

Rule of Law Toolkit

Chapter 1

Protection of Human Rights

Facilitator's Notes for the Protection of Human Rights

Target Audiences: High School Students; University Students; New Law Students,
Estimated Time: 1.5 hours

Description of Section: Protection of Human Rights

Participants will be asked to think about the protection of human rights on an international and national level. The following major themes will be discussed:

- brief history of human rights
- definition of human rights
- international standard for human rights
- the importance of international human rights instruments and agreements
- the obligation of nations to protect and promote human rights

Key Learning Objectives

- Participants will become familiar with the main international human rights documents and conventions: the Universal Declaration of Human Rights; the International Covenant for Civil and Political Rights; the International Covenant for Economic, Social, and Cultural Rights
- Participants will learn which rights are protected under their own constitution
- Participants will link elements of human rights protection (rights and responsibilities; fairness; equity; equality; protections) with the rule of law and understand its importance

Glossary of Terms

- **Declaration:** A written or oral indication of a fact, opinion, or belief. Unlike treaties and covenants, declarations are not legally binding.
- **Constitution:** The formal or informal system of primary principles and laws that regulate a government or other institutions.
- **Covenant:** An agreement to do or not do a particular thing; a promise, incidental to a deed or contract, either express or implied; a pact or binding agreement between two or more parties. The term 'covenant' is used synonymously with the terms 'treaty' and 'convention.'
- **Human Rights:** The basic rights and freedoms that all humans should be guaranteed, such as the right to life and liberty, freedom of thought and expression, and equality before the law.
- **Implicit Rights:** Rights that are not specifically named in a country's constitution or law, but which are implied or gleaned from the context or larger meaning of the document.

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Implicit rights receive the same protection as rights that are *explicit*, or clearly named in a document.

- **Inalienable rights:** *Natural rights* (also called *moral rights* or *inalienable rights*) are rights which are not contingent upon the laws, customs, or beliefs of a particular society or polity. They apply to everyone, regardless of nationality, religion, or gender.
- **International Bill of Human Rights:** The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.
- **Protocol:** A protocol is a formal agreement between nation states; also referred to as a treaty or covenant.
- **Treaty:** A treaty is an agreement under international law entered into by actors in international law, namely sovereign states and international organizations. The term treaty is used synonymously with (international) agreement, protocol, covenant, convention, exchange of letters.
- **Ratification:** The process by which a state becomes bound to a treaty. Until a state ratifies a treaty, it is not legally obligated to abide by its provisions.
- **Reservation:** A governmental statement that negates the legal effect of a particular treaty provision. If a state asserts a reservation to a provision, that provision will no longer apply to that state.
- **Social Contract:** A perceived agreement between the government and its citizens, whereby the government agrees to maintain social order and, in exchange, the citizens agree to abide by laws.

Introductory Activity – Brainstorm on Human Rights

Begin with an explanation of the goal of the brainstorming session. For example: "The goal of our brainstorming session is to identify what we see as human rights, and to identify where we get our rights." Articulate this task in full to the group and then note it down as a title on the blackboard or sheet of paper.

Emphasize that after brainstorming the list of ideas, each participant will have a chance to discuss any suggestions, and that the process of brainstorming is designed to generate as many ideas as possible, not to evaluate their quality. It is important to mention any time limits, so that the group knows how long they have to accomplish the process. All ideas should be noted down in the same words as articulated by the participants.

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If the group stops generating new ideas, you may facilitate by posing questions, recommendations, and comments. After the brainstorming session, discuss and articulate each idea in a well-formed statement.

Possible Additional Activity: Human Rights Tree

- Ask participants to break into small groups, and have each group draw a tree with branches and leaves on a large sheet of paper.
- Write on the tree (in the form of leaves or branches) the human rights that they think are necessary for people to live with dignity and justice.
- A human rights tree needs roots to grow and flourish. Give the tree roots and label them with the things that will help human rights flourish. Examples could include the rule of law, universal education, and suffrage.

