the United Nations [1945], Preamble.

⁹ Charter of the United Nations [1945], Preamble.

¹⁰ Charter of the United Nations (1945), Preamble.

From the precursor documents, it is evident that **every human being is entitled to human rights from birth, and they should not be stripped off because we are all born with equal dignity**. As the UN began its operations, it built on these fundamental principles to advance the creation of the core international human right instrument, which led to the issuance of other international and regional legal instruments, including, but not limited to, the following:

Instrument	Entry into force	Scope and purpose
The International Covenant on Civil and Political Rights (and its two Optional Protocols)	1976	Full realization and enjoyment of civil and political rights.
The International Covenant on Economic, Social and Cultural Rights (and its Optional Protocol)	1976	Full realization and enjoyment of economic, social and cultural rights.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (and its Optional Protocol)	1987	Prevention, fight and eradication of torture and other cruel, inhuman or degrading treatment or punishment throughout the world.
The International Convention on the Elimination of All Forms of Racial Discrimination	1969	Elimination of any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.
The Convention on the Elimination of All Forms of	1981	Promotion of equality between men and women and

Discrimination Against Women (and its Optional Protocol)		protection against discrimination based on sex.
The Convention on the Rights of the Child (and its three Optional Protocols)	1990	Recognition of specific rights of children, who need special care due to their mental and physical immaturity.
The Convention on the Rights of Persons with Disabilities (and its Optional Protocol)	2008	Promotion and protection of the rights and dignity of persons with disabilities on an equal basis with others.
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	2003	Recognition of the importance and extent of the migration phenomenon, the promotion and protection of the rights of migrant workers and members of their families.
International Convention for the Protection of All Persons from Enforced Disappearance	2010	Prevent enforced disappearances and combating impunity for the crime of enforced disappearance.

There Is No Life Without Human Rights

Can you imagine your life without human rights?

It is impossible to think of such a scenario. Human rights are necessary for amicable life in society as individuals who are part of a larger community. It would be difficult for us to live in peace with one another and non-viable for us to achieve our goals. Thus, **observance of human rights is imperative** to prevent the re-occurrence of instances that threaten peaceful existence in society.

Without human rights, there is inequality, injustice, and discrimination, which lead to instability. For the realisation of international progress in all facets of humanity, our rights need legal protection and enforcement. At The Thinking Watermill Society, this is the core foundation of all our research and dealings. We, therefore, encourage the respect and observance of all fundamental human rights and freedoms for the full realisation of individual and institutional goals.

The subsequent article in this [Right to Asylum series](#) examines the importance of recognition of women's rights as human rights.