

Human Rights

1. All governments must respect the human rights of all persons.

Governments must respect human rights for three reasons:

- First, human rights are necessary for *democracy*. If the people do not have *political rights*, such as the right to vote and to form political parties, then democracy does not even exist because democracy is defined as that form of government in which the people have the right to govern themselves. More *private* and *civic* rights, such as the right to own property or to marry, are also, indirectly, necessary for democracy. If the people fear that their government can take from them everything they value – for example, their homes and their freedom – then they will be unable to stand up to abuses of government power. As a result, the government will be the master of the people rather than their servant, and such a government is not democratic. If, by contrast, the people are secure in their rights, then they will not fear to criticize the government or even to turn it out of office.
- Second, human rights are necessary for *the rule of law*. As explained in the paper on **The Rule of Law**, the rule of law requires that government must be subject to certain enduring legal limits on its power; by definition, the government may not alter or ignore these limits. In the fullest version of the rule of law, these enduring legal limits include respect for human rights, along with democracy and legal regularity. If the government is subject to no such limits, then it will quickly become despotic.
- Third, human rights are necessary for *human dignity*, as numerous international law instruments assert. When a government systematically violates human rights, it treats people as though they were physical objects or animals, to be used or abused at will, rather than human beings, who are morally entitled to be treated with dignity. Dignity includes rights of autonomy, i.e. the right to be left alone in order to live one's life according to one's own goals and ideas. It also includes a claim on social resources, such as health care or education, so as to be able to live one's life at a minimum level of well-being. Finally, it includes rights to social inclusion, i.e. the right to membership in those aspects of communal life that should be open to all, such as participation in village festivals.

A government that fails to respect human rights has no claim on the loyalty or obedience of any person within its jurisdiction. When the government refuses to protect democracy, subject itself to the rule of law, or honor human dignity, then it forsakes its claim to the people's loyalty or obedience to its laws.

2. Human rights can belong to individual persons or to groups of persons

Human rights belong both to individual persons and to groups of people. For example, a right to property might belong to an individual person who owns a piece of land, but it can also belong to an ethnic or kinship group that holds the land in common (i.e. all members of the group have rights to use it.) Similarly, a right to freedom of religion is an individual right, which entitles each person to believe

and practice his or her religion freely. But it is also a group right, which entitles a religious organization to run activities, such as worship services or charitable activities, to support the beliefs of its members.

3. Human rights include both rights to autonomy and rights to resources or opportunities.

Human rights come in two different forms: *positive rights* and *negative rights*:

- *Negative rights* are defined as those rights that prohibit the government from interfering in certain central aspects of the lives of individuals, such as marriage or making art. In that sense, negative rights are shields to protect a realm of autonomy for the individual against government aggression. For example, the right to free speech means that the government cannot stop a person from speaking or punish him for speaking. The right to freedom of political association means that the government must not interfere with citizens' efforts to form political groups or parties. The right to freedom of religion means that the government must leave individuals alone to believe and practice their religion as their consciences dictate.
- The second kind of right is called a "positive right." This type of right gives a person the ability to demand a resource or opportunity from the government. The right to an education is a positive right, because it allows one to demand that the government provide one with a free or affordable education. The right to health care is a positive right. The right to a clean environment is a positive right included in many recent constitutions.

Both positive and negative rights are important to human dignity and freedom. In many cases, people simply need to be protected against government interference in order to be free. Thus, government generally does not need to help people to speak or to practice their religion; it just needs to get out of the way and let them do it on their own. But in some situations, people need the government's help in order to effectively enjoy their rights. For example, a woman who is being beaten by her husband and cannot protect herself must have the help of the police to protect her right to be free from violence. It is not enough that the police leave her alone: they must actively help her in order for her to effectively enjoy this right. So, both positive and negative rights can be very important.

4. Different countries may need to focus on protecting different rights, in light of their history, culture, and goals.

Each country must decide which rights are most important to protect in its particular situation. While some rights are very basic and should be protected everywhere (for example, the right not to be enslaved), not all rights are included in every constitution. In thinking about which rights to include, the people need to consider (1) the history of their country, (2) their culture(s), and (3) their goals and aspirations.