Handouts

- Handout I: Background Paper: International Bill of Human Rights
- Handout II: Summary of the Jordan's National Constitution
- Handout III: Summary of Core UN Human Rights Conventions
- Handout IV: Summary of Jordan's Reservations to UN Conventions

At this time, you may consider summarizing the main points of the Background Paper, located within this chapter. The background paper gives a brief history of human rights, how human rights can be classified, and the importance of international human rights conventions. This introduction should be brief, as the points will be further discussed in the activities.

Handouts should be provided to the participants prior to meeting as a group. They should also be discussed briefly in class, prior to Activity 1.

Activity 1: Rights and Responsibilities

Participants will:

- Be introduced to key international human rights documents and ways that countries incorporate principles from those documents into their national constitutions
- Analyze such documents by reading and interpreting their language

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- Discuss which international rights from the Background Paper are included in their country's constitution and which are excluded
- Discuss possible reasons why some international rights are not included in their country's constitution and possible reasons for their country's reservations

This Activity uses all four Handouts. Yet, in order to complete this activity, the facilitator should modify Handouts II and IV to include information about the constitution of the nation where the class is occurring. The case studies for Jordan currently offered in Handouts II and IV are provided as models.

Overview - Introducing participants to legal analysis and critical thinking will prepare them to formulate and advocate their own positions on issues. Using a case study of one country's constitution as an example will spark a discussion in which students can debate among themselves and consider each other's positions. The facilitator will guide several sets of discussions in a way that encourages objectivity and participation. Facilitators should discourage any bias in the discussions – both their own bias and that of the participants.

1. Ask participants to review Handout I and give them ample time to do so. Lead a discussion about Handout I by asking participants to summarize the key human rights protected by international treaties and conventions. What are the key human rights protected in the Universal Declaration? Why are these rights important? Why was the Declaration necessary?
2. Ask participants to review Handout III and give them ample time to do so. Lead a discussion about the human rights contained in these more specific agreements. How are they related to the rights enshrined in the Universal Declaration?
3. Ask participants to review Handouts II. Ask them which international human rights that are included in international treaties are *not* included in Jordan's Constitution?

Focus Questions:

- Which international human rights related to women are or are not contained in Jordan's Constitution?
- Which international human rights related to children are or are not contained in Jordan's Constitution?
- Are these implicit rights, if not explicitly stated?
- Do citizens have enough awareness about the rights guaranteed by the constitution?

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4. Ask participants to review Handout IV and discuss their thoughts as to why Jordan has made certain reservations.

Focus Questions:

- Why do you think it is important to allow countries to submit reservations?
 - What do you think the practical effect is of reservations?
 - Should the UN disallow reservations?
5. Wrap up and summarize.

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Handout I:

Background Paper: International Bill of Human Rights¹

Human rights are inalienable rights and freedoms that belong to every individual. They are “universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity.” These rights may not be denied or taken away, and supersede any conflicting legal rules adopted by states. In order to enhance and protect human rights, it is essential to instill and apply the rule of law on national and international levels. International agreements are critical in guaranteeing the protection of human rights. These agreements identify minimum standards for protecting human rights. They also establish a legal basis for obligating states to comply with those standards.

During the 20th century, an international consensus emerged that all people share basic fundamental rights, merely by virtue of being human. Three developments in the early 20th century were especially relevant to the evolution of early international human rights law. First, after World War I, many states entered into a series of treaties and declarations designed to protect certain minority rights. It was felt that with the redrawing of borders and the creation of new states, one should protect against the mistreatment of minorities in order to ensure that the new peace of the world would last. These treaties signaled the first multilateral efforts to protect the rights of specific groups at the international level. These treaties contained similar provisions guaranteeing the protection of minority rights, in the states party to the treaty, including the right to life and liberty for all inhabitants and civil and political rights for nationals.

Second, after World War I, many countries entered into agreements designed to protect the rights of workers, specifically their right to “fair and human conditions of labor.” This goal became central to the work of the International Labour Organization, which continues to day to be one of the United Nation’s specialized agencies. Third, around this same time, efforts to fight slavery grew increasingly vocal and transnational, resulting in several historic treaties where countries called on each other to outlaw slavery and combat trafficking in women and children.

While these developments provided increased attention to human rights issues, they did not impose meaningful legal obligations on states to protect human rights. The need for such obligations was not widely agreed upon by the international community until the late 1940s, after

¹ Material in this Handout is primarily adopted from the following two sources: United Nations’ Publication: *Human Rights Training: A Manual on Human Rights Training Methodology*, Office of the United Nations High Commissioner for Human Rights, available at <http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx>; Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford 2007) 25-47.

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the horrors of World War II came to light. The United Nations (UN) was established in 1945, beginning a period of unprecedented international concern for the protection of human rights.

The United Nations General Assembly adopted the *Universal Declaration of Human Rights* in 1948. This document has had monumental influence, both in terms of spreading the philosophy of human rights, and in terms of inspiring additional legal texts, treaties, and decisions that provide today's legal framework for protecting human rights. The Declaration has been translated into over 300 languages, and several national constitutions have adopted its provisions as a basis for their national "bill of rights." Although the Declaration does not itself form a binding legal instrument, member states have come to acknowledge that it does contain actual human rights obligations.

The Preamble to the Declaration outlines its main values and principles, including the "inherent dignity" and "equal and inalienable rights of all members of the human family" regardless of their gender, religion, or nationality. All countries who sign the Declaration pledge to protect these rights "by the rule of law." The individual articles of the Declaration go into further detail, listing specific civil, political, economic and social rights. These include a prohibition on slavery (Art. 4); freedom from torture (Art. 5); the right of everyone accused of a crime to receive a fair and public hearing by an independent tribunal (Art. 10); freedom of thought, religion, and expression (Arts. 18-19); the equal right of each person to own property (Art. 17); the right of each person to participate in the government of his or her country (Art. 21); the right to work and to have decent working conditions (Art. 23); and the right to an education (Art. 26).

The Universal Declaration was followed by other international agreements concerning human rights. States that are parties to these conventions and treaties are bound by law to uphold and enforce their contents. Two of the most significant agreements to follow the Declaration are the **International Covenant on Civil and Political Rights** (adopted 1966) and the **International Covenant on Economic, Social and Cultural Rights** (adopted 1966).

The recognition that every individual has inalienable and equal rights forms the basis of these three key UN documents – the Universal Declaration, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. These three foundational agreements are collectively referred to as the **International Bill of Human Rights**.

These agreements state what the law is, but they do not, by themselves, create mechanisms to monitor national implementation of these treaties, or otherwise enforce their terms. Some enforcement and monitoring occurs on the international level. For instance, the UN convenes several committees whose job is to monitor countries' compliance with particular treaties. One example of a treaty-based committee is the UN Human Rights Committee, which considers

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periodic reports concerning countries' compliance with the International Covenant on Civil and Political Rights. Members of the Committee are elected by UN member states.

Most enforcement happens at the national level. Each country is responsible for establishing its own mechanisms for protecting and guaranteeing these rights within their own borders. This is achieved by each country independently codifying international human rights standards in internal legislation. Such legislation must include the creation of internal legal procedures for identifying when a human rights violation has occurred and for compensating victims.

There are three levels of state obligations to protect human rights. The first is the *commitment* to respect human rights, which means that the state itself cannot act in a way that violates human rights or hinders individuals' enjoyment of those rights. The second obligation is *protection*, which obligates the state to take all necessary legislative and administrative measures to guarantee and protect human rights. The third obligation is *fulfillment*, which requires the state to promote human rights to the greatest extent possible, given its available resources.

