

Topic Review – Human Rights

Key Questions and Issues (as Stated in Syllabus)

These questions are an essential part of the Legal Studies Course. All students should be able to answer them comfortably, and with reference to examples.

What are rights?

Rights are fundamental entitlements. These entitlements are so basic that they should not be questioned. They are intrinsic. That is, they make people fully human. Rights arise even before the child is born and last throughout life. Although governments may legislate to restrict rights, or so by force, the entitlement to rights can never change.

How are rights recognised and enforced?

Rights are *recognised* by the *UN Declaration on Human Rights*. They are also articulated by a series of Covenants and Conventions that emulate from the UN. The UN cannot enforce that rights be upheld, but they can place moral pressure on States that restrict the rights of their citizens. Rights are generally *enforced by domestic legislation*, which varies from nation-State to nation-State. The breach of legislation carries State imposed sanctions. The threat of sanctions can ensure that rights are both recognised and upheld.

How effective are legal measures both domestically and internationally in addressing human rights issues?

Australia generally has an excellent human rights record. Australia, as a stable democracy, grants its citizens the right to vote, freedom of expression, the right to freedom of movement, freedom of association, the right to access free public health and education. As is true of all nation-States, there are some areas that Australia's human rights records could be better. Specifically, such areas include indigenous health and education, treatment of asylum seeker, the treatment of inmates in prisoners and the access to services for the socio-economically disadvantaged.

In Australia there is a separation of powers within the State (legislature, executive and judiciary) that ensures that there is a relatively high compliance with human rights.

The international situation is a little different. Whilst the UN creates human rights instruments in the form of Conventions and Covenants they are only effective when nation-States pass them into domestic legislation. That is, international instruments recognised rights but do not have the power to enforce them. State sovereignty ensures that many governments amend the articles of UN documents in order to meet domestic political goals. Thus there is variable international compliance. Furthermore, the UN has no capacity to enforce its Covenants and Conventions. Hence, the UN really has only moral force.

How effective are non-legal measures?

Non-legal international measures arise from the work of Non Government Organisations (NGO's) such as Amnesty International, Medecins Sans Frontiers and the Red Cross. These organisations apply moral pressure to the UN and to governments in breach of human rights law. They raise public awareness through media campaigns. On a domestic level, the media, trade unions, community and lobby groups and the State and Federal Ombudsmen all apply moral pressure for governments to comply with and uphold human rights.

Non-legal measures have the potential to be very powerful in certain environments. They may bring breaches of human rights to public attention, campaign for minority groups and they have the potential to strongly influence government policies and decision making. However as with the UN, NGO's largely have only moral influence. Therefore, it can be said that non-legal measures have only limited effectiveness as no sanctions can be applied by such organisations.

Effectiveness of legal measures both domestically and internationally in addressing human rights issues

The 20th Century has witnessed immense progress in many areas of human rights, both at domestic and international levels, which has increased the effectiveness of legal measures dealing with human rights issues. The abolition of slavery, the introduction of universal suffrage, trade unionism and universal education are prominent examples of such progress. Legal measures in these two spheres regarding human rights have also increased dramatically. The UN has become an influential body in evaluating human rights standards and domestic legislation has evolved in many countries to reflect contemporary human rights standards. However, many human rights issues remain to be addressed through international and domestic law.

Over time the UN has become the organisation from which international law regarding human rights has largely emanated. Human rights are adequately protected through multilateral agreements such as the *Universal Declaration of Human Rights* (UDHR), but also by treaties such as the ICCPR, ICESCR and CROC. Thus, through such agreements, human rights are recognised in international law. Human rights issues are also addressed internationally through UN 'monitoring mechanisms', such as the *Committee on the Elimination of Racial Discrimination* (CERD) and *Committee on the Elimination of Discrimination against Women*.

International law also sets a high standard of international rights from which many countries take directive when deciding how to recognise rights in their own domestic legislation. Australian legislation has often been enacted in order for Australian laws to be in accordance with international human rights standards. That is, international laws are ratified and hence encoded into Australian law. In this way, international standards of human rights can then be effectively enforced on a domestic level. The *Racial Discrimination Act 1977* (NSW) is an example of such a law. In this way international law indirectly addresses human rights issues occurring at a domestic level.

At the nation-State level, domestic legislation will dictate how effective domestic laws are in addressing human rights legislation. Human rights issues will not be addressed through domestic legal measures if the laws protecting those rights do not exist. That is, a country must have adequate legal measures in place for the law to deal effectively with human rights issues. The effectiveness of domestic legal measures in addressing human rights therefore, depends on a country's human rights legislation.

Who determines effectiveness when addressing domestic human rights issues?

It is important to note that when analysing domestic legislation and human rights, that particular human rights issues may not be addressed if they do not serve the government's interests. Any government's main interest is generally staying in power, and to stay in power, a government must reflect society's values. So, domestic human rights issues are often addressed in relation to the important that the wider community places on them. Unfortunately, most groups in society are concerned with protecting their own rights at the cost of the rights of others.

State sovereignty (the sovereign nation-State) is the foundation of contemporary international relations, but also remains the greatest challenge for domestic law. International benchmarks (laws) can be set and may even influence domestic legislation, but ultimately people live in nation-States and these States decide to what extent they recognise human rights. when addressing the effectiveness of legal measures (especially international measures) in addressing human rights issues, the role of State sovereignty should not be underestimated.