- *History*: If their government has a history of violating certain rights, then the people must be particularly careful to include those rights in order to prevent a repetition of this pattern. In countries that have lived for a substantial period under less than fully democratic regimes, the basic political freedoms will need careful enumeration in the Constitution and vigorous protection. For example, the Constitution could specify protection for freedom of speech, freedom of association for political and social projects, freedom to hold public demonstrations, and freedom to organize and participate in political parties. These rights may be subject to some limitations (see the section below on limits on rights), but they will need to be expressed in strong terms in order to counteract the habits of repression formed under many years of totalitarian government.
- *Culture*: If the culture of a country makes certain rights particularly significant to certain people, then it is important to include such rights in the Constitution. For example, in a country with either majority or minority cultures that emphasize religion, it is particularly important to include strong protections for religious freedom. Similarly, in a culture that highly prizes education, a right to a free or affordable education will be particularly important. Culture should also be examined to see whether it functions as a barrier to certain rights. For example, if a country has a culture in which obedience and deference are valued and defiance is discouraged, then it may need a particularly strong set of rights relating to free speech, freedom of association, and freedom to demonstrate. The reason for making these rights stronger under these circumstances is so that the Constitution might slightly counteract the culture and encourage behavior necessary to democracy that the culture might otherwise stifle.
- *Democratic aspirations*: Finally, if the people of a country aspire to a democratic and accountable government, then there are some rights that they must protect vigilantly in order to achieve that goal. These rights are of several types:
 1. First, people need rights of political participation, such as the rights already discussed: freedom to speak, to associate for political purposes, and to protest publicly against their government's actions in order to hold the government democratically accountable.
 2. Second, people need secure property rights in order to feel safe enough to challenge their government when it abuses its powers. If the government can take away their property arbitrarily, or for projects that enrich a few at the expense of the public interest, then people will live in fear and be unable to resist abuses by their government. Even if the government is taking the property for a legitimate reason, it must be required to compensate people adequately. Without such compensation, people can be impoverished by their government's action and, again, unable to effectively exercise their power as citizens. Thus, to ensure democratic accountability, the Constitution should demand that the government can take away people's property only for a legitimate public interest and only with adequate compensation.

3. Third, people also need strong equality rights in order to ensure that all voices are heard and all groups represented in the democracy. Without strong protection for equality, certain groups of people will be systematically discriminated against and/or excluded from public power. For example, without strong equality rights, women tend to be poorer, less educated, less healthy, and underrepresented politically. Minority ethnic communities also tend to be disadvantaged in all of these ways. In order to build a strong and representative democracy in which all voices are heard and all people feel they have a stake, the Constitution must have strong positive protections for equality.
4. Finally, people need certain other basic positive rights, such as education, health care, and social security. If people are struggling to survive, they will generally be unable to be active and vigilant citizens, so these basic positive rights ensure that they have the minimum conditions necessary to allow them to act as democratic citizens.

This list is just an illustration: each country must examine its own goals and aspirations to see which rights are most important to building stable and inclusive democratic institutions and practices under the conditions of that country.

5. In order to protect human rights, the Constitution must be clear, strong, and enforceable.

Protecting human rights is one of the central purposes of a Constitution. All governments, no matter how good and democratic they may be, occasionally try to violate their citizen's rights. The Constitution should provide a mechanism for people to resist such violations. To effectively protect human rights, a constitution must do several things.

- First, the Constitution must clearly state the rights to be protected, in language that is understandable by ordinary people and that specifies the scope of the right (e.g. is it positive or negative?). This is the function of a Bill of Rights in the Constitution. It should be comprehensive and clear.
- Second, the Constitution must restrain the government's ability to limit or restrict rights. Very few rights are absolute: most can be limited in small ways if an important enough interest is at stake. For example, freedom of speech can be limited if a person is trying to sell state secrets to a foreign government or if a person is speaking in ways that destroy someone else's reputation. In these cases, the limitation on free speech is justified because it is only a marginal restriction on what one can say and it is necessary to protect an important interest on the other side: state security or individual reputation. But governments are notoriously bad at making this judgment about when restrictions on rights are justified; they are very likely to overestimate the importance of other interests and limit rights unnecessarily. And, if the Constitution authorizes the government to limit rights whenever "public order and morality" require (as many constitutions do), then it will invite this sort of abuse. So, the Constitution needs to specify that the government may limit rights only when it meets a strong standard by demonstrating that

the restriction is necessary to serve a very weighty and appropriate interest. This is called a “limitations clause” and it is a necessary part of protecting rights.

- Third, the Constitution must make rights enforceable. It must provide a “constitutional protection mechanism,” in the form of a court or other body, with the authority to rule acts of the government unconstitutional. This body must be sufficiently independent of the political branches of government (the executive and legislative) that it is able to rule on their actions impartially. For more on this issue, see the paper on **Judicial Independence**. This body must have the power to order redress for persons whose rights have been violated. And this body must be accessible to ordinary citizens who wish to challenge the constitutionality of government action. One way of increasing accessibility is to provide for a government agency whose job is to investigate claims of rights violation and to help victims obtain redress. This sort of agency is sometimes called an “ombudsman’s office” or a “Human Rights Commission.” Another way of ensuring accessibility is to provide that any person may bring a claim to the courts alleging the violation of a constitutional right and to allow public interest organizations to make such claims on behalf of their members. Such an arrangement opens the courts to the widest possible range of claims and makes it possible for citizens easily to enforce their human rights.

If the Constitution provides people with these necessary tools, then the people will be able to effectively resist the violation of their rights.