It should be noted that under international law, special circumstances exist under which states are permitted to impose narrow limits on some of these rights. Generally speaking, such limitations must be set forth in formal legislation and they must be "essential," meaning that they are necessary in order to protect other rights and freedoms that are under threat in that country, or to preserve public order, health, morals, national security, or safety.²

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights are considered the authoritative documents defining the role of the international community in protecting human rights. They establish the legal basis for these rights. Thus, they are an integral part of the legal frameworks through which these rights are enforced, both nationally and internationally.

² See, e.g., United Nations' General Assembly, *International Covenant on Civil and Political Rights*, Art. 19.3(b) (1966), available at <http://untreaty.un.org/cod/avl/ha/iccpr/iccpr.html> (last visited 10 December 2009).

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Handout II: Summary of Jordan's National Constitution

The Hashemite Kingdom of Jordan is a monarchy. Its Constitution was adopted in 1952, and the political system in the Kingdom is based on the legislative, judicial and executive authorities.

Jordan is a party to a number of international human rights agreements. Jordan has signed six basic human rights agreements: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the Convention of the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention against Torture. Under these agreements, Jordan agreed to take all legal measures to ensure these rights without distinction.

Upon acceding to international agreements on human rights, Jordan reviewed its national legislation to ascertain their compliance with the international agreements. Throughout 2006 and 2007, Jordan published the six international agreements in the Official Gazette, which meant that they became part of Jordan's national legislation. Accordingly, those agreements can be relied upon in legal arguments before courts in Jordan.

Jordan's national Constitution also guarantees many rights and freedoms and stresses many principles set forth in international charters and agreements, including the principles of equality and non-discrimination. The Constitution provides that "Jordanians shall be equal before the law. There shall be no discrimination with regards to rights and duties on grounds of race, language or religion."³

The Constitution sets forth the obligations of the state to establish and guarantee several fundamental human rights. These rights include:

- The right to employment and education within the capacities of the state and in accordance with the principle of equal opportunities for all citizens;
- Freedom of each person to perform religious rites in accordance with the customs in the Kingdom so long as they do not violate public order or decency;

³ The Constitution of the Hashemite Kingdom of Jordan, Art. 6(ii) (1952), available at http://www.kinghussein.gov.jo/constitution_jo.html.

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- Freedom of opinion and expression, verbally and in writing or photography, as well as all other means of expression so long as they do not violate the law;
- Freedom of the press. The freedom of the press may not be restricted unless in accordance with the law. Nevertheless, in cases of martial law, related to issues of public safety and civil defense purposes, certain oversight may be imposed on newspapers, publications, writings, and radio broadcasts.
- Freedom of assembly within the limits of the law. Jordanians have the right to form associations and political parties provided that they have legitimate purposes and sound means.
- The right to secrecy of mail, wire and telephone correspondence and not be subject to control or suspension unless in the cases prescribed by law.
- The right to appointment to public posts on the grounds of qualifications and competence.

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Handout III: **Summary of Core UN Human Rights Conventions**

Human rights conventions and treaties, including the Charter of the United Nations, represent the main sources of international law. There are also other specialized agreements that specifically address certain matters or populations, such as the Convention on the Elimination of Discrimination against Women, the Migrant Workers Agreement, and the Convention on the Rights of the Child. Below is a brief view of the most important agreements and their main provisions and principles.

(1) Charter of the United Nations

Signed June 26, 1954.

The Charter of the United Nations is considered one of the key conventions among states and includes basic provisions for human rights. Countries commit, under the Charter, to work jointly to establish stability and public welfare, and to promote all the objectives which the UN seeks to achieve in accordance with Article 55 of the Charter. Among the Charter's objectives are:

- (a) Higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) Solutions to international economic, social, health, and related problems;
- (c) International cultural and educational co-operation; and
- (d) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, gender, language, or religion.

(2) Universal Declaration of Human Rights

Adopted by UN General Assembly resolution of December 10, 1948.

The Declaration was an important step toward international enforcement of human rights. It constitutes a shared understanding among nations of the world of the inalienable rights of all humankind. The international acceptance of the Declaration indicates its legal and moral importance.

The International Human Rights Convention, held in Tehran in 1968, stressed that the Declaration constitutes common understanding among the nations of the world about the universality and indivisibility of the rights described in the Declaration. In the 1993 International Human Rights Convention in Vienna, more than 150 states stressed their commitment to the

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Declaration. In addition, the International Court of Justice relies in some of its decisions and opinions on the Declaration. The contents of the Declaration have been adopted into to many modern constitutions.

(3) The International Covenant on Civil and Political rights (ICCPR)

Adopted 1966, entered into force 1976.

This Covenant sets forth international criteria for the minimum conduct of parties and obligates them to respect and guarantee enjoyment of all rights by persons under their respective jurisdictions without discrimination and by taking all the necessary legislative and administrative measures to protect and enhance these rights. Such rights include the right to self-determination, legal fairness, equality, life, liberty, freedom of movement, fair trial, and freedom of expression, thought, conscience, religion, peaceful assembly and association. It also prohibits torture and all forms of cruel, inhumane or degrading treatment and slavery.

(4) The International Covenant on Economic, Social, and Cultural Rights (ICESCR)

Adopted 1966, entered into force 1976.

The Covenant includes the main legal provisions regarding economic, social and cultural rights including the right to an appropriate standard of living, work in healthy and safe conditions, social security, residence, the highest possible level of health, and free public education. The Covenant sets the minimum international criteria for taking all measures and procedures to protect and ensure these guaranteed rights by means of the ideal and maximum use of resources available to the state.

(5) Specialized conventions

There are six significant international human rights agreements relating to specific categories of rights. These agreements are the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Relating to the Status of Refugees; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child, and the Convention on Migrant Workers.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW is the main benchmark for women's rights. Entered into force in 1981, it aims to protect women's equality under the law and prevent oppression of women throughout the world. States that ratify CEDAW commit to implement the treaty into their national legislative

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frameworks, protect women’s equality under the law, and combat discrimination against women in all its forms. To accomplish this, states must amend or adopt laws to protect the “spirit” of the convention and outline government strategies and establish entities to protect women.

The first article of CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁴ CEDAW expanded this concept in 1992 to include violence based on gender.

Convention Relating to the Status of Refugees

This Convention establishes the rights of “refugees,” the rights of individuals who are granted asylum, and the responsibilities of nations that grant asylum. Article 1 of the Convention defines “refugee” as someone who leaves his or her country owing to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”⁵

The convention was first approved at a special UN conference in 1951 and was first limited to protecting European refugees after World War II. A Protocol adopted in 1967 removed the geographical and time limits, expanding the scope of the Convention to apply to refugees around the world.

Convention on the Elimination of All Forms of Racial Discrimination (CERD)

This Convention came into force in 1969 and commits signatories to eliminating racial discrimination and promoting understanding among all races. It calls on governments to “take all necessary measures to prevent all manifestations of racial, religious, and national hatred,” including reviewing their own laws to ensure they do not discriminate on the basis of race, and educating their publics against intolerance. It prohibits:

[A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which as the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human

⁴ Text of the convention available at <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>.

⁵ Text of the convention available at <http://www.unhcr.org/3b66c2aa10.html>.

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rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁶

CERD also condemns apartheid and racial segregation, and obliges signatories to provide “effective” legal remedies through courts or other institutions for any acts of racial discrimination, including a right to compensation for injuries due to discrimination.

Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

This Convention includes a definition of torture and insists that any party to it undertake the following obligations: to take steps to prevent acts of torture in any territory under jurisdiction; not to return any person to a state where there are substantial grounds for believing that the person would be in danger of being subjected to torture; and to ensure that acts of torture be prosecuted in the courts of that state even though those acts occurred abroad. The Convention came into force in 1987.

Convention on the Rights of a Child

This Convention defines a child as “every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier.”⁷ The Convention seeks to protect children from practices that endanger their welfare, including economic exploitation, illicit use of drugs, trafficking, and all forms of sexual exploitation and abuse. The guiding principles of the Convention are the need to consider the child’s best interests, non-discrimination, and respect for the wishes of the child. The Convention entered into force in 1990 and is the most widely ratified of all UN human rights treaties.

Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

This Convention protects all migrant workers and members of their families, regardless of their legal status. However, it should be noted that the rights granted to “documented” workers who have official permission to work within their country of employment, and “undocumented”

⁶ United Nations’ General Assembly, *The United Nations Declaration on the Elimination of All Forms of Racial Discrimination*, entered into force 1965, available at <http://www2.ohchr.org/english/law/cerd.htm>

⁷ United Nations’ General Assembly, *The United Nations Convention on the Rights of the Child*, entered into force 1990, available at <http://www2.ohchr.org/english/law/crc.htm>.

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workers who do not have such permission are not identical. The Convention was adopted in 1990.

The rights that apply to all migrant workers, irrespective of their legal status, include basic freedoms, such freedom of movement to and from their country of origin. All workers are also entitled to emergency medical care, the right to join freely any trade union, the right to preserve their cultural identity, and the right to be treated as equals to nationals before courts or tribunals. In addition, the Convention provides that the children of all migrant workers, both documented and undocumented, have a right of access to education.

(6) Treaty-Based Committees

Each convention or international treaty related to human rights has a monitoring committee formed pursuant to the provisions of the agreement of treaty (known as treaty-based committee). These committees monitor the states' implementation of these agreements. Under the provisions of the agreement, states provide periodic reports to the committee. The committees also prepare general remarks, recommendations, official interpretations of the provisions of the agreements, and determining the scope of obligations of states under the agreements. These committees are the Committee on Human Rights, formed pursuant to the International Covenant on the Civil and Political Rights; the Committee on Economic, Cultural and Social Rights; the Committee on the Elimination of All Forms of Discrimination against Women; the Committee on the Elimination of All Forms of Racial Discrimination; the Committee against Torture; and the Committee on the Rights of the Child.

(7) Non-treaty agreements

The UN also prepares declarations, codes, rules, principles and directives that provide details regarding specific human rights, and which further clarify the obligations of states in respect to those rights. Examples include the Minimum Standard Rules for the Treatment of Prisoners, the Declaration on the Elimination of Violence against Women, the Declaration on the Right to Development, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

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Handout IV: Summary of Jordan's Reservations to UN Conventions

Jordan has expressed reservations to several UN conventions on human rights, meaning that it has refused to comply with certain provisions of those conventions. Below are some examples.

A. Convention on the Elimination of All Forms of Discrimination against Women

Jordan views some of the provisions of CEDAW as being at variance with the precepts of the tolerant Islamic Shariah. Jordan has expressed reservations to, and does not consider itself bound by, the following provisions⁸:

Article 9, paragraph 2

Parties shall grant women equal rights with men with respect to the nationality of their children.

Article 16, paragraph (1), subsections (c), (d) and (g). These provisions relate to the rights arising upon the dissolution of marriage with regard to maintenance and compensation, and read as follows:

Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

...

(c) The same rights and responsibilities during marriage and at its dissolution.

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

⁸ An initial reservation on Article 15, paragraph 4, which gives women freedom of mobility and choice of residence, was lifted by the government of Jordan in May 2009.

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(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.⁹

B. Convention on the Rights of the Child

Jordan views some provisions of the Convention on the Rights of the Child as also being at variance with the precepts of tolerant Islamic Shariah. These articles generally grant children the right to freedom of choice regarding their religion, and relate to the issue of adoption. Jordan's objections are to the following provisions:

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

⁹ Text of the convention available at <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>.

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Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.