

# Session 11

## Women's Rights Protections in General International Human Rights Instruments

### OBJECTIVES:

- To review the history and aims of the UN's Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Social, Economic, and Cultural Rights.
- To explore how each of these three core instruments strives for universal human rights and to consider whether there is a need to recognize distinct rights for women and girls.

### In This Session:

Women's rights are enumerated in dozens of international declarations and treaties, some of which focus wholly on women, others of which focus on another distinct group (such as children or the disabled) but address gender equality somewhere in the agreement, and still others that are directed at equal rights for all of humanity.

In this session, we will review and discuss the three core international human rights instruments that make up the International Bill of Rights, and the protections these general agreements provide for women in their affirmation of human rights for all.

### Reading Assignments:

#### International Bill of Human Rights

For those who believe in human rights, the question of their origins is largely academic and has little bearing on the authenticity or authority of these profound and profoundly human principles. Setting aside for a moment questions about the historical origins of human rights laws and how those origins legitimize or delegitimize human rights for different peoples and cultures, let us take a closer look at the UN International Bill of Human Rights, which served and continues to serve as the framework for the majority of human rights mechanisms, rules of conduct, and laws drafted over the last 50 years.

Of the three documents that make up the UN International Bill of Human Rights, the first – the Universal Declaration of Human Rights (UDHR) – is only a declaration and has no legally binding obligations attached to it. The UDHR was adopted by the UN General Assembly in 1948. At the time, the General Assembly was made up of 58 nations, of which

48 voted in favor of the UDHR, eight (Belarus, Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukraine, U.S.S.R., and Yugoslavia) formally abstained, and two (Honduras and Yemen) failed to vote or abstain.<sup>54</sup> The UDHR was a compromise document meted out by an 18-member international UN Commission on Human Rights over a period of two years before it was finally approved by the UN General Assembly.

The UDHR paved the way for the adoption, 18 years later, of the Covenant on Economic, Social, and Cultural Rights (ICESCR), which enumerated the rights to an adequate standard of living, health, education, and housing, and one's cultural identity and expression. On the same date, December 16, 1966, the UN General Assembly adopted the Covenant on Civil and Political Rights (ICCPR), which enumerated the rights to life, liberty, and security of person, freedom of expression, thought, conscience, and religion. Unable to reach consensus on a single human rights treaty that covered both civil and political rights, and economic, social, and cultural rights, the General Assembly requested two separate treaties be drafted to encompass both sets of rights. Together, as the International Bill of Human Rights, these three documents – the UDHR, ICESCR, and ICCPR – have served as models for nearly 100 national constitutions and thousands of national and local laws and policies throughout the world. Decades after their adoption, country representatives at the Vienna World Conference on Human Rights (1993) sought to address the split between the two human rights treaties with a final Declaration that stated in part, “All human rights are universal, indivisible, interdependent and interrelated.”

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*“Human rights are African rights. They are also Asian rights; they are European rights; they are American rights. They belong to no government, they are limited to no continent, for they are fundamental to humankind itself.”*

Kofi Annan

UN Secretary-General, 1997-2006

<http://www.un.org/press/en/1997/19971015.SGSM6359.html>

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Although the UN Human Rights Commission that drafted the UDHR was led by a woman, former American First Lady Eleanor Roosevelt, the other drafting committee members were men. Similarly, in the decades that followed, most of those engaged in drafting the ICESCR and ICCPR also were men. Nevertheless, the drafters' commitment to the universality of rights, irrespective of gender, laid the groundwork for the creation and adoption of the international women's rights-focused agreements that followed. For this reason, in considering which international instruments

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54 The following countries voted in favor of adopting the Declaration: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, Republic of China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam, Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela.

support women's rights and which to use in advocating for women's advancement, one will find relevant language in the seminal human rights treaties as well as in the international instruments drafted for the specific purpose of protecting the rights of women.

It is important to note that not all countries have signed or ratified the UN human rights treaties. Even those that have do not necessarily observe all the articles in the treaties.<sup>55</sup> Some countries only selectively observe the treaties, making informal and even formal exceptions to certain human rights. For countries that have adopted human rights treaties into law, there are often obligations to report on their observance of the treaties. However, the consequences of reporting late or not reporting at all are minimal. The strength of these treaties thus does not necessarily come from international monitoring and sanctions. Instead, individuals and organizations within each country who advocate for their government's and other institutions' compliance very often provide the strongest and most strategic pressure for compliance.

The international human rights instruments state explicitly the rights and freedoms that societies and cultures support implicitly. Wording from the treaties codifies rights and provides language agreed to by a majority of nations. Knowing the rights enumerated in the international legal instruments is empowering for human rights advocates everywhere and provides a framework for seeking and protecting human rights locally.

### **Universal Declaration of Human Rights (UDHR)**

The full text of the **Universal Declaration of Human Rights** can be found **Appendix A** of this manual; in this workshop session, we will focus on the specific UDHR articles and aspects of its Preamble that address the protection of women's rights and welfare.

The UDHR Preamble begins by declaring its applicability to "all members of the human family." This is significant because the framers wanted to be clear that human rights are not privileges for a specific gender, class, race, or nationality. Neither infirmity or disability, legal status, nor sexuality can limit the rights enumerated in the UDHR. The Preamble states: ***"WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. . ."***

The Preamble also reminds us that the members of the United Nations, by joining the UN Charter, affirmed their agreement to the dignity and worth of the human person and the equal rights of men and women.

It states, ***"WHEREAS the peoples of the United Nations have in the [United Nations] Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal***

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55 The Office of the High Commissioner's website says, "All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations." <http://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>

*rights of men and women and have determined to promote social progress and better standards of life in larger freedom. . .”*

Nearly all of the UDHR articles begin with the words, “**everyone has the right to. . .**” without specifying both men and women, although the articles occasionally use the male pronoun to refer to all people, as was customary in official documents in English in the 1940s. For that reason, UDHR articles 16 and 25 stand out because their language leaves nothing to interpretation as to whom the rights should apply. It is significant, that in area of family law, the framers did not choose to state that “everyone” of full age has the right to marry and to found a family. Instead, the Article 16, Paragraph 1’s more pointed language says, “**Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.**” Perhaps anticipating that family law would be the last bastion of gender bias and sex-determined rights and roles, the framers chose to state unequivocally that the rights of individuals once married would not diminish or increase based on gender. Reinforcing that the family unit should not diminish individuals’ rights within or without marriage, the framers again are clear about this in Article 25, Paragraph 2. The UDHR says, “**Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.**”

The UDHR has been translated into more than 300 languages, influencing the lexicon and laws of many new and established nations. Although the UDHR is not technically a binding agreement, at the first World Conference on Human Rights in Tehran, in 1968, representatives of countries across the globe formally avowed that: “**The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.**”

## **International Covenant on Economic, Social, and Cultural Rights (ICESCR)**

*As of 2015: 164 countries have made this treaty law.*

*An additional 6 countries have signed the treaty;  
27 countries have taken no action on this treaty.<sup>56</sup>*

The full text of the **International Covenant on Economic, Social, and Cultural Rights** can be found in **Appendix B** of this manual; in this workshop session, we will focus on the specific ICESCR articles that address the protection of women’s rights and welfare.

Treaties (as distinct from *declarations*, such as the UDHR) are meant to legally bind signatories to their provisions, obligating states to enforce the treaties’ articles. The ICESCR is a legally binding treaty, and its provisions

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56 For information on which countries have ratified the ICESCR, go to <http://indicators.ohchr.org/>

apply to everyone, men and women, in the signatory country. Nevertheless, like the UDHR, it contains articles that draw attention to the specific rights of women. Article 2, Paragraph 2 states, ***“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”***

Article 3 states, ***“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”***

Article 10, paragraphs 1 and 2, mirrors much of the language from Article 16 in the UDHR delineating the rights of women and men in marriage. This article then goes beyond the Declaration to guarantee social security to pregnant and new mothers: ***“The States Parties to the present Covenant recognize that: 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”***

## **International Covenant on Civil and Political Rights (ICCPR)**

***As of 2015: 168 countries have made this treaty law.***

*An additional 7 countries have signed the treaty;  
22 countries have taken no action on this treaty.<sup>57</sup>*

Unlike the ICESCR, the ICCPR includes an Optional Protocol, a separate but connected treaty that strengthens the enforcement of the ICCPR. Countries that adopt the ICCPR can choose to adopt the Optional Protocol or not. The Optional Protocol provides a mechanism for individual citizens to report human rights violations in their country to the ICCPR’s monitoring committee. The U.S. is one example of a country that has signed (1977) and ratified (1992) the treaty into domestic law but has neither signed nor ratified the Optional Protocol. Having ratified the treaty, the U.S. is obligated to report to the ICCPR’s monitoring committee on its compliance with the treaty’s civil and political rights provisions.

The ICCPR uses the pronoun “everyone” or “he” almost without exception in each of its articles. Article 2 (stating that each of the treaty’s articles apply to all persons regardless of status, including sex), Article 23 (relating to family law and marriage rights, similar to Article 10 in the ICESCR), and Article 26 (relating to individuals’ right to equality before the law and the right to protection from discrimination on any grounds,

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57 For information on which countries have ratified the ICCPR, go to <http://indicators.ohchr.org/>.

including sex or other status) make special mention of sex as a distinct, protected category. The rest of the ICCPR uses language that applies to both genders. For example, Article 18 begins, *“Everyone shall have the right to freedom of thought, conscience, and religion.”*

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### Questions for Group Discussion:

- In considering the two treaties, the ICESCR and the ICCPR, do you think there are some rights that are more important, or of a higher order, than others? Why or why not? And if you do, which rights do you think are more important or less important, and why?
- The UDHR was drafted in the earliest days of the United Nations and signed by nearly all of the Member States at the time. Do you think that which countries participated in drafting the UDHR<sup>58</sup> and which were among the original signatories<sup>59</sup> has an impact on the Declaration’s universality today? Do you think the Declaration would have more universal applicability if there had been wider international representation among the drafters and signatories? Why or why not?
- If you believe, or know others who believe, that the UN International Bill of Human Rights represents Western values to the exclusion of other cultures’ principles, how could this be addressed? What principles and rights have been excluded or violated by the International Bill of Human Rights? How might the excluded principles and rights be introduced into the international human rights framework? Are there amendments that you would propose? What would they be?
- Do you think that the International Bill of Human Rights adequately addresses and protects the rights of women and girls, or is another treaty specific to the rights of women necessary? Why or why not?

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### Team Exercise:

Break the group into teams of three or four and ask each team to discuss and define “universal human rights” and “women’s rights” in their own words and as they would define these concepts for themselves. After each team has done this, reconvene the group. Ask a representative from each team to share her team’s definitions with the group.

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58 The Human Rights Commission that drafted the UDHR was made of up representatives from Australia, Belgium, Byelorussian S.S.R., Chile, Republic of China, Egypt, France, India, Iran, Lebanon, Panama, Philippines, United Kingdom, United States, U.S.S.R., Uruguay, and Yugoslavia.

59 The original signatory countries included: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, Republic of China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam, Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela.

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### **Questions for Group Discussion:**

- Which definition or definitions seemed to best capture the meaning of the expressions? Why?
- Does the group seem to have reached a consensus on the meaning of “universal”? Why or why not?
- If you were to teach young people about human rights, would you use the UDHR, the ICESCR, and the ICCPR to explain human rights? Would they help explain the relevance of human rights? Why or why not? Would they help explain what women’s rights are? Why or why not?
- Does the International Bill of Human Rights promote human rights and empower individuals to stand up for their rights? If so, how?