

## **A Critical Analysis of The Scope and Nature of The Concept of Human Rights**

**Dr. Alfred Mwenedata (Llb, Llm, Ph.D.),**  
*Senior Lecturer In International Law, University Of Kigali*

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### **I. GENERAL INTRODUCTION**

Human Rights Have Been Defined As Basic Moral Guarantees That People In All Countries And Cultures Allegedly Have Simply Because They Are People<sup>1</sup>. Calling These Guarantees Rights Suggests That They Attach To Particular Individuals Who Can Invoke Them, That They Are Of High Priority; And They Are Rights Because They Belong To An Individual As A Consequence Of Being Human. They Refer To A Wide Continuum Of Values That Are Universal And In Some Sense Equally Claimed For All Human Beings<sup>2</sup>. It Goes Without Saying That If They Refer To The Concept Of Human Beings As Having Universal Rights, Those Rights Have Their Status Regardless Of Legal Jurisdiction Or Other Localizing Factors, Such As Ethnicity And Nationality. The Concept Of Human Rights Is Based On The Idea That Each Person Has Worth And Dignity, And Thus Deserves Certain Basic Freedoms. When Those Freedoms Are Recognised, Each Individual Can Enjoy Safety, Security, And The Ability To Make Many Decisions About His Or Her Life. As A Body Of Norms On Rules Human Rights Belong To The Whole Humanity<sup>3</sup>. The Possession And Entitlement To Exercise Human Rights Is Invested In All People; They Have The Same Basic Rights. Without The Recognition Of These Rights And Their Adequate Protection Human Society Would Simply Not Exist. At This Broad Level, Therefore, The Use Of Human Rights Is That Through Them, People Become More Truly Human And Their Society Worth Living In. The Source Of Human Rights Is Man's Moral Nature (Freedom, Justice And Peace), Which Is Only Loosely Linked To The Human Nature Of Basic Human Needs; Human Rights Are Needs Of Human Dignity, Rather Than Health, And Violations Of Human Rights Are The Denials Of One's Humanity Rather Than Deprivations Of Needs<sup>4</sup>.

What Human Rights Do Primarily Aim To Identify Is The Basis For Determining The Shape, Content, And The Scope Of Fundamental, Public Moral Norms. Human Rights Aim To Secure For Individuals The Necessary Conditions For Leading A Minimally Good Life<sup>5</sup>. The Origins Of The Concept Of Human Rights Are Usually Agreed To Be Found In The Mists Of Time Yet The Term Itself Dates Back Barely Sixty Years To International Discussions Preceding The Founding Of The United Nations. Since 1945, The Scope Of Human Rights Has Been Elaborated And The Concept Now Permeates The Fabric Of International Society<sup>6</sup>. According To Their Historical Background, Human Rights Are More A Philosophical Or Moral Concept Than A Legal One<sup>7</sup>. For Heinze, Human Rights Are Standards Of A Complex Nature And Origin; Therefore, They Can Be Classified Into Different Ways, For Instance As Religious Standards, Philosophical Ideas, Mere Altruistic Sentiments Or As Legal Norms<sup>8</sup>. In This Hypothesis, Kuhnhardt Proceeded To Argue That The Legal Aspect Of Human Rights Is Quite Important Because Law, Especially Human Rights Law, Is A Mediator Between The Real And The Ideal World<sup>9</sup>. Human Rights Can Best Finally Be Understood As Those Rights Which Are Fundamental To The Human Condition, And As Fundamental Principles Of Justice<sup>10</sup>.

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<sup>1</sup>Donnelly *International Human Rights* (1993) 19.

<sup>2</sup>Ishay *The History of Human Rights* (2004) 3.

<sup>3</sup>Kofi Annan (message by the UN Secretary-General) in Van Der Heijden & Tahzib-Lie *Reflections on the Universal Declaration of Human Rights* (1998) 18.

<sup>4</sup>Donnelly (1993) 22.

<sup>5</sup>The moral foundation of Human rights is also found in Article 1 of the Universal Declaration which says: "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".

<sup>6</sup>Smith *Textbook on International Human Rights* (2003) 5.

<sup>7</sup>*Id.*

<sup>8</sup>Heinze in Hastrup *Human rights on common grounds* (2001) 39.

<sup>9</sup>Kuhnhardt in Hastrup (2001) 39.

<sup>10</sup>Crawshaw *Police and Human rights* (1999) 36.

The Proclamation Of The Universal Declaration Of Human Rights On The 10<sup>th</sup> December 1948 In The General Assembly Of The United Nations Can Be Seen As A Turning Point In The International Protection Of Human Rights. This Declaration Was A Genuinely Universal Document That Endeavoured To Cover The Whole Field Of Human Rights. Thus, It Also Formulated A Definition Of What Was Meant By Human Rights. While Not Legally Binding, The Universal Declaration Urged Member Nations To Promote A Number Of Human, Civil, Economic And Social Rights, Asserting These Rights As A Part Of The Foundation Of Freedom, Justice And Peace In The World<sup>11</sup>. It Limits The Behaviour Of The State, Which Now Has Duties To The Citizen (Rights-Duty Duality). In Fact, The Ultimate Goal Is To Protect And Promote The Basic Human Rights Of Every Person, Every Where.

## **ii. Analysis Of The Scope Of The Concept Of Human Rights**

In Their Contemporary Manifestation, Human Rights Are A Set Of Individual And Collective Rights That Have Been Formally Promoted And Protected Through International And Domestic Law Since The 1948 Universal Declaration Of Human Rights. Arguments, Theories, Protections, And Violations Of Such Rights, However, Have Been In Existence For Much Longer; But Since The Evolution Of Their Express Legal Protection Has Grown Rapidly. Today, The Numerous International Treaties On Human Rights Promulgated Since The Universal Declaration To Which An Increasingly Large Number Of Nation States Are A Party Define The Core Content Of Human Rights That Ought To Be Protected Across Categories Of Civil, Political, Economic, Social, And Solidarity.

### **ii.1. Categories Of Human Rights**

The Collection Of Human Rights Protected By International Law Resorts To Tradition Of Rights From Philosophy, History And Normative Political Theory And Now Includes Three Sets, Or Categories Of Rights That Have Become Useful Shortcuts For Talking About Human Rights Among Scholars And Practitioners In The Field. These Categories Are: Civil And Political Rights; Economic, Social, Cultural Rights; And Solidarity Rights.

#### **ii.1.1. Civil And Political Rights (Rights Of The First Generation)**

Civil And Political Rights Uphold The Sanctity Of The Individual Before The Law And Guarantee His/Her Ability To Participate Freely In Civil, Economic And Political Society<sup>12</sup>. Civil Rights Include Such Rights As The Right To Life, Liberty And Personal Security; The Right To Equality Before The Law; The Right Of Protection Of Arbitrary Arrest; The Right To The Due Process Of Law; The Right To A Fair Trial; And The Right To Religious Freedom And Worship. When Protected, Civil Rights Guarantee One's Personhood And Freedom From State-Sanctioned Interference Or Violence<sup>13</sup>.

Political Rights Include Such Rights As The Right To Speech And Expression; The Rights To Assembly And Association; And The Right To Vote And Political Participation. Political Rights Thus Guarantee Individual Rights To Involvement In Public Affairs And The Affairs Of The State<sup>14</sup>. In Many Ways, Both Historically And Theoretically, Civil And Political Rights Have Been Considered Fundamental Rights For Which All Nation States Have A Duty And Responsibility To Uphold. They Have Also Been Seen As So-Called Negative Rights Since They Merely Require The Absence Of Their Violation In Order To Be Upheld. These Rights Denote Actions That A Government Should Not Take<sup>15</sup>. Their Content Is Viewed In The Lines Below.

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<sup>11</sup> Thus later the two Covenants, the International Covenant on Civil and Political Rights (opened for signature 1966, entered into force March 23,1976) and the International Covenant on Economic, Social and Cultural Rights (opened for signature 1966, entered into force January 3, 1976), were created which bind those States that ratify them to protect the rights listed in the respective Covenants. Together, these three documents constitute International Bill of Rights; and there have been a number of other Conventions regarding particular rights, including: the Optional Protocol to the International Covenant on Civil and Political rights (UN, 1966); The second Optional Protocol to the International Convention on Civil and Political rights (UN, 1989); Convention on the prevention and punishment of the crime of Genocide (entry into force 1951); Convention on the Elimination of all forms of racial discrimination (entry into force 1969); Convention on the Elimination of all forms of discrimination against Women (entry into force 1981); Convention on the rights of the child (UN, 1989); and the Rome Statute of the International Criminal Court (UN, 2002).

<sup>12</sup> Symonides *Human Rights: concept and standards* (2002) 69.

<sup>13</sup> Universal Declaration of Human rights: Articles 2, 3, 4, 5, 6, 7, 8,9,10,11,12,13, and 18.

<sup>14</sup> *Id.*, Articles 14, 15, 19, 20 and 21.

<sup>15</sup> Article 2 of the International Covenant on Civil and Political Rights obliges all States Parties to respect all the Covenant's rights and to ensure them for all individuals without discrimination. The obligation "to respect" indicates the traditional duty of states to refrain from restricting the exercise of civil and political rights.

#### **ii.1.1.1. Right To Life<sup>16</sup>**

The Notion Of Life Means The Principle Of Animation And Has To Be Understood As An Anti-Thesis Of Lifeless. The Individual Cannot Attain The Highest In Him Unless He Is In Possession Of Certain Rights Which Leave Him As It Were To Breathe And Expand. The Right To Life Does Not Then Merely Mean The Sanctity Of Life; It Means The Fullest Opportunity To Develop One's Personality And Potentiality To The Highest Level Possible In The Existing Stage Of Our Civilization<sup>17</sup>. It Follows Inevitably That The Right To Life Is The Right To Live Decently As A Member Of A Civilized Society And Have All The Freedoms And Advantages That Would Go To Make Life Agreeable, And Living Assured In A Reasonable Standard Of Comfort And Decency<sup>18</sup>. The Right To Life Also Includes The Right To Live With Human Dignity.

Article 3 Of The Universal Declaration Of Human Rights Comprises The Different Rights, Namely The Right To Life In A Biological Sense And In A Wider Human Sense The Right To Liberty And The Right To Personal Security.

#### **ii.1.1.2. The Right To Liberty**

Liberty Includes Freedom To Do As One Pleases, The Unrestrained Employment Of Natural Rights, Power Of Free Chance, Privileges, Exemption, Relaxation Of Restraint, The Bounds Within Which Certain Privileges Are Enjoyed, Freedom Of Speech And Action Beyond Ordinary Civility. In Other Words, The Right To Personal Freedom Is A Liberty To Such Personal Freedom As Is Not Taken Away By Law. It Asserts The Principle Of Legality, That Every Thing Is Legal That Is Not Illegal; Or Asserts That A Man May Not Be Deprived Of His Freedom For Doing Any Act Unless In So Doing He Violates The Law<sup>19</sup>.

#### **ii.1.1.3. The Right To Personal Security**

It Consists In The Right To Be Protected Against Certain Interferences From The State Or From Non-State Actors, Including Private Individuals (Integrity Rights). The Right To Security Of The Person Is Manifested In The Injunctions Against Torture, Cruel, Inhuman Or Degrading Treatment Or Punishment, And Subjecting Some One To Medical Experimentation Without His Or Her Free Consent<sup>20</sup>.

#### **ii.1.1.4. The Right To Equality Before The Law And Fair Trial<sup>21</sup>**

The Word Equality Before The Law Is The Standardised Way Of Expressing The Idea Of Equal Protection By Or Under The Law Without Discrimination. The Right To A Fair Trial Relates To The Rights Of An Accused Person To The Elements Or Conditions Of A Partial And Just Trial Required By International Human Rights Law: The Right To Information; To Defence Which Includes Also The Right To Be Heard; To Legal Representation; To Speed Trial And In A Reasonable Time; To Presumption Of Innocence; Etc.

#### **ii.1.1.5. The Right To Religious Freedom And Worship<sup>22</sup>**

This Is A Right To Freedom Of Conscience, To Profess, Practice And Propagate Any Religion; And The Right To Change One's Religious Allegiance. Religious Freedom By Its Nature Entails All Rights Relating To A Person's Involvement With A Religious Community<sup>23</sup>.

#### **ii.1.1.6. The Right To Speech And Expression<sup>24</sup>**

This Is The Right Including Freedom Of The Press And Other Media And The Freedom Of Artistic Creativity And Scientific Research.

#### **ii.1.1.7. The Right To Vote And Political Participation<sup>25</sup>**

It Includes The Right To Make Political Choices, To Form And Participate In The Activities Of And To Recruit Members Of A Political Party, To Campaign For A Political Party And The Secrecy Of The Vote. In Other Way, This Is The Right Of People To Participate In Politics By Expressing Themselves, Protesting, Voting And Serving In Public Office.

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<sup>16</sup> UDHR, article 3.

<sup>17</sup> Sumil & Kiran *Fundamental Human rights: the right to life and personal liberty* (2004) 4.

<sup>18</sup> *Id.*

<sup>19</sup> Sunil (2004) 11.

<sup>20</sup> See Duplessis and Corder (1994) 153.

<sup>21</sup> ICCPR, article 14.

<sup>22</sup> ICCPR, article 18.

<sup>23</sup> Duplessis and Corder (1994) 156.

<sup>24</sup> ICCPR, article 19.

<sup>25</sup> ICCPR, article 25.

#### **ii.1.1.8. The Right To Assembly And Association<sup>26</sup>**

It Includes The Right To Freely Form And Belong To Peaceful Assembly And Association.

#### **ii.1.2. Social, Economic And Cultural Rights (Rights Of The Second Generation)**

Articles 22 To 27 Of The Declaration Deal With Economic, Social And Cultural Rights. Sometimes These Rights Are Referred To As The Second Generation Of Human Rights In Order To Separate Them From The Civil Liberties Included In National Constitutions Since The End Of The 18th Century. These Were The "First Generation" Of Human Rights. The Central Characteristic Of Economic, Social And Cultural Rights Is That These Rights Will Not Be Actualised If The State Simply Refrains From Interfering With Individual Freedom. Cultural Rights For Instance, Are Meant To Maintain And Promote Sub-National Cultural Affiliations And Collective Identities, And Protect Minority Communities Against The Incursions Of National Assimilationist And Nation Building-Projects. These Rights Are About The Conditions For The Actual Well-Being Of People That Require The Society To Use Its Resources; Protections Against Severe Poverty And Starvation. The Articles Mentioned Above List As Economic, Social And Cultural Rights, Among Others, The Right To Social Security (Article 22), The Right To Work (Article 23) And Certain Minimum Conditions In Work (Article 24), The Right To An Adequate Standard Of Living, Including Medical Care, Food And Housing (Article 25), The Right To Education (Article 26), And The Right To Freely Participate In The Cultural Life Of The Community (Article 27). When Protected, These Rights Help Promote Individual Flourishing, Social And Economic Development, And Self-Esteem<sup>27</sup>. Economic, Social, Cultural Rights Denote Rights That The State Is Obligated To Protect And Provide<sup>28</sup>. The Second Generation Rights Are Seen As An Aspirational And Programmatic Set Of Rights That National Governments Ought To Strive To Achieve Through Progressive Implementation; And Their Realization Depends Heavily On The Fiscal Capacity Of States.

#### **ii.1.3. Solidarity Rights (Rights Of The Third Generation)**

Article 28 Of The Universal Declaration Of Human Rights Refers To The Role Of Each Individual In Realising The So-Called Third Generation Human Rights Or The Rights That Belong To Peoples. "Everyone Is Entitled To Social And International Order In Which The Rights And Freedoms Set Forth In This Declaration Can Be Fully Realised." The Formulation Of The Article Is Related To The Self-Determination Of Peoples That Has Since Been Recorded Into Human Rights Conventions, And To The Question Of The Right To Development Which Has Been A Large Part Of Recent Human Rights Discussion. In November 1977, Karel Vasak Called For The Recognition Of A Third Generation Of Human Rights, Namely Solidarity Rights<sup>29</sup>.

Solidarity Rights Which Include Rights To Public Goods Such As Development And The Environment, Seek To Guarantee That All Individuals And Groups Have The Right To Share In The Benefits Of The Earth's Natural Resources, As Well As Those Goods And Products That Are Made Through Processes And Economic Growth, Expansion, And Innovation<sup>30</sup>. Many Of These Rights Are Trans-National In That They Make Claims Against Wealth Nations To Redistribute Wealth To Poor Nations, Cancel Or Reduce International Debt Obligations, Pay Compensation For Past Imperial And Colonial Adventures, Reduce Environmental Degradation, And Help Promote Policies For Sustainable Development. This Third Generation Is Still Met With Resistance And Scepticism: It Was On One Hand Objected That By Their Very Nature, Solidarity Rights Cannot Be Invoked By Individuals, And Apply Only To Collectivities; And An Individual's Right To Peace Would For Instance Be Difficult To Contemplate<sup>31</sup>. However, On The Other Hand It Is Argued By Proponents Of Third Generation Rights That In Many Countries, Africa In Particular, Governments Struggle To Combat Famine, Illness And Ignorance. They Tend To Overlook The Classic Liberties Of The Western World But They Find Themselves In A Fight Against Underdevelopment. In This Fight, They Are In A State Of Emergency Which Permits Derogations To Be Made; They Recognise Then The Importance Of The Realisation Of Social And Economic Developments And The Securing Of The Classic Rights And Liberties. The Right To Development Is Then Considered As A Necessary Corollary Of The Other Fundamental Rights<sup>32</sup>. In Other Way, The Term Solidarity Or Collective Rights Refers To The Rights Of Peoples To Be Protected From Attacks On Their Group Identity And Group Interests. The Following Is The Third Generation Content Analysis.

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<sup>26</sup> ICCPR, articles 21 & 22.

<sup>27</sup> McChesney *Promoting and defending Economic, Social and Cultural Rights: a handbook* (2000) 17-18; see also Universal Declaration: Articles 16, 17, 20, 22, 23, 24, 25, 26, and 27.

<sup>28</sup> McChesney (2000) 36.

<sup>29</sup> See Donders *Towards a right to cultural identity* (2002) 4.

<sup>30</sup> Nel & Bezuidenhout *Policing and Human rights* (1997) 91.

<sup>31</sup> *Id.*

<sup>32</sup> *Ibid.*

#### **ii.1.3.1. The Right To Self-Determination<sup>33</sup>**

It Is Said To Be The Most Important Of Such Collective Rights<sup>34</sup>. This Is A Theoretical Principle That A People Ought To Be Able To Determine Their Own Governmental Forms And Structures. It Is A Political Right Of The Majority To The Exercise Of Power Within Boundaries Of A Generally Accepted Political Unit, Area, Or Territory.

#### **ii.1.3.2. The Right To Economic And Social Development<sup>35</sup>**

Economic Development Is The Development Of Economic Wealth Of Countries Or Religions For The Well-Being Of Their Inhabitants. Public Policy Generally Aims At Continuous And Sustained Economic Growth And Expansion Of National Economies So That Developing Countries Become Developed Countries. The Economic Development Process Supposes That Legal And Institutional Adjustments Are Made To Give Incentives For Innovation And For Investments So As To Develop An Efficient Production And Distribution System For Goods And Services. In Terms Of Article 1 (1) Of Un Declaration On The Right To Development, The Right To Development Is An Inalienable Human Right By Virtue Of Which Every Human Person And All Peoples Are Entitled To Participate In, Contribute To, And Enjoy Economic, Social, Cultural And Political Development, In Which All Human Rights And Fundamental Freedoms Can Be Fully Realized.

#### **ii.1.3.3. The Right To Natural Resources<sup>36</sup>**

Natural Resources Are Naturally Substances That Are Considered Valuable In Their Relatively Unmodified Natural Form. Natural Resources Are Often Classified Into Renewable And Non-Renewable Resources. Renewable Resources Are Generally Living Resources (Fish, Coffee, And Forests For Example), Which Can Restock (Or Renew) Themselves At Approximately The Rate At Which They Are Extracted, If They Are Not Overharvested. Non-Living Renewable Natural Resources Include Soil, As Well As Water, Wind, Tides And Solar Radiation.

#### **ii.1.3.4. The Right To Communicate<sup>37</sup>**

This Is The Right Including The Right To The Process Of Exchanging Information, Usually Via A Common Protocol. Examples Of Human Communication Are The Sharing Of Knowledge And Experiences, The Giving Or Receiving Of Orders And Cooperation. Common Forms Of Human Communication Include Sign Language, Speaking, Writing, Gestures And Broadcasting.

#### **ii.1.3.5. The Right To Participation In Cultural Heritage<sup>38</sup>**

Cultural Heritage Consists Of Nation's Historic Buildings, Collections, Monuments, Etc. That Are Considered Worthy Or Preservation For The Future. Much Of Such Heritage That Consists Of Smaller Objects Such As Artworks And Other Masterpieces Is Stored In Museums And Art Galleries. Typically, By Its Nature, Such Heritage Is Unique And Irreplaceable. It Can Often Form An Important Component In A Country's Tourist Industry Attracting Many Visitors From Abroad As Well As Locally.

### **ii.2. Partial Conclusion**

It Goes Without Saying Finally That While The Right To Self-Determination And Eventually The Right To Humanitarian Assistance, For Example, Find Expression On The Legal As Well As The Moral Plane, The Majority Of These Solidarity Rights Tend To Be More Aspirational Than Justiciable In Character, Enjoying As Yet An Ambiguous Jural Status As International Human Rights Norms.

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<sup>33</sup> ICCPR, article 1; ICESCR, article 1; African Charter on Human and Peoples' Rights, article 20.

<sup>34</sup> See Steiner and Alston *International Human rights in context: law, politics, morals* (1996) 972.

<sup>35</sup> UDHR, article 25; see also Steiner & Alston (1996) 1112; Wallace *International Human rights: texts and materials* (2001) 1.

<sup>36</sup> Article 1 (2) of International Covenant on Economic, Social and Cultural rights says: "all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". Similarly, article 21 (1) of the African Charter on Human and Peoples' Rights provides: "all peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it". See also Nmehiell *The African Human rights system: its laws, practice, and institutions* (2001)146.

<sup>37</sup> UDHR, article 19.

<sup>38</sup> UDHR, article 27.

After This Scope Analysis Of Human Rights, It Is Worth Noting That, Human Rights Are About The Freedom From Something And The Right To Something. Different Rights And Freedoms May Stress These Two Sides Differently, But Both Dimensions Belong To The Concept Of Human Rights And The Obligations Of A State That Are Based On Binding International Treaties. In Sum, Different Conceptions Of Rights, Particularly Emerging Conceptions, Contain The Potential For Challenging The Legitimacy And Supremacy Not Only Of One Another But, More Importantly, Of The Political-Social Systems With Which They Are Most Intimately Associated. As A Consequence There Is Sharp Disagreement About The Legitimate Scope Of Human Rights And About The Priorities That Are Claimed Among Them. In Short, While We Are Talking About The Scope Of Human Rights, We Can Say That The Legitimacy Of Different Human Rights And Priorities Claimed Among Them Are Function Of Context. Because People In Different Parts Of The World Both Assert And Honour Different Human Rights Demands According To Many Different Procedures And Practices, And These Issues Ultimately Depend On Time, Place, Setting, Level Of Crisis, And Other Circumstances. The Content Of Human Rights Has Been Broadly Defined, Not With Any Expectation That The Rights Associated With One Generation Would Or Should Become Outdated Upon The Ascendancy Of Another, But Expansively Or Supplementally. Reflecting Evolving Perceptions Of Which Values, At Different Times, Stand Most In Need Of Encouragement And Protection, The History Of The Content Of Human Rights Also Reflects Humankind's Recurring Demands For Continuity And Stability.

### **iii. Analysis Of The Nature Of The Concept Of Human Rights**

#### **iii.1. The Characteristics Of Human Rights**

The Very Term "Human Rights" Appears To Define One Essential Element Of Their Nature. That Is, Their Necessary Attachment To Human Beings. Surely, Therefore, Human Rights Are Contingent Upon The Rights-Holder Being Human<sup>39</sup>. If Human Rights Are Contingent On One's Humanity And An Essential Ingredient Of Humanity Is The Dignity That Every Human Being Possesses; An Important Challenge That Faces Human Rights Is The Basis Upon Which Human Dignity Is Measured And Expressed.

Human Rights Are Characterised As Universal, Inalienable, And Fundamental, Non-Derogable, Interrelated, Indivisible, And Interdependent.

#### **iii.1.1. The Concept Of Universality**

The Universality Of Human Rights Has Two Meanings: On The One Hand, The Universality Of Human Rights Prohibits Discrimination On The Ground Of Sex, Colour, Social Status Or Other Similar Characteristic. This Why The Prohibition Of Discrimination Is Included In The Universal Declaration Of Human Rights<sup>40</sup> And In Almost Other International Human Rights Conventions. On The Other Hand, The Universality Of Human Rights Refers To The Global Applicability Of Human Rights. Human Rights Are Common To All People On All Continents Irrespective Of Cultural Or Economic Differences; And People Have And Should Enjoy Them<sup>41</sup>. In The Following, As States Hastrup, The Universality Of Human Rights Will Be Discussed In Legal Terms As Referring To The Existence Of A Special Set Of International Legal Norms Regarding Human Rights Which Are Legally Binding Upon All States Legal Universality, Therefore, Refers To The Legal Obligation Under International Law Of All States To Respect Certain Basic Standards On The Treatment Of Human Beings<sup>42</sup>. In Addition, The Concept Of Universality Of Human Rights Can Be Broadly Seen Under Two Aspects<sup>43</sup>: The First Relates To Its Roots In Diverse Humanitarian, Philosophical And

Religious Traditions And There Is Where The Universality Of Human Rights Is Most Apparent. This Aspect Also Clearly Demonstrates That The Concept Of Human Rights Is Not The Monopoly Of Any One Civilization Or System. The Second Aspect Relating To The Contemporary Political And Legal Nature Of This Concept Can Be Traced Back To Historical And Intellectual Developments In Europe. This Aspect Is Most Clearly Enunciated In The Universal Declaration Of Human Rights And Finds Unprecedented Support And Acceptance Today In All Parts Of The World. In Fact, It Finds That Moral Actions Are Generally Tied To The Act Itself, Not Regardless Of The Cultural Context, But In Respect Of The Basic Ethical Standards That Exist In All Cultures.

Nevertheless, Even If It Is So, The Universality Of Human Rights Can Not Remove Cultural And Societal Differences Between Peoples. What Is To Be Emphasised Here Is The Status Of Human Rights As Humankind's Common Cultural Heritage, The Historical Background Of Which Lies Not Only In Western

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<sup>39</sup> See in this regard Article 1 of the Universal Declaration above-mentioned.

<sup>40</sup> See Articles 2 and 7.

<sup>41</sup> See for instance Hastrup (2001) 39.

<sup>42</sup> Hastrup (2001) 40.

<sup>43</sup> [http://www.indianembassy.org/policy/humanrights/vdpa\\_india.html](http://www.indianembassy.org/policy/humanrights/vdpa_india.html) (accessed on 10th April 2006).

Liberalism But Also In The Common Characteristics Of The Cultures Of Different Eras And Continents. Here, Variation Is Also An Asset. Human Rights Are Also Associated With Tolerance. Freedom Of Speech, Freedom Of Religion And Privacy, For Example, Are All Human Rights That Also Presume The Protection Of Dissimilarities. Especially Majorities And Their Members Should Be Tolerant Of Minorities And Their Customs. When These Points Are Combined, We Reach Then The Following Solution To The Problem Of Different Cultures And Common (Or Universal) Human Rights: Human Rights Protect Dissimilarity And Culture-Specific Features, Assuming That These Features Are Not A Means Of Violating The Human Rights Of An Individual Or An Attempt To Deny Some People Their Human Rights.

### **iii.1.2. The Concept Of Inalienability**

The Term “Inalienable Rights (Or Unalienable Rights)” Refers To A Set Of Human Rights That Are Said To Be Absolute, Not Awarded By Human Power, Not Transferable To Another Power, And Incapable Of Repudiation. The Inalienability Of Human Rights Reflects The Idea Of Natural Individual Rights That Precede The State’s Authority. Each Individual Has Human Rights On The Basis Of His/Her Humanity. Therefore, These Rights Can No More Be Taken Away From Him/Her By A Decision Of The Authorities Than By His/Her Own Consent. The Inalienability Of Human Rights Also Means That A Person Cannot Legally Give Over His/Her Human Rights By Selling Himself Or Herself As A Slave; In Other Words If A Right Is Inalienable, That Means That It Cannot Be Bestowed, Granted, Bartered, