

# Taking Duties Seriously: Individual Duties in International Human Rights Law

A Commentary

## About this publication

Article 29(1):  
Everyone has duties to the community in which alone the free and full development of his personality is possible

Article 29(2): In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Notions of individual duties and responsibilities have recently attracted increasing attention. Calls have been made for a "global ethic" that would set minimum standards to guide human behaviour. Though individual duties and human rights are closely related, it is sometimes argued that an unbalanced focus on human rights needs to be corrected.

This short publication aims to contribute to this debate by collating and organising in a readable way the various references to notions of individual duties and responsibilities in international human rights standards.

*"The issues are critically and dispassionately analysed with specific reference to international and regional human rights standards... invaluable to both scholars and activists."*

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## The International Council on Human Rights Policy

The International Council on Human Rights Policy was established in Geneva in 1998 to conduct applied research into current human rights issues. Its research is designed to be of practical relevance to policy-makers in international and regional organisations, in governments and intergovernmental agencies and in voluntary organisations of all kinds. The Council is independent, international in its membership, and participatory in its approach. It is registered as a not-for-profit foundation under Swiss law.

Additional information about the Council may be found at the end of this document.

**right**<sup>3</sup> (rīt) *n.* **1.** what is just, fair treatment; b  
right were done; **do** person ~, **do** ~ by pers  
or think of him fairly; **the** ~, what is RIGHT  
juster cause; **in the** ~, having justice or truth o  
side. **2.** justification, fair claim, being entitl  
privilege or immunity, thing one is entitled to, (t  
he, no, right to thing, to do, of doing, etc.; belo  
or as of or by right; rights and duties); (i  
act in specified way; **in one**'  
riage, adherence. **3.** **of way**  
1; ~ of way  
anoth

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Human Rights Law

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A Commentary

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The Commentary has been written by David Petrasek, a Research Director at the International Council.

## PREFACE

by Thomas Hammarberg

This Commentary describes how the Universal Declaration of Human Rights and other international human rights agreements take account of individual duties and responsibilities.

The 1948 Universal Declaration of Human Rights was a response to widespread outrage after the Holocaust and the other crimes of that time. Those who drafted the Universal Declaration drew from ethical principles of the world's religions as well as from socialist, liberal and other secular thinking. They wanted the Declaration to reflect standards that are common to cultures and traditions all over the world. However, the intention was not to establish a new philosophy or ideology; it was not to replace religions, political sympathies or general views of the purpose of life. The documents were instruments for a certain purpose.

The main approach of the Universal Declaration of Human Rights is to define the rights of individuals, and to make fulfilment of those rights a responsibility of governmental authorities. Linked to every right is a State obligation. The fact that the standards are addressed to Governments is crucial for the whole human rights architecture that started with the Universal Declaration. I am convinced that this should not be undermined.

In recent years, however, an argument has emerged that too little attention has been given to individual duties and responsibilities. This Commentary mentions some of the bodies that have advanced this point of view. They include groupings associated with major faiths, the Commission on Global Governance, and a group of elder statesmen. It is not hard to see why this argument has been appealing. The more orderly and peaceful world that was to follow the end of the Cold War has not materialised. Instead, uncertainty seems to predominate

– conflict has spread within some countries, in others political and economic systems have failed or collapsed, and modern developments associated with technology are rapidly changing the world.

Human rights advocates, however, have been sceptical about arguments for more emphasis on individual duties. They have pointed out that some regimes have used the language of “duty” and “obligation” to justify the silencing of dissent. People who have peacefully challenged corrupt and autocratic policies have been portrayed as promoting “instability” and disturbing “social order”. Discussion of personal duties and obligations can indeed be abused for unacceptable political ends, and this should be opposed.

Nevertheless, the relationship between duties and rights is not a new question, and it has engaged the attention of legal and moral philosophers for many years. When do the needs of the community take precedence over the rights of the individual? How should the claims of the individual (on the basis of his or her inherent rights) be reconciled with the claims of the State, of the community and of other individuals (on the basis of shared community values and interests)? Political misuse of the language of individual duties should not prevent a constructive discussion of these complex and difficult questions. Reminding people that they have basic ethical obligations is a worthy and necessary undertaking.

In the context of such a broad discussion, this Commentary has a limited purpose. It asks: How do the main human rights agreements deal with the question of individual responsibility? Its aim is not to support one or another point of view but to clarify some of the issues.

The Commentary describes the background to Article 29(1) of the Universal Declaration of Human Rights which says “Everyone has duties to the community in which alone the free and full development of his personality is possible”. It shows how this

clause has inspired other references to individual duties in human rights agreements. The Commentary also shows how human rights agreements place some limits on the rights they protect. Article 29(2) of the Universal Declaration of Human Rights says: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Clauses such as this show the circumstances in which States may legitimately restrict rights; but they also provide guidance to individuals concerning the limits of their freedom – and these limits deal with issues such as the needs of other individuals and the community. In other words, it is wrong to argue, as some have done, that international human rights law promotes an "unrestricted freedom" or that it promotes rights without responsibility.

The Commentary also shows the importance that the drafters of the Universal Declaration of Human Rights attached to individual duties. They felt that an article on duties was crucial to differentiate freedom from anarchy and tyranny and make clear that a balance must be struck between individual freedom and the rights of others, as well as the legitimate demands of the community and the State.

One proposal floated by former world leaders, is to have the UN adopt an agreement on human responsibilities. My own view is that a parallel UN declaration on duties or responsibilities would itself cause an imbalance and create confusion about the significance of the Universal Declaration of Human Rights. It might also give an opportunity for those in power to play one document against the other, and attend exclusively to duties in order to suppress rights.

In any case, human rights are vitally important and the discussion of duties is also important. The International Council was set up in Geneva in 1998 to enrich discussion of human rights issues by conducting careful research into difficult subjects and doing so with proper respect for different points of view. This is the Council's first publication. I believe it is a document that can be of value to those who seek to promote rights and those interested in the ethics of personal responsibility. If this is so, and it helps to spread shared understanding of the issues, it will have served its purpose.

Ambassador Thomas Hammarberg chairs the Executive Board of the International Council on Human Rights Policy.

## One: INTRODUCTION

Most people would readily agree with the idea that individuals have certain duties or responsibilities that should govern the way they behave. Most would also agree that such duties are owed to one's family, to other individuals, to one's community and, in some circumstances, to the State. These individual duties may be legal obligations, or may be based on religious practice, customary values in the community, or on personal ethical convictions.

In recent years, a number of organisations have suggested that societies should reaffirm the ethical foundations of individual behaviour. While their emphasis has varied, they have tried to define a "global ethic" or a general framework of "human responsibilities" that will describe the range of duties to which all human beings ought to be subject. In some cases, they have asked international organisations like the United Nations (UN) to formally adopt a document setting out this "global ethic".

The call for a greater awareness of individual responsibility – towards the family, others and the community – is put forward on its own merits. However, it is also suggested that focusing on individual responsibility is necessary to counter-balance what some take to be a bias towards rights. Symptoms of disorder – crime, the breakdown in family and community life, ethnic or religious intolerance, and internal conflict – are attributed to the exercise of rights without responsibility. Demands for human rights are portrayed as leading to a selfish individualism, where the individual makes demands on the community but offers nothing in return. According to one eminent group of former world leaders, an "exclusive insistence on rights can lead to endless dispute and conflict". Only by emphasising human responsibilities can we move from the "freedom of indifference to the freedom of involvement".<sup>1</sup>

<sup>1</sup> Introductory Comment to *A Universal Declaration of Human Responsibilities*, published by the InterAction Council, 1 September 1997, p.1.

Those working for human rights protection have greeted with some scepticism proposals that we need a global agreement on individual duties. Their scepticism is grounded in two factors. First, in many cases those in power have used the language of duty and obligation to suppress human rights. People who peacefully challenge corrupt or autocratic politics are portrayed as promoting “instability” and are often silenced in the name of “social order”. Notions of individual duty may be transformed by political authorities into demands for blind and uncritical patriotism. Further, individual duties towards the family or the community can be promoted in ways that maintain power relationships that are unequal and based on duress.

Second, the idea that demands for human rights are based on an unacceptable individualism, or lead to an unwarranted degree of freedom that itself produces conflict, is contrary to the experience of human rights advocates. The human rights movement takes its lead from the Universal Declaration of Human Rights (UDHR), and subsequent UN and regional human rights standards, that in many important respects recognise the need to balance rights and freedoms with duties and responsibilities. Further, active engagement in the community and its concerns – particularly the concerns of its most vulnerable members – are the hallmarks of local human rights organisations.

### **Purpose of the commentary**

It is our belief that some of the arguments regarding the need for a global agreement on individual responsibilities or a new “global ethic” are based on a misunderstanding of international human rights standards. The purpose of this commentary is to show how these existing standards already include notions of individual duty and responsibility. In doing so, we hope to counter the impression that these standards encourage people to act as if there are no limits to their freedom, or to exercise their rights without any sense of responsibility for others.

## Two: NOTE ON HUMAN RIGHTS STANDARDS AND INSTITUTIONS

This commentary is designed to explain how international human rights law deals with duties of individuals. We refer extensively to different human rights documents and to the different bodies, particularly UN bodies, which drafted or are responsible for implementing them. This short note explains some of the terms used.

### International human rights law

International human rights law is relatively new. For the most part it was developed after the UN was established at the end of the Second World War (1945). All States joining the UN must accept its founding document, the UN Charter. The Charter includes the promotion of respect for human rights as a key purpose of the UN, and requires UN Member States to co-operate with the UN in this task.

The UN Charter does not provide a list of human rights. The first UN document to do so was the Universal Declaration of Human Rights, adopted (almost unanimously) by the UN General Assembly in 1948. The General Assembly is the UN body in which each Member State is represented and can vote. The Universal Declaration of Human Rights recognises all the main human rights, including civil and political rights – such as the right to life, to free speech, to freedom of religion and to take part in government – and economic and social rights such as the right to work, to social security and to education. The Universal Declaration takes the form of a resolution passed by the UN General Assembly. It is not a treaty which States formally sign.

After the Universal Declaration of Human Rights was adopted, the Member States of the UN began work on drafting international human rights treaties. The main UN human rights treaties are listed below. The date beside each indicates the year the treaty was adopted.

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

There are also treaties dealing with apartheid, genocide and refugee protection.

Some of these treaties have been accepted by almost every State, and most have been accepted by a solid majority of the world's States. More States accept the treaties every year.

Member States of the UN have drafted and agreed to dozens of texts dealing with human rights, ranging from principles for investigating arbitrary killings to guidelines for the treatment of prisoners. These documents (called declarations, guidelines, principles, rules, etc.) are not legally-binding treaties, but they set out how States are expected to act on specific human rights matters.

States have also formed regional inter-governmental organisations and some of these have adopted human rights treaties. The three main regional human rights treaties are the:

- American Convention on Human Rights (1969), adopted by the Organisation of American States, a regional

body that includes almost all States in North, Central and South America.

- African Charter on Human and Peoples' Rights (1981), adopted by the Organisation of African Unity, a regional organisation of all African States.
- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), adopted by the Council of Europe, a regional organisation that used to be restricted to Western Europe but now includes States in Eastern and Central Europe and States formed after the collapse of the Soviet Union.

These regional organisations (and others, including the Organisation of the Islamic Conference, a grouping of Muslim States, and the Organisation for Security and Co-operation in Europe) have also adopted non-treaty standards on human rights.

**In this commentary, we use the term “international human rights standards” to refer generally to this entire body of documents adopted by the UN and by regional organisations.**

The UN has published a two-volume compilation of all its human rights treaties and texts – *Human Rights: A Compilation of International Instruments*. The second volume of this publication includes important regional human rights standards. All the standards cited in this commentary are found in this UN publication. All of these standards can also be found on the website of the Office of the UN High Commissioner for Human Rights, at <http://www.unhchr.ch>.

Also, in this commentary all quotes taken from international human rights standards are placed in italics.

### United Nations bodies

A number of different UN bodies deal with human rights matters. The most important UN body is the General Assembly in which all Member States of the UN are represented and can vote. The UN General Assembly usually adopts or otherwise approves of any human rights standard developed within the UN. A sub-committee of the General Assembly – the “Third Committee” – deals with human rights issues.

The General Assembly also has different subsidiary bodies, including the Economic and Social Council (ECOSOC). ECOSOC was given authority in the UN Charter to establish a Commission on Human Rights.

The Commission on Human Rights is the UN forum that deals only with human rights matters. It is presently made up of 53 States, which are elected by States on ECOSOC and come from all regions of the world. States that are not currently members of the Commission can still take part in its work, though they cannot vote. It is within the Commission (or through a working group it establishes) that UN human rights standards are usually drafted.

### Three: THE APPEAL FOR A GLOBAL ETHIC

A number of organisations have argued that a new or renewed focus on duties and responsibilities is required, and that the language of rights is insufficient. In this section, we discuss some of the more significant international contributions that have been made.

#### **The Parliament of the World's Religions**

Spiritual leaders have been a consistent source of calls for a new global ethic. Theologians have a special interest in this issue since religious teachings are commonly concerned with what is right and wrong, and many attach particular importance to guides or codes of good behaviour that emphasise individual duties. In 1993, the Parliament of the World's Religions met in Chicago to commemorate the centenary of its first meeting in 1893. In *The Declaration Toward a Global Ethic*, adopted at that meeting, the organisation stated:

“We are persons who have committed ourselves to the precepts and practices of the world's religions. We confirm that there is already a consensus among the religions which can be the basis for a global ethic – a minimum fundamental consensus concerning binding values, irrevocable standards and fundamental moral attitudes.”

The document went on to say:

“On the basis of personal experiences and the burdensome history of our planet we have learned: that a better global order cannot be created or enforced by laws, prescriptions and conventions alone; that the realisation of peace, justice, and the protection of earth depends on the insight and readiness of men and women to act justly; that action in favour of rights and freedoms presumes a consciousness of responsibility and duty, and that therefore both the minds and hearts of women and

men must be addressed; that rights without morality cannot long endure, and that there will be no better global order without a global ethic.”

One of the principal drafters of the Declaration noted subsequently:

“After it was written, a few persons criticised the ethic for being ‘too religious’. But we did not want to produce a merely secular declaration, something which would have been more appropriate for the world of jurisprudence, laws, and rights. The United Nation’s Universal Declaration of Human Rights, for example, is such a document. The global ethic is not about rights. It is about responsibilities. The values, standards, and attitudes expressed in the ethic are not intended to be negotiable or be the subject of legislation or litigation. They are statements intended to resonate in the hearts of individuals.”<sup>2</sup>

The Declaration identified only general ethical principles, including to treat others humanely and as we would wish others to treat us, and stated as “irrevocable directives” for the global ethic a commitment to:

- a culture of non-violence and respect for life;
- a culture of solidarity and a just economic order;
- a culture of tolerance and a life of truthfulness; and
- a culture of equal rights and partnership between men and women.

### **The Commission on Global Governance**

Another call for a global ethic has come from the Commission on Global Governance, a body that was established in 1992 “... in the belief that international developments had created a unique

<sup>2</sup> Dr Daniel Gomez-Ibanez, “Moving towards a Global Ethic”, paper presented to the Fifth National Conference on Ethics in America, Long Beach, California, March 1994.

opportunity for strengthening global co-operation to meet the challenge of securing peace, achieving sustainable development, and universalising democracy". The Commission was the successor to several international initiatives that examined issues of development, disarmament and the environment.<sup>3</sup> Its report, *Our Global Neighbourhood*, was published in 1995 and called on the international community "... to unite in support of a global ethic of common rights and shared global responsibilities. In our view, such an ethic – reinforcing the fundamental rights that are already part of the fabric of international norms – would provide the moral foundations for constructing a more effective system of global governance."

The Commission, like the Parliament of the World's Religions, wished to complement human rights standards. It felt that documents like the Universal Declaration of Human Rights needed to be supplemented for two reasons.

"First, as presently conceived, rights are almost entirely defined in terms of the relationship between people and governments. We believe it is now important to begin to think of rights in broader terms by recognising that governments are only one source of threats to human rights and, at the same time, that more and more often, government action alone will not be sufficient to protect many human rights. This means that all citizens, as individuals and as members of different private groups

<sup>3</sup> The commission was initiated by former West German Chancellor Willy Brandt, who a decade earlier had chaired the Independent Commission on International Development Issues. In January 1990, he met with the members of that Commission and individuals who had served on the Independent Commission on Disarmament and Security Issues (the Palme Commission), the World Commission on Environment and Development (the Brundtland Commission), and the South Commission (chaired by Julius Nyerere). This meeting led eventually to the establishment in 1993 of the Commission on Global Governance chaired by Ingvar Carlsson (former Prime Minister of Sweden) and Shridath Ramphal (former Commonwealth Secretary-General).

and associations, should accept the obligation to recognise and help protect the rights of others.

Second, rights need to be joined with responsibilities. The tendency to emphasise rights while forgetting responsibilities has deleterious consequences. Over the long run, rights can only be preserved if they are exercised responsibly and with due respect for the reciprocal rights of others.”

The Commission on Global Governance proposed a short, somewhat general list of duties, saying individuals have a responsibility to:

- contribute to the common good;
- consider the impact of their actions on the security and welfare of others;
- promote equity, including gender equity;
- protect the interests of future generations by pursuing sustainable development and safeguarding the global commons;
- preserve humanity's cultural and intellectual heritage;
- be active participants in governance; and
- work to eliminate corruption.

### **The InterAction Council**

A more recent call for a new focus on duties and responsibilities has come from the InterAction Council, a group of some 30 former heads of state or government formed 15 years ago at the initiative of Takeo Fukuda (former Prime Minister of Japan) and Helmut Schmidt (former Chancellor of the Federal Republic of Germany). In September 1997 the InterAction Council wrote to all heads of state and government, and to the UN Secretary-General, asking them to support adoption by the UN General Assembly of a draft Universal Declaration of Human Responsibilities which the InterAction Council had prepared.

The draft had 19 articles and was explicitly proposed as a supplement to the Universal Declaration of Human Rights.

“Our conviction is that, as we are approaching the 50th anniversary of the Universal Declaration of Human Rights (1948), it is now time to talk about human responsibilities. In a world transformed by globalisation, common ethical standards as a basis for living together have become an imperative, not only for individual behaviour but also for corporations, political authorities and nations. The challenges posed by globalisation require an effort quite comparable to that of 1948.

The Universal Declaration of Human Rights reflects the philosophical and cultural background of its western drafters. But all over the world, it is necessary to balance the notions of freedom and of responsibility. At a time when people talk about the danger of a clash between civilisations, it is urgently desirable to make people understand that not only do humans deserve the greatest possible degree of freedom, but they should also develop their sense of responsibility to its fullest in order to correctly use their freedom. The proposed Universal Declaration of Human Responsibilities is not a replacement of the Universal Declaration of Human Rights but is designed to supplement it.”

The duties and responsibilities proposed by the InterAction Council are quite specific and detailed. They include injunctions to treat all people humanely, to promote good and avoid evil, to respect life and protect the environment, to behave with integrity, honesty and fairness and to lend support to the disadvantaged. In addition, the InterAction draft places special duties on the media (to report accurately and fairly), on those wielding economic and political power (which ought not to be an instrument of domination), on religious leaders (who should foster tolerance and mutual respect), and on professionals such as doctors, lawyers and civil servants who are all subject to

ethical standards. Also, the draft lists the duties on marriage partners towards each other and to their children.<sup>4</sup>

All these initiatives share features in common. First, they call for recognition in some form of a universal code of ethical obligations – a body of international rules to guide individual behaviour. Second, they all claim to some degree that modern societies cannot regulate themselves well on the basis of human rights principles alone. Third, they say individual responsibility should be emphasised more. On these grounds, all argue that an international agreement on human responsibilities is required to supplement existing international human rights standards.

Their assumption is that existing human rights standards do not adequately address the question of individual duties and responsibilities. Is this the case?

<sup>4</sup> The full text of the draft Universal Declaration of Human Responsibilities proposed by the InterAction Council is set out in the Annexe.

## Four: DUTIES IN INTERNATIONAL HUMAN RIGHTS STANDARDS – THE OVERLAP BETWEEN LAW AND ETHICS

The main purpose of international human rights standards is to protect the individual, usually against the arbitrary exercise of State power. It does not follow from this, however, that human rights standards attach absolute importance to individual preferences or give no consideration to the legitimate needs of society. We will see that the Universal Declaration of Human Rights, the two International Covenants on human rights, and other key human rights documents attach considerable importance to individual duties and that their authors were very conscious of the relationship between human rights and individual duties. Before we examine these documents more closely, however, we should explain what we mean by individual duties.

An individual “duty” can be understood in different ways. A duty can be a legal obligation – to pay taxes, or to perform military service. A duty can also be an ethical obligation, for example a duty to tell the truth, or to be faithful to one’s spouse. These ethical obligations are moral rules that individuals feel bound to follow because obeying them is good and not obeying them is bad. Morality will vary between different individuals, and between different societies, though there is much common ground about basic ethical obligations. For example, most individuals and most social codes are in agreement in saying that it is good to be truthful, good to do what you can to help others, and good to treat others as you would like to be treated.

To what extent are legal and ethical duties different in character? One of the criticisms directed at the InterAction draft Universal Declaration of Human Responsibilities (including by human rights groups) is that it confuses ethical and legal duties. Critics say that it is wrong to set out ethical principles in language reminiscent of an international treaty and ask States to adopt

them, when such principles are not legally binding. In response, supporters of the InterAction Council's draft have stressed that their project does not seek to identify legal duties, but ethical ones. They argue there is no intention to subject ethical duties to negotiations between States or to establish machinery to monitor how people live up to them. In both cases, the assumption seems to be that ethical and legal duties are quite different in character.

In some respects, of course, they are. It may be said for example that a legal obligation is imposed upon the individual by an external authority, whether or not that individual recognises the obligation is justified. In contrast, an ethical obligation is strongest when it is felt personally by the individual, who is self-motivated to accept it. Nevertheless, an ethical duty to act or not to act in a specific manner can certainly overlap with a legal duty, and the law will punish in some way the breach of certain ethical obligations. Being unfaithful to a spouse might, in law, constitute grounds for divorce. Lying to an employer about a day off sick might, in law, constitute a breach of contract. Similarly, an ethical duty can overlap with legal duties found in international human rights standards. In many cases acting to protect human rights will require a course of action that is ethical, and unethical behaviour will also be an abuse of human rights. Murder is immoral, and when civilians are murdered by security forces it is both immoral and a grave human rights abuse.

In short, while there is a distinction between legal and ethical duties, there is also some overlap so that a course of action that is ethically correct might also be one that is legally required. This overlap between law and ethics is especially apparent in the legal duties in human rights law. This should not be surprising since human rights law aims to protect human dignity – a key concern of any ethical code. The strong link between legal and ethical duties in human rights law is made explicit in two human rights standards adopted by the regional organisations for the

Americas and for Africa.

The American Declaration of the Rights and Duties of Man, adopted in 1948 by the Organisation of American States, says in its Preamble:

*Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.*

*Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.*

The preamble to the African Charter on Human and Peoples' Rights, adopted in 1981 by the Organisation of African Unity, is similarly explicit:

*Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone.*

### **Types of individual duties in international human rights standards**

In international human rights standards, we find three kinds of duties on individuals:

- duties on individuals vested with State authority to respect, promote and protect human rights;
- duties on individuals to exercise their rights responsibly; and
- more general duties individuals have towards others and their community.

The first two types of duty arise when individuals exercise their rights. The third type of duty arises independently of any particular human rights claim. All three types of duty are primarily legal, but in each there is an overlap with ethical obligations.

The three types of duty are briefly discussed below. We then outline in more detail how human rights standards include references to the different types of duties.

### **The duty on State authorities**

To be enforceable, a right claimed by one person must imply a corresponding duty on someone else to take, or not take, a certain course of action. Human rights guaranteed in international standards generally create duties on State authorities. A right to speak freely involves a duty on the authorities not to interfere with free speech and to devise and maintain laws and institutions to protect that right. A right to join trade unions implies a duty on the authorities and on employers not to punish people who do so, and so on. The mere proclamation of human rights is not enough: those in authority must act in a certain way to give effect to the right.

A distinction used to be drawn between human rights that create *negative* duties (prohibitions on acting in a certain manner) and human rights that create *positive* duties (requirements to act in a certain manner). It was argued that civil and political rights created negative duties – injunctions on the State not to torture, not to interfere with free speech, not to discriminate and so on. Economic, social and cultural rights, on the other hand, were said to create positive duties – for example, to establish schools to ensure the right of children to education, to build houses for the homeless and so on.

This distinction is rarely made nowadays, because it is widely agreed that most human rights, in whatever category they fall, require a variety of both positive and negative measures to be taken. For example, to prevent torture requires not only a prohibition in law, but also adequate training of police and prison personnel, and punishment of those who resort to torture.

The duty on authorities to do (or not do) something in order to give effect to human rights is primarily a legal duty. International human rights standards require States to take certain steps to protect rights and to respond to the allegations of those who claim a violation. National law imposes (or should impose) similar obligations. This said, there is certainly an association between these legal duties and ethical obligations. States (in the abstract)

do not take action. In practice, the responsibility to do so falls on individual officials. And an official who is required by law to act (or not act) to give effect to a human rights claim, may also be under an ethical obligation. For example, where an official has the legal duty to prevent torture, failure to act may mean that he or she breaches an ethical obligation (to treat people humanely).

There are many specific clauses in international human rights standards that place clear obligations on State authorities to take measures to ensure rights are respected. Indeed, for each human right one could identify a corresponding duty on individual State authorities, and in this way construct a fairly lengthy list of legal duties (which might in many cases overlap with ethical obligations). We do not deal further with this type of individual duty in this commentary.

### **The duty on individuals to exercise their rights responsibly**

International human rights standards also place duties on individuals to exercise their rights responsibly. They make clear that personal freedom is not absolute and that rights can be qualified. The right to freedom of expression does not allow a person to slander or libel someone else. The right to equality cannot be pursued to the point where it leads unfairly to someone else suffering inequality. The legitimate demands of minority groups for special protection of their rights must be balanced against the requirements of democratic government. Freedom of the press does not mean that journalists can publish legitimate military secrets or exhort their readers to violence. The exercise of individual responsibility is inherent in making particular human rights claims.

In this instance, too, the duty on individuals to exercise their rights responsibly is primarily a legal duty under international human rights standards. These duties are found in the limitation clauses – those parts of human rights standards that set out the grounds on which a State is allowed to restrict human rights. For example, the right to freedom of expression can be restricted by State authorities to ensure “respect of the rights and reputations

of others". This means that laws can legitimately be put in place to prevent slander and libel. Individuals exercising their right to free speech are then under a legal duty not to use this right to spread lies about someone else. But, as this example shows, here too there might be an overlap with an ethical duty – in this case, to be truthful. The way in which human rights standards deal with the duty to exercise rights responsibly is discussed in section Six below.

### **Duties towards others and the community**

In the two previous categories, the individual duty arises in the exercise of rights: either a State authority is required to act (or not act) to give effect to the right, or the individual is required to act responsibly so as not to exceed the limits of the right. However, international human rights standards also place some general duties on individuals that exist independently of any particular human rights claim. These duties are often characterised in broad terms as "duties to the community", but they can be more specific. For example, a number of documents attach specific responsibilities to groups of individuals (for example, parents, doctors or law enforcement officials) who are in a position to exercise power over others.

Once again, these general duties have a legal character that overlaps frequently with ethical obligations. The general phrase "duties to the community" might cover such legal obligations as paying taxes or performing military service. It might also cover a duty to respect the rights of others (for example, not to discriminate on grounds of race) that is also an ethical obligation. Similarly, doctors are under both a legal obligation not to participate even indirectly in acts of torture, and under a moral obligation (formalised in a code of professional ethics) to do no harm. These references are discussed in more detail in sections Four and Five, beginning with Article 29(1) of the Universal Declaration of Human Rights.

## Five: DUTIES TO THE COMMUNITY AND OTHERS – ARTICLE 29 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

International human rights standards contain numerous references to the notion that individuals have certain general duties. The first and perhaps most important such reference is Article 29(1) of the Universal Declaration of Human Rights (UDHR), which says:

*Everyone has duties to the community in which alone the free and full development of his personality is possible.<sup>5</sup>*

What is the significance of this Article? To answer this question, we look at the debates that took place when the Universal Declaration was being drafted. Since the UDHR is the first, and perhaps most important, international human rights standard, looking at the debate on Article 29 also provides some insight into the relationship between duties and rights in these standards.

### **Drafting history of Article 29<sup>6</sup>**

Early discussions of the draft Universal Declaration of Human Rights (UDHR) in the UN Commission on Human Rights in 1947 concentrated on matters of principle rather than on specific articles. From the outset, there was wide consensus that all individuals, as social beings, owed duties to their communities. No delegate disputed this. There was some discussion, on the other hand, about whether these duties should be spelt out in detail. Some delegates wondered whether the text should simply include a general principle recognising that the individual had certain duties to fulfil. Others thought that individual duties would be raised more effectively by stating that particular rights had limitations and spelling the limitations out.

The first proposed reference to individual duties was in the draft text submitted by the Indian delegate. It included the following general clause:

“Nothing mentioned in this Act shall be construed as not obligating the individual to his corresponding duties to his own State and to the international community under the United Nations.”

When the subject of duties was raised again at later meetings, a rather intense discussion on rights and duties took place. The Lebanese delegate urged the Commission to adopt the principle that “the human person is more important than the racial, national, or other group to which he may belong” and that “any social pressure on the part of the State, religion or race, involving the automatic consent of the human person is reprehensible”. This proposal was widely rejected by the majority of representatives. The representative of the United Kingdom stated that there was no “unrestricted liberty in any modern community” and that “it would be useless to try to define the liberties of the individual without taking account of his obligations towards the State or benevolent organisations.” The French representative said he shared the UK representative’s views and advanced “the principle that the human being was above all, a

<sup>5</sup> Article 29 has three paragraphs. Paragraph 29(2) reads: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” This paragraph is discussed below in the section on limitation clauses. Paragraph 29(3) reads “These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.”

<sup>6</sup> This section draws on the discussions during the drafting of the Universal Declaration of Human Rights, and Article 29 in particular, set out in the following UN documents: E/CN.4/SR.8 (31 January 1947); E/CN.4/11 (31 January 1947); E/CN.4/SR.14 (5 February 1947); E/CN.4/21 (1 July 1947); E/CN.4/AC.3/SR.5 (8 December 1947); E/CN.4/AC.3/SR/7 (9 December 1947); E/CN.4/AC.3/SR.6 (9 December 1947); E/CN.4/56 (11 December 1947); E/CN.4/SR.34 (12 December 1947); E/CN.4/57Add.1 (17 December 1947); E/CN.4/95 (25 May 1948); E/CN.4/99 (24 May 1948); E/CN.4/SR.50 (4 June 1948); A/C.3/261 (2 October, and 23-24 November 1948); A/C.3/304/Rev.2.

social being. Parallel with the list of the rights of the individual, they ought, no doubt, to draw up a list of the rights of the community”.

The Australian representative summarised the debate by saying that:

“the members of the Commission all recognised that the individual’s rights ought to be subordinated to those of the national community and of the international community. This principle could serve as a guide for the Drafting Committee.”

Some months later, a first draft of what was to become the Universal Declaration of Human Rights was produced by the UN Secretariat. It proposed that four principles be enshrined in the preamble of the Declaration. These included the principle that “man does not have rights only; he owes duties to the society of which he forms part” and the principle that “man is a citizen both of his State and of the world”. The first two articles of the Secretariat draft stated:

Article 1.

Every one owes a duty of loyalty to his State and to the [international society] United Nations. He must accept his just share of responsibility for the performance of such social duties and his share of such common sacrifices as may contribute to the common good.

Article 2.

In the exercise of his rights every one is limited by the rights of others and by the just requirements of the State and of the United Nations.

The Secretariat’s draft was debated, as were drafts prepared by several governments. The Drafting Committee then submitted a further text to the Commission on Human Rights. It proposed various alternative texts for an article on duties.

The first of these consisted of three articles as follows:

Article 2.

The object of society is to afford each of its members equally opportunity for the full development of his spirit, mind and body.

Article 3.

As human beings cannot live and develop themselves without the help and support of society, each one owes to society fundamental duties which are: obedience to law, exercise of a useful activity, willing acceptance of obligations and sacrifices demanded for the common good.

Article 4.

In the exercise of his rights, everyone is limited by the rights of others.

A second alternative consisted of one article only and read

Article 2.

These rights are limited only by the equal rights of others. Man also owes duties to society through which he is enabled to develop his spirit, mind and body in wider freedom.

The Commission on Human Rights eventually combined the alternatives and adopted the following text which was circulated to governments for their comments:

Article 2.

In the exercise of his rights everyone is limited by the rights of others and by the just requirements of the democratic State. The individual owes duties to society through which he is enabled to develop his spirit, mind and body in wider freedom.

Many governments commented on this draft text. Among the comments received were the following proposals for text regarding duties:

“Man owes duties to the society which allows him to shape and freely develop his personality. In their discharge, the right of each is limited only by the rights of others and by the just laws of the democratic state”.

and:

“All men are members of communities and, as such, have the duty to respect the rights of their fellow men equally with their own.

The just claims of the state, which all men are under a duty to accept, must not prejudice the respect of man’s right to freedom and equality before the law and safeguard of human rights, which are primary and abiding conditions of all just government”.

When the debate resumed, there was a discussion about whether to omit a specific reference to duties to the community and simply refer to how rights might be limited. However, the Commission on Human Rights decided to maintain distinct references to both general duties and limits on rights and eventually adopted the following text, which was passed through the Economic and Social Council (ECOSOC) to the Third Committee of the General Assembly. It read:

1. Everyone has duties to the community which enables him freely to develop his personality.
2. In the exercise of his rights, everyone shall be subject only to such limitations as are necessary to secure due recognition and respect for the rights of others and the requirements of morality, public order and the general welfare in a democratic society.

By the time the Third Committee met, delegates generally agreed that a distinct reference should be made to general duties owed to the community. Previous debates had proved the need for this. Delegates stressed the impossibility of drafting a declaration of rights without mention of the duties which came with freedom

and which were necessary for the establishment of a peaceful and democratic society. They felt that some wording on duties was crucial to differentiate freedom from anarchy and tyranny, and to make clear that it was necessary to strike a balance between individual freedom and the rights of others, as well as the legitimate demands of the community and the state. Because the need for the Article was not disputed, debate focused on wording and on suggested amendments. In discussion, the Australian delegate proposed that the phrase “in which alone the free and full development of his personality is possible” would replace “which enables him freely to develop his personality”. The Belgian representative spoke against this proposal on the grounds that it was not true that a person could only develop his personality within a community. To make his point, he argued that: “it was ... only necessary to recall the famous book by Daniel Defoe, *Robinson Crusoe*, to find proof of the contrary”.

The Soviet delegate later seized upon this literary reference. The example of Robinson Crusoe showed instead, he said, that: “man could not live and develop his personality without the aid of society. Robinson had, in fact, had at his disposal the products of human industry and culture, namely the tools and books he had found on the wreck of his ship”.

Eventually, the language on general duties was adopted, including the Australian amendment and became Article 29(1). As accepted later by the General Assembly, it simply stated:

*Everyone has duties to the community in which alone the free and full development of his personality is possible.*

### **The significance of Article 29(1)**

The time and energy devoted to Article 29 show that it was clearly considered by its drafters to be one of the most important articles in the Universal Declaration. The issue of individual duties, as well as the relationship between rights and duties, was

considered frequently during the drafting process. In addition, the debates reveal key areas of agreement about the Article's application and significance.

First of all, there was widespread agreement that the UN's first human rights statement should refer to individual duties as well as rights. Article 29(1) was not an aside or an add-on provision but was *fundamental* to the conception of the Universal Declaration. As we have seen, it was originally Article 2 in the draft, and the fact that it is now located at the end of the text does not reduce its importance. Efforts to remove a separate reference to individual duties were roundly rejected.

Second, Article 29(1) affirmed that individuals have *general* duties. These were understood to be additional to duties that might arise in the exercise of particular rights. Efforts to argue that the reference to these general duties could be dropped, or that it would be adequate to list the legitimate grounds for restricting rights, were not successful.

Third, the language of Article 29(1) was intended to capture the idea that it is not adequate to proclaim individual rights without regard to the social environment in which they are exercised. Because people exercise their rights *in society*, it was necessary also to stress their duties.

However, Article 29(1) does not explicitly indicate what precise individual "duties to the community" it is meant to include. The debates during drafting show there was discussion, but not agreement, on such duties as "loyalty to the State and to the United Nations", "share of common sacrifices", "obedience to law", "exercise of a useful activity", "willing acceptance of obligations and sacrifices demanded for the common good", "to respect the rights of their fellow men", and to accept "the just claims of the State". Some of these examples suggest the drafters had in mind *legal* duties (e.g. "obedience to law", "the just claims of the State"). On the other hand, the eventual decision was to stress that duties are "to the *community*" (not

the State). This suggests that Article 29(1) captures the notion of ethical obligations. For example, the duties to respect the rights of others, to work for the common good, and to exercise a useful activity are similar to ethical obligations the InterAction Council believes are needed.<sup>7</sup>

In summary, the reference to individual duties in Article 29(1) of the UDHR was seen as a key element of the text by those who drafted it. While an individual's "duties to the community" are not specified, these might include both legal and ethical obligations.

Article 29(1) is fundamental to any appreciation of the place occupied by duties in international human rights standards. But the notion of general duties to the community and to others is not limited to this Article. It is found in many other human rights standards.

<sup>7</sup> The notion of respect for the rights of others underlies Articles 1, 2 and 5 of the InterAction draft, the notion of working for the common good is similar to responsibilities set out in Articles 4, 9 and 11, and the responsibility to exercise useful activity is echoed in Article 10 of the InterAction draft.

## Six: DUTIES TO THE COMMUNITY AND OTHERS – OTHER HUMAN RIGHTS STANDARDS

The Universal Declaration of Human Rights is a foundation document. It was necessary to turn its language into binding treaty commitments that could be monitored and eventually enforced. When this work was undertaken, the drafters of these treaties included references to individual duties that borrowed heavily from Article 29 and the particular conception of human rights which, as we have seen, those who drafted the Universal Declaration had in mind.

### **General duties in UN human rights standards**

#### **The two International Covenants**

The original plan of governments participating in the work of the UN Commission on Human Rights was to draft a single international human rights treaty. Debates on alleged differences in the nature of civil and political rights, on the one hand, and economic, social and cultural rights on the other hand, and the ideological debates of the Cold War, intervened in the 1950s to make this task very difficult. In the end it was decided to prepare two separate treaties, each dealing with one category of rights. Both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were completed in 1966, and, after a sufficient number of States had ratified them, entered into force in 1976. The two Covenants are today the most important international human rights treaties, given their scope (they each deal with a wide range of human rights) and widespread acceptance. Over 140 States have ratified both Covenants.

The two International Covenants include in their preambles an identical reference to individual duties, which is based on Article 29(1) of the Universal Declaration:

*The State Parties to the present Covenant...*

*Realising that the individual, **having duties to other***

***individuals and to the community to which he belongs***, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant,

*Agree upon the following articles...*(Emphasis added.)

In asking that this reference to duties be included in the Covenants, the Australian delegate stated that though the texts were “concerned with the obligations of States, nevertheless, States being the sum of individuals, the latter must co-operate if the covenant was to be implemented”.<sup>8</sup>

It is worth noting that the language of duties in the preambles of the Covenants makes clear that the individual has duties both to the “community” and to “other individuals”, whereas Article 29(1) of the UDHR only mentioned the former. Though no full list of these duties is provided, it is clear from the language used in the preambles that at least one such duty on individuals is to promote and observe human rights.

Two other UN human rights standards pick up and develop the language of Article 29(1), the Declaration on the Right to Development and the Declaration on Human Rights Defenders.

### **Declaration on the Right to Development**

The UN Declaration on the Right to Development was adopted by the General Assembly in 1986. It was strongly supported by poorer countries because under-development (including widespread poverty, illiteracy and disease) clearly has a profound impact on their peoples’ ability to enjoy human rights. The Declaration establishes the right of all peoples to participate in, contribute to and enjoy economic, social, cultural and political development.

<sup>8</sup> E/CN.4/SR.308, p.13

While most of this Declaration deals with obligations on States, Article 2(2) says:

*All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.*

Clearly inspired by the language of Article 29(1) of the UDHR, this article goes further in indicating that individuals have a responsibility for development and for promoting conditions conducive to development. What this means in practice is not spelled out. It is interesting, however, that the individual responsibility for development articulated in the Declaration is similar to ethical obligations identified by both the Commission for Global Governance and the InterAction Council.<sup>9</sup>

### **The Declaration on Human Rights Defenders**

The most recently adopted UN human rights standard is the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental

<sup>9</sup> The Commission for Global Governance identified “pursuing sustainable development” as an element of a global ethic. The draft Universal Declaration of Human Responsibilities prepared by the InterAction Council says in Article 9: “All people, given the necessary tools, have a responsibility to make serious efforts to overcome poverty, malnutrition, ignorance, and inequality. They should promote sustainable development all over the world in order to assure dignity, freedom, security and justice for all people.” Also, in Article 11: “All property and wealth must be used responsibly in accordance with justice and for the advancement of the human race. Economic and political power must not be handled as an instrument of domination, but in the service of economic justice and the social order.”

Freedoms (more commonly referred to as the Declaration on Human Rights Defenders). The Declaration was adopted at the 1998 session of the General Assembly. Its aim is to elaborate the right of individuals and groups to promote and protect human rights. As such, it is seen as a key instrument to legitimise and support the efforts of members of civil society and non-governmental organisations that work on human rights issues in countries around the world.

For the most part, this Declaration establishes obligations on States to take steps to ensure that those who defend human rights can do so openly and effectively, without fear of harassment or persecution. However, Article 18 of the Declaration is directed at individuals and says:

- 1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.*
- 2. Individuals, groups, institutions and non-governmental organisations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and achievement of democratic societies, institutions and processes.*
- 3. Likewise, they have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realised.*

Here too we see that the text is directly inspired by Article 29(1) of the UDHR, but it also goes further in specifying some of these general duties and responsibilities to the community. In this case, the individual responsibilities mentioned are to safeguard and help build democracy, and to promote a social and international order conducive to human rights. Again, these are similar to the

ethical duties identified by the Commission on Global Governance and the InterAction Council.<sup>10</sup>

These examples from UN human rights standards show that the language which describes individual duties to the community in Article 29(1) of the UDHR has continued to have an impact. As human rights law develops, the idea that individuals have certain individual duties to the community has not been lost. Further, some of these duties are spelt out in later standards, including the duty to promote and observe human rights, the responsibility for development and to promote conditions allowing for it, and the duty to safeguard and help build democracy.

### **General duties in regional human rights standards**

Human right standards adopted by regional organisations also make reference to general duties of individuals towards others and the community. In some cases they indicate what specific duties are included.

### **American Declaration of the Rights and Duties of Man**

The American Declaration of 1948 contains many references to duties of the individual, including the following:

#### *Preamble*

*The fulfilment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.*

*Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.*

<sup>10</sup> The Commission on Global Governance includes the duty to be “an active participant in governance” in its list. The duty regarding promoting an (equitable) social order is similar to Articles 9 and 11 of the InterAction draft, quoted in the previous footnote.

*Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.*

*Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practise and foster culture by every means within his power.*

*And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.*

*Chapter 2; Duties*

*Article XXIX*

*It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.*

The Declaration goes on to specify a number of particular duties, including mutual duties of support and protection between parents and children, the duty to acquire an education, to obey the law, to perform civil or military service if required, to co-operate with the State on matters of social security and welfare, to pay taxes, to work as far as one's abilities permit and to vote. The full list of individual duties in the American Declaration is set out in the Annexe.

### **The American Convention on Human Rights**

The American Declaration is not a legally binding treaty, and in 1969 the Organisation of American States adopted the American Convention on Human Rights. This does create clear legal obligations on States which accept it. In the American Convention reference is made to the general duties of the individual in Article 32(1), titled "Relationship between Duties and Rights". The Article states simply:

*1. Every person has responsibilities to his family, his community, and mankind.*

## **The African Charter on Human and Peoples' Rights**

The African Charter on Human and Peoples' Rights, adopted in 1981, contains three Articles and a total of eleven Paragraphs devoted to the issue of individual duties, including the following references to general duties:

### *Preamble*

*Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;...*

### *Chapter II; Duties*

#### *Article 27*

*1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.*

*2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.*

#### *Article 28*

*Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.*

Article 29 of the African Charter lists a number of additional duties on individuals, including duties within the family, the duty to work to the best of one's abilities and to pay taxes, and the duty to contribute to the moral well-being of society. Also, a number of duties towards the State are identified, such as the duty to support the territorial integrity of the State and defend it if required, and not to compromise its security. Some of these latter duties have been criticised as putting too much emphasis on the State. The report from the meeting that drafted the African Charter notes that

"the concept of the individual, completely free and

completely irresponsible, and at all times in opposition with society, does not conform with African philosophy.”<sup>11</sup>

The full list of individual duties in the African Charter is set out in the Annexe.

### **Duties of particular groups under international human rights law**

In the preceding section we looked at the references in UN and regional human rights standards to general duties that individuals have to the community. Human rights standards also include many references to the duties that fall on particular groups of individuals in society who exercise positions of influence and/or power over others.

Specific human rights standards have been developed to deal with the rights of vulnerable groups within society, including children, detained persons, the mentally handicapped, and the disabled. In some cases, drafters have made specific mention of duties on individuals who have a direct responsibility for protecting the rights of the group in question. Important examples of such standards are found in the UN Convention on the Rights of the Child.

### **The UN Convention on the Rights of the Child**

The Convention on the Rights of the Child has been accepted by all but two States. It is the most widely ratified human rights treaty. It provides a comprehensive catalogue of children's human rights and establishes clear obligations on State authorities to give effect to them. Of course, in dealing with the rights of children a key factor is the role of parents (or guardians). The Convention therefore recognises not only children's human rights, but also the duties and responsibilities falling on parents.

<sup>11</sup> As quoted in Ouguergouz, Fatash, *La Charte Africaine des Droits de l'Homme et des Peuples*, Institute of Advanced International Studies, 1993, p.233.

Article 18(1) of the Convention recognises that the basic responsibility for a child's upbringing lies on the parents:

*States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.*

Article 27(2) recognises the parent's duty to provide for the child:

*The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*

Further, Article 5 of the Convention recognises the responsibility of parents to help the child in the exercise of his or her rights:

*States Parties shall respect the responsibilities, rights and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.*

The InterAction Council's draft Universal Declaration of Human Responsibilities stresses that individuals in positions of authority or influence must be subject to ethical standards.<sup>12</sup> International human rights standards also set out guidelines for the conduct of groups who play a central role in human rights protection. For example, there are guidelines covering the responsibilities of

<sup>12</sup> Article 13 of the InterAction Council draft states: "No politicians, public servants, business leaders, scientists, writers or artists are exempt from general ethical standards, nor are physicians, lawyers and other professionals who have special duties to clients. Professional and other codes of ethics should reflect the priority of general standards such as those of truthfulness and fairness."

physicians, lawyers and prosecutors. These documents place specific duties on the individuals involved, and sometimes make specific mention of ethical duties.

### **Physicians and health personnel**

In the past, physicians have been involved (willingly or not) in the torture and ill-treatment of detainees. For example, they have been asked to advise on the effects of different methods of torture, or have been asked to treat victims of torture so that more torture can be inflicted. The UN adopted a set of Principles in 1982 to make clear that physicians may not be involved in such acts – the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Principles include the following provisions:

#### *Principle 1*

*Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.*

#### *Principle 2*

*It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.*

#### *Principle 3*

*It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the*

*purpose of which is not solely to evaluate, protect or improve their physical or mental health.*

## **Lawyers**

The Basic Principles on the Role of Lawyers were adopted by the UN in 1990.<sup>13</sup> This document sets out guidelines to strengthen the role of lawyers, particularly their role in protecting human rights. It includes a section on "Duties and Responsibilities" that requires lawyers "to maintain the honour and dignity of their profession", and describes their duties to their clients. It also says:

*14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.*

## **Prosecutors**

The UN Guidelines on the Role of Prosecutors were also adopted in 1990. As with the Basic Principles on the Role of Lawyers, the Guidelines aim to strengthen the role of prosecutors in efforts to protect human rights. As well as requiring States to ensure that prosecutors operate fairly and effectively, the Guidelines place specific obligations on prosecutors. Guideline 12 says:

*Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.*

<sup>13</sup> They were adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba.

Guideline 13 says that, *inter alia*, prosecutors should:

*(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;*

*(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;*

*(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;*

As these examples show, guidelines dealing with the conduct of groups who play an important role in protecting human rights do take into account the importance of individual duties and ethical obligations.

## Seven: THE DUTY TO EXERCISE RIGHTS RESPONSIBLY

One of the main points made by those promoting a “global ethic” is that “... rights need to be joined with responsibilities... Over the long run, rights can only be preserved if they are exercised responsibly and with due respect for the reciprocal rights of others.”<sup>14</sup> International human rights standards do take this into account. Recognising that few rights are absolute, these standards make clear that there are limits on the manner in which rights can be exercised. These limits are often set precisely to ensure that individuals cannot harm others in pursuit of their own human rights.

The limits to rights are found in clauses (“limitation clauses”) that typically follow the recognition of particular rights and indicate the circumstances in which those rights may be restricted by State authorities. They are loosely based on Article 29(2) of the Universal Declaration of Human Rights that says:

*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*

There are two ways of understanding these limitation clauses. First, and most importantly, the limitation clauses place limits on the ability of governments to restrict rights. By setting out what limitations are allowed, these clauses clearly intend to ensure that any government restriction on a right must fall within the terms of the clause. The burden falls on the government to show why, for example, preventing a demonstration is necessary to protect “public order”.

<sup>14</sup> Commission on Global Governance.

Second, and more to the point for our discussion, by setting out the limits on rights, limitation clauses provide a guide to individuals concerning the point at which their right (for example, to free expression) may be overruled by other rights or values (for example, another person's interest in not being slandered). It is in this second understanding of the limitation clauses that we see the idea that individuals have a duty to exercise rights responsibly. The duty arises indirectly – the limits on the right set the boundaries within which the right can be exercised.

### **Examples of the duty to exercise rights responsibly**

In international human rights standards a number of reasons are listed which justify placing limits on rights. For the most part, these reasons are based on the wording of Article 29(2) of the UDHR. The general pattern has been for a treaty to recognise a particular human right, and then indicate the reasons it might be limited. For example, Article 21 of the International Covenant on Civil and Political Rights recognises the right of peaceful assembly, and then says the only restrictions allowed on this right are those necessary

*in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

Similar reasons are listed with regard to a number of other rights in the International Covenant on Civil and Political Rights, and other UN and regional human rights treaties. It is important to note that not all human rights are subject to limitation clauses. For example, the rights to life, to non-discrimination, to fair trial, and to protection against arbitrary arrest and detention, torture, and slavery do not include limitation clauses like the one quoted above. However, rights to freedom of movement, to practice one's religion, to free expression, and freedoms of assembly and association typically do include limitation clauses. It is interesting to note that the rights subject to limitation clauses have a more

public nature than rights that do not include these clauses. That is, they are exercised more usually by individuals acting together with others, or in a way that visibly impacts on others.

How do these reasons for limiting rights impose duties on individuals? To answer this question we will take as an example the limits placed on the right to freedom of expression. Following that, we will look briefly at how some of the reasons for limiting rights (e.g. "public order", "respect for the rights and freedoms of others") can be understood as creating individual duties.

### **Freedom of expression: special duties and responsibilities**

The right to express one's views is fundamental, but human rights standards take account of the fact that some views or opinions, when expressed, may cause harm to others. They therefore accept, for example, that freedom of the press should not provide a license to libel or slander, and that freedom of speech should not be a cover under which racist ideologies cloak their violent intentions.

Freedom of expression is guaranteed in Article 19 of the International Covenant on Civil and Political Rights, and in all major regional human rights standards. When drafting Article 19, delegates debated the circumstances in which the right to free expression could be limited. They attempted to draw up a "full catalogue" of such circumstances. Included in this catalogue were the following:

- a) Matters which must remain secret in the interest of national safety;
- b) Expressions which invite persons to alter by violence the system of government;
- c) Expressions which directly incite persons to commit criminal acts;
- d) Expressions which are obscene;
- e) Expressions injurious to the fair conduct of legal proceedings;

- f) Infringements of literary or artistic rights;
- g) Expressions about other persons, natural or legal, which defame their reputations or are otherwise injurious to them without benefiting the public;
- h) The systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples and States.<sup>15</sup>

As this list grew, it was decided to draft a more general clause instead. When Article 19 was adopted, it therefore included the following clause as Article 19(3):

*The exercise of the rights provided for in paragraph 2 of this article (to free expression) **carries with it special duties and responsibilities**. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

*(a) For respect of the rights or reputations of others;*

*(b) For the protection of national security or of public order (ordre public), or of public health or morals.*(Emphasis added)

Article 19(3) makes explicit the point that individuals who exercise the rights concerned incur “special duties and responsibilities” when they do so. The debates indicate that the drafters had in mind in particular the powerful influence of modern media, and that much of that media was in private hands.<sup>16</sup>

The European Convention for the Protection of Human Rights and Fundamental Freedoms also includes a clause that sets limits on freedom of expression. Article 10(2) notes that

*The exercise of these freedoms ... carries with it duties and responsibilities...*

<sup>15</sup> See UN Doc. A/2929, p.147.

<sup>16</sup> See UN Doc. A/2929, p.147.

What are the “special duties and responsibilities” referred to in Article 19(3) of the Covenant? The listing of reasons for restricting the right to free expression in sub-paragraphs (a) and (b) gives some indication. Respecting the “rights or reputations of others” obviously means one cannot use the media to slander and libel others, or print falsehoods deliberately. Similarly, the media has a duty to respect the right to privacy of people. Protecting “public morals” will require that those responsible for airing television programmes are careful regarding what children watch, or that the media follow guidelines on whether to print or broadcast material that might offend people, such as types of pornography.

That the exercise of freedom of expression places duties on individuals to do so responsibly is also shown in the way human rights standards deal with “hate speech” – that is, types of expression which advocate racial intolerance, violence or hatred towards particular groups. Article 20 of the International Covenant on Civil and Political Rights states:

- 1. Any propaganda for war shall be prohibited by law.*
- 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

What this means is that those who resort to “hate speech” should be subject to criminal penalties. In other words, human rights standards refuse to protect “hate speech” as legitimate expression, and go further in requiring steps to be taken to prevent it. This provision is controversial, and when it was drafted some countries argued that it was wrong for a human rights treaty to criminalise some types of expression (however objectionable they might be). But it clearly shows that the individuals exercising their right to free expression are obliged to do so within certain limits.<sup>17</sup>

### **To respect the rights, reputations and freedom of others**

The phrase, “the rights and freedoms of others” (or “the rights or reputations of others”), is included in the International Covenant on Civil and Political Rights as a legitimate reason for restricting the rights of freedom of movement, freedom of expression, peaceful assembly, and association, and the right to manifest one’s religion or beliefs.

The same or similar phrase is also found in numerous articles of the Convention on the Rights of the Child, as well as in a number of articles of the American Convention on Human Rights and the African Charter on Human and Peoples’ Rights.

What it means is that a government might legitimately refuse, for example, to allow a group to hold a public demonstration (their right to peaceful assembly) if the purpose of the demonstration is to shout racial abuse at a minority ethnic group. In other words, individuals who wish to hold demonstrations cannot abuse their right to do so by spreading racial intolerance.

To give a second illustration, a government might refuse to allow an individual to leave his country (included in the right to freedom of movement) if he is doing so to avoid paying support to dependent children. In other words, the individual cannot exercise the right to leave if it would mean his children’s rights (in this case entitlement to support) would be undermined.

### **Public order (ordre public)**

In the International Covenant on Civil and Political Rights, “public order (ordre public)” is cited as a legitimate reason to restrict the rights to freedom of movement, freedom of expression, of peaceful assembly, of association, and the rights to a public hearing and to manifest one’s religious beliefs.

<sup>17</sup> Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination also places obligations on States to prohibit “hate speech” but also to prohibit groups inciting or promoting racial discrimination, and to criminalise membership of such groups.

In English, limiting a right on grounds of “public order” might mean simply the prevention of disorder. But the French term “ordre public”, common in civil law systems, has a broader meaning that covers community-wide concerns. When it is cited as a reason for limiting human rights it means that the legitimate interests of the community might take precedence over an individual's exercise of his or her rights. For example, a government could legitimately demand that those wishing to hold a demonstration (right to peaceful assembly) should notify and seek the permission of the authorities. The authorities might require the demonstration to be held in a particular place, or follow a particular route, for reasons such as ease of traffic and crowd control. The individuals who want to demonstrate must abide by laws regulating such matters.

“Public order” would also justify governments passing environmental and zoning laws that affect people's freedom of movement and their right to choose their place of residence in a country.

### **Public morals**

The protection of “public morals” is cited in the International Covenant on Civil and Political Rights as a legitimate reason for restricting rights to freedom of movement, manifesting one's religious beliefs, freedom of expression, peaceful assembly and freedom of association. It is also a legitimate reason for restricting rights in a number of articles of the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples Rights.

There is not much material available from the drafting history that helps to define what types of restrictions on rights are justified on grounds of “public morals”. What is acceptable to the public will vary in different societies. For example, in one country it might mean that a government could prevent nude sunbathing; in another, that nude sunbathing might be restricted to

designated sites. In either case, there is a clear duty on individuals not to offend others.

### **Public health**

The International Covenant on Civil and Political Rights lists “public health” as a reason for limiting the rights to freedom of movement, freedom to manifest one’s religion, freedom of expression, peaceful assembly and freedom of association.

A government might, for example, have to subject people to quarantine as the result of the outbreak of infectious disease. This is an obvious restriction on those people’s right to free movement but might be justified as the only way to halt the spread of the disease. The individuals affected are under a duty to obey such measures for the good of the community as a whole.

### **Prohibition of actions aimed at the destruction of rights**

In addition to duties that arise from the limits which might be placed on certain rights, international human rights standards also make clear that individuals are under a duty not to use the cover of human rights protection as a means to destroy human rights.

Article 30 of the Universal Declaration of Human Rights says:

*Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.*

Article 5 of the International Covenant on Civil and Political Rights uses almost identical language:

*Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms*

*recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.*

A similar provision is found in regional human rights standards in Europe and the Americas.

The drafting history of Article 5 shows that it was intended to combat the rise of racist and fascist ideologies. While Article 5 includes States, the actions of private individuals or groups were of most concern to the drafters.

## Eight: THE HUMAN RIGHTS ETHIC

We have seen in the previous sections that international human rights standards deal with three types of duties on individuals: duties on State authorities to act (or not act) to give effect to human rights; duties individuals have to others and to the community; and duties individuals have to exercise their rights responsibly. The standards establish that these are primarily legal duties, but in many cases the legal duty concerned overlaps with an ethical obligation.

Those advocating the adoption of a global ethic have stressed that their project is not about adopting legal obligations but rather is an appeal to individual values:

“The global ethic is not about rights. It is about responsibilities. The values, standards, and attitudes expressed in the ethic are not intended to be negotiable or be the subject of legislation or litigation. They are statements intended to resonate in the hearts of individuals.”<sup>18</sup>

One of the key points they make is that respect for human rights depends on individuals having a sense of acting in a morally justified manner. As stated in the preamble to the InterAction Council's draft Universal Declaration of Human Responsibilities:

*“Whereas the rule of law and the promotion of human rights depend on the readiness of men and women to act justly...”*

The idea is to create a sense of civic obligation – to instill in individuals the idea that they should act in ways that support basic shared values. This idea certainly appeals to the values of religious and secular traditions that are older and deeper, in some respects, than international human rights standards.

<sup>18</sup> Dr Daniel Gomez-Ibanez “Moving Towards a Global Ethic”, paper presented to the Fifth National Conference on Ethics in America, Long Beach, California, March 1994.

We believe, however, that international human rights standards also appeal to – and depend upon – a conception of the person that presumes he or she act responsibly and in a just and conscientious manner. Human rights law is attentive to right and wrong. It is not value-free. The standards show a clear bias towards certain types of behaviour and beliefs. In particular, they promote the values of solidarity, equality, freedom, tolerance and non-discrimination. Taken together, the values promoted by international human rights standards do create an underlying ethic. Moreover, these are some of the same values promoted by those who call for a global ethic.

### **Promoting a human rights ethic**

How do international human rights standards promote ethical behaviour?

First, the very idea of developing a universal law of human rights is grounded in a common concern for other humans simply because they are human (as opposed to members of a particular region, citizens of one country, etc.). As one author puts it:

*“At the very foundation of human rights is the conviction that because every one of us human beings is sacred, every one of us bears certain responsibilities to every one of us.”<sup>19</sup>*

The idea of solidarity – that we should care about what happens to other people for no other reason than that they too are humans – is woven into the fabric of international human rights standards. Indeed it is eloquently expressed in Article 1 of the Universal Declaration of Human Rights:

*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and **should act towards one another in a spirit of brotherhood.*** (Emphasis added.)

<sup>19</sup> Michael J. Perry, *The Idea of Human Rights: Four Inquiries*, Oxford University Press, 1998, p.51

The idea of solidarity is also found in references that require individuals (not only States) to promote respect for human rights. The preambles to both Covenants say:

*The State Parties to the present Covenant...*

*Realizing that **the individual**, having duties to other individuals and to the community to which he belongs, **is under a responsibility to strive for the promotion and observance of the rights** recognized in the present Covenant,*

*Agree upon the following articles...(Emphasis added.)*

The preamble to the Universal Declaration of Human Rights in some ways goes further by asking individuals to work for the universal protection of human rights:

*The General Assembly,*

*Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that **every individual and every organ of society**, keeping this Declaration constantly in mind, **shall strive by teaching and education to promote respect for these rights and freedoms** and by progressive measures, including national and international, **to secure their universal and effective recognition and observance ...***

*(Emphasis added.)*

Underlying this appeal is the conviction that people should care about what happens to other people, wherever they might be.

Article 1 of the UDHR also highlights the values of equality and freedom. A right can only properly be called a human right if it is held by everyone. There is no justification for granting greater rights to some people on account of their political affiliation, ethnic origin, etc. The starting point for human rights protection must be that we are all equally entitled to that protection.

Of course, human rights standards deal extensively with the legal obligations on States not to discriminate and to take steps to ensure equality in law. But these standards also promote individual behaviour that overcomes prejudice.

For example, to further its goal of ensuring equality between men and women, the UN Convention on the Elimination of All Forms of Discrimination against Women creates obligations on States:

*Article 2(f)*

*To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; [...]*

*Article 5(a)*

*To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; [...]*

While the obligation is on the State, it is clear that what the standard aims to achieve is to alter individual prejudice that treats women as inferior. And the standard recognises that passing laws is only one way of achieving this.

Similar examples are found in the International Convention on the Elimination of All Forms of Racial Discrimination. For example, Article 2(e) requires States:

*to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.*

And Article 7 says:

*States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups...*

Once again, though the obligation is on the State, the aim is to change individual behaviour in order to promote tolerance and equality and overcome racial discrimination.

Of course, education is a key means by which certain values and ethical behaviour can be promoted. Recognising this, the right to education, as guaranteed in Article 13 of the International Covenant on Economic, Social and Cultural Rights, not only guarantees the right but requires States to ensure education is devoted to specific purposes:

*1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

Likewise, the Convention on the Rights of the Child not only guarantees a child's right to education but devotes a separate article (Article 29) to detailing what this education should aim to achieve. In addition to the full development of the child's talents and mental and physical abilities, Article 29(1) includes the following purposes:

*(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*

*(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*

*(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*

*(e) The development of respect for the natural environment.*

One further example might be cited. Article 5(3) of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted in 1981, says:

*The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.*

It is clear from these references that human rights standards actively promote certain values. Often the obligation is placed on the State to take the lead. Nevertheless, the intended result is to ensure that individuals act in a way consistent with these values.

## Nine: CONCLUSION

We have seen that international human rights standards contain many important references to individual duties and responsibilities. What do these various references add up to? Do international human rights standards deal adequately with human responsibilities? If so, is the implication that there is no need for new global agreements focusing on individual responsibilities?

Let us recall that the purpose of international human rights standards is to protect human dignity and freedom. These standards came into being as a response to the assaults on human dignity in the Second World War – assaults carried out in the name of an all-powerful State. The main intention of the drafters therefore, was to place obligations on States. The main effect of human rights law is to regulate State, not individual, behaviour. Events in the 50 years since the adoption of the UDHR show without question that the protection of human dignity and freedom continues to require international control over how States treat their citizens.

This being the case, the many references to individual duties in these standards shows rather clearly how much the drafters felt individual duties were important. They proclaimed rights but did so in a philosophical framework that assumed the value, and the values, of individual responsibility – to families, to others and to the community.

Is there no need therefore, for a new global agreement on individual duties? It was not the purpose of this commentary to answer this question one way or the other. One should not underestimate the importance of promoting more ethical behaviour. No doubt, if individuals paid more attention to what is right and what is wrong it would be easier to secure respect for human rights. But if a global ethic is needed, it is not because international human rights standards promote “the freedom of indifference” or encourage individuals to exercise rights without responsibility.

## Annexe: SELECTED LISTS OF INDIVIDUAL DUTIES

### 1. InterAction Council

The draft Universal Declaration of Human Responsibilities proposed by the InterAction Council includes the following individual duties:

**Article 1.** Every person, regardless of gender, ethnic origin, social status, political opinion, language, age, nationality, or religion, has a responsibility to treat all people in a humane way.

**Article 2.** No person should lend support to any form of inhumane behaviour, but all people have a responsibility to strive for the dignity and self-esteem of all others.

**Article 3.** No person, no group or organization, no state, no army or police stands above good and evil; all are subject to ethical standards. Everyone has a responsibility to promote good and to avoid evil in all things.

**Article 4.** All people, endowed with reason and conscience, must accept a responsibility to each and all, to families and communities, to races, nations, and religions in a spirit of solidarity: What you do not wish to be done to yourself, do not do to others.

**Article 5.** Every person has a responsibility to respect life. No one has the right to injure, to torture or to kill another human person. This does not exclude the right of justified self-defense of individuals or communities.

**Article 6.** Disputes between states, groups or individuals should be resolved without violence. No government should tolerate or participate in acts of genocide or terrorism, nor should it abuse women, children, or any other civilians as instruments of war. Every citizen and public official has a responsibility to act in a peaceful, non-violent way.

**Article 7.** Every person is infinitely precious and must be protected unconditionally. The animals and the natural

environment also demand protection. All people have a responsibility to protect the air, water and soil of the earth for the sake of present inhabitants and future generations.

**Article 8.** Every person has a responsibility to behave with integrity, honesty and fairness. No person or group should rob or arbitrarily deprive any other person or group of their property.

**Article 9.** All people, given the necessary tools, have a responsibility to make serious efforts to overcome poverty, malnutrition, ignorance, and inequality. They should promote sustainable development all over the world in order to assure dignity, freedom, security and justice for all people.

**Article 10.** All people have a responsibility to develop their talents through diligent endeavor; they should have equal access to education and to meaningful work. Everyone should lend support to the needy, the disadvantaged, the disabled and to the victims of discrimination.

**Article 11.** All property and wealth must be used responsibly in accordance with justice and for the advancement of the human race. Economic and political power must not be handled as an instrument of domination, but in the service of economic justice and of the social order.

**Article 12.** Every person has a responsibility to speak and act truthfully. No one, however high or mighty, should speak lies. The right to privacy and to personal and professional confidentiality is to be respected. No one is obliged to tell all the truth to everyone all the time.

**Article 13.** No politicians, public servants, business leaders, scientists, writers or artists are exempt from general ethical standards, nor are physicians, lawyers and other professionals who have special duties to clients. Professional and other codes of ethics should reflect the priority of general standards such as those of truthfulness and fairness.

**Article 14.** The freedom of the media to inform the public and to criticize institutions of society and governmental actions, which is essential for a just society, must be used with responsibility and discretion. Freedom of the media carries a special responsibility for accurate and truthful reporting. Sensational reporting that degrades the human person or dignity must at all times be avoided.

**Article 15.** While religious freedom must be guaranteed, the representatives of religions have a special responsibility to avoid expressions of prejudice and acts of discrimination toward those of different beliefs. They should not incite or legitimize hatred, fanaticism and religious wars, but should foster tolerance and mutual respect between all people.

**Article 16.** All men and all women have a responsibility to show respect to one another and understanding in their partnership. No one should subject another person to sexual exploitation or dependence. Rather, sexual partners should accept the responsibility of caring for each other's well-being.

**Article 17.** In all its cultural and religious varieties, marriage requires love, loyalty and forgiveness and should aim at guaranteeing security and mutual support.

**Article 18.** Sensible family planning is the responsibility of every couple. The relationship between parents and children should reflect mutual love, respect, appreciation and concern. No parents or other adults should exploit, abuse or maltreat children.

**Article 19.** Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the responsibilities, rights and freedoms set forth in this Declaration and in the Universal Declaration of Human Rights of 1948.

## 2. American Declaration

The American Declaration of the Rights and Duties of Man (adopted in 1948), includes the following provisions dealing with individual duties:

### **Chapter 2; Duties**

*Article XXIX. It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.*

*Article XXX. It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honour their parents always and to aid, support and protect them when they need it.*

*Article XXXI. It is the duty of every person to acquire at least an elementary education.*

*Article XXXII. It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.*

*Article XXXIII. It is the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be.*

*Article XXXIV. It is the duty of every able-bodied person to render whatever civil and military service his country may require for its defence and preservation, and, in case of public disaster, to render such services as may be in his power. It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.*

*Article XXXV. It is the duty of every person to cooperate with the state and the community with respect to social security and welfare, in accordance with his ability and with existing circumstances.*

*Article XXXVI. It is the duty of every person to pay the taxes established by law for the support of public services.*

*Article XXXVII. It is the duty of every person to work, as far as his capacity and possibilities permit, in order to obtain the means of livelihood or to benefit his community.*

*Article XXXVIII. It is the duty of every person to refrain from taking part in political activities that, according to law, are reserved exclusively to the citizens of the state in which he is an alien.*

### **3. African Charter**

The African Charter on Human and Peoples' Rights (adopted in 1981) includes the following provisions dealing with individual duties:

#### **Chapter II. Duties**

*Article 27.*

- 1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.*
- 2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.*

*Article 28.*

*Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.*

*Article 29. The individual shall have the duty:*

- 1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;*

2. *To serve his national community by placing his physical and intellectual abilities at its service;*
3. *Not to compromise the security of the State whose national or resident he is;*
4. *To preserve and strengthen social and national solidarity, particularly when the latter is threatened;*
5. *To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;*
6. *To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;*
7. *To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well-being of society;*
8. *To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.*

## About the International Council on Human Rights Policy

The International Council on Human Rights Policy was established by a process of consultation following the 1993 World Conference on Human Rights in Vienna. It is an independent research foundation.

The Council's Mission Statement reads:

*"The International Council on Human Rights Policy will provide a forum for applied research, reflection and forward thinking on matters of international human rights policy. In a complex world in which interests and priorities compete across the globe, the Council will identify issues that impede efforts to protect and promote human rights and propose approaches and strategies that will advance that purpose.*

*The Council will stimulate co-operation and exchange across the non-governmental, governmental and intergovernmental sectors, and strive to mediate between competing perspectives. It will bring together human rights practitioners, scholars and policy-makers, along with those from related disciplines and fields whose knowledge and analysis can inform discussion of human rights policy.*

*It will produce research reports and briefing papers with policy recommendations. These will be brought to the attention of policy-makers, within international and regional organisations, in governments and intergovernmental agencies and in voluntary organisations of all kinds.*

*In all its efforts, the Council will be global in perspective, inclusive and participatory in agenda-setting and collaborative in method."*

The Council starts from the principle that successful policy approaches are likely to take account of the diversity of human experience. The Council will co-operate with all that share its

human rights objectives, including voluntary and private bodies, national governments and international agencies. Neglect of social and economic rights depress the quality of human life as much as violations of political and civil rights. The Council will undertake work across the whole range of human rights issues.

To be relevant, the Council must identify and concentrate on issues that matter. This is the core task of the International Council, a group of 22 individuals from all regions and a variety of backgrounds.

The International Council meets annually to set the direction of the Council's Programme. It ensures that the Council's agenda and research draw widely on experience from around the world. Members help to make sure that the Council's programme reflects the diversity of disciplines, regional perspectives, country expertise and specialisations that are essential to maintain the quality of its research.

To implement the programme, the Council employs a small secretariat of six staff. Based in Geneva, its task is to ensure that projects are well designed and well managed and that research findings are brought to the attention of relevant authorities and those who have a direct interest in the policy areas concerned.

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<b>Stanley Cohen*</b>	Professor of Sociology, London School of Economics. United Kingdom.
<b>Radhika Coomaraswamy</b>	UN Special Rapporteur on Violence against Women; Director, the International Centre for Ethnic Studies, Colombo. Sri Lanka.
<b>Yash Ghai*</b>	Sir Y K Pao Professor of Public Law, Hong Kong.
<b>Thomas Hammarberg*</b>	Ambassador; UN Secretary General's Special Rapporteur on Human Rights in Cambodia. Sweden.
<b>Bahey El Din Hassan</b>	Director, Cairo Institute for Human Rights Studies. Egypt.
<b>Ayesha Imam</b>	Co-ordinator, International Solidarity Network of Women Living under Muslim Laws, Region West Africa. Nigeria.
<b>Hina Jilani*</b>	Director, AGHS Legal Aid Cell, Lahore. Pakistan.
<b>Virginia Leary</b>	Distinguished Service Professor of Law, State University of New York at Buffalo. United States of America.
<b>Goenawan Mohamed</b>	Poet; Editor of <i>Tempo</i> magazine, Indonesia
<b>Bacre Waly Ndiaye*</b>	Lawyer; Director of the Office of the UN High Commissioner for Human Rights in New York. Senegal.
<b>Margo Picken</b>	Associate Fellow at the Centre for International Studies, London School of Economics. United Kingdom.
<b>N. Barney Pityana</b>	Chair, South African Human Rights Commission. South Africa.
<b>Daniel Ravindran</b>	Founder, Asian Forum for Human Rights and Development (Forum-Asia). India.
<b>Dorothy Thomas</b>	Consultant, Shaler Adams Foundation. United States of America.
<b>Renate Weber</b>	Co-President, Romanian Helsinki Committee. Romania.

**\* Member of the Executive Board**

## THE RESEARCH PROGRAMME 1999

### **National Human Rights Institutions** Ref 102: *In research*

Will assess the extent to which these bodies are acquiring social legitimacy and meeting the needs of vulnerable groups. It will also examine the role of government, judicial and non-government institutions in making them more or less effective. Research will be undertaken in Indonesia, Mexico and Ghana, and on several other countries.

Researcher: Richard Carver.

Start: November 1998. Consultation on draft report: August to October 1999. Publication: February 2000.

### **Human Rights Assistance Programmes** Ref 104: *In research*

Will examine the effectiveness of human rights assistance programmes from the perspective of recipients. Research will focus on the administration of justice and will take place in Cambodia, Guatemala, South Africa and will also look at other countries. Researcher: Craig Mokhiber.

Start: March 1999. Consultation on draft: November 1999 to January 2000. Publication: May 2000.

### **Armed Opposition Groups** Ref 105: *In research*

Will examine the degree to which human rights organisations have succeeded or not in reducing or preventing abuses by armed opposition groups. Case studies will be written on about ten countries for a consultation in September 1999.

Start: April 1999. Consultation: September 1999. Publication: December 1999 (provisional date).

### **Universal Jurisdiction** Ref 201: *In research*

Following the extradition case against General Augusto Pinochet in the United Kingdom, the Council will convene a meeting of experts in May 1999 to discuss the principle of universal jurisdiction and the issues that will arise if it is used more widely to bring perpetrators of crimes against humanity to justice.

Start: February 1999. Consultation: May 1999. Publication: October 1999 (provisional date).

### **Governments and Media** Ref 106: *In design*

Will examine the way governments make increased reference to human rights in their presentation of foreign policy, and at how media organisations have responded. Research will focus on selected countries and the principal international media. It may also examine public

responses in a variety of societies to media coverage of policy issues with a human rights dimension.

Start: June-July 1999.

**Accountability of private companies** Ref 107: *Pre-feasibility*

This project will be designed in May 1999. It is likely, as a first step, to examine the degree to which corporations are (or may become) directly accountable under international human rights law for the effects of their activities outside the workplace.

Start: July 1999 (provisional date).

**Economic and social rights** Ref 108: *Pre-feasibility*

Economic and social rights will be a principal theme of the third meeting of the International Council in June 1999. A project will be designed following this meeting in the second half of 1999.

Design: September 1999. Start: October 1999. (Provisional dates).

**Traditional authorities**

Exploratory research will be commissioned in the first half of 1999, to identify what relevant and useful research might be done on the role that traditional authorities play in protecting or obstructing protection of human rights in various domains and in different societies.

Feasibility research: May-September 1999. Design: 4th quarter 1999 (subject to Board approval).

**Religion and Rights**

Exploratory research will be commissioned in the first half of 1999 to examine what useful and relevant research might be undertaken on the subject of religion and human rights.

Feasibility research: June-October 1999. Design: 4th quarter 1999 (subject to Board approval).

**Racism**

The United Nations is planning to hold an international conference on racism during 2001. The Council will examine what useful research it might do in the context of this event.

Feasibility: December 1999. Start: 1st quarter of 2000 (subject to Board approval).

During 1999 the Council will also examine whether research should be undertaken, starting in 1999 or 2000, on the impact of new technology and on the subject of the universality of human rights. No decision has been taken on whether research projects on these subjects should be developed.



## How to order publications and documents from the Council

If you would like to order copies of this publication or information about other Council publications or subscribe to the quarterly Council newsletter, please complete the form overleaf and return it to the Secretariat at the address given.

### This publication

**Ref. 103** *Taking Duties Seriously: Individual Duties in International Human Rights Law – A Commentary*, International Council on Human Rights Policy, 1999, ISBN 2-940259-00-3, 80pp., 165mm x 220mm, Currently available in English.

Frs.13.50 (+ Frs.3. p.&p.) Qty. \_\_\_\_\_ Total: (Frs.) \_\_\_\_\_

This publication may be available later this year in Arabic, French and Spanish. Please indicate if you would like to order copies in other languages.  Arabic  French  Spanish

### Information about other projects and publications by the Council

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| Publication: February 2000.                                |                          |
| <b>Ref. 104</b> <i>Human Rights Assistance Programmes</i>  | <input type="checkbox"/> |
| Publication: May 2000                                      |                          |
| <b>Ref. 105</b> <i>Armed Opposition Groups</i>             | <input type="checkbox"/> |
| Publication: December 1999                                 |                          |
| <b>Ref. 201</b> <i>Universal Jurisdiction Publication</i>  | <input type="checkbox"/> |
| 3rd Quarter 1999   |                          |
| <b>Ref. 106</b> <i>Governments and Media</i>               | <input type="checkbox"/> |
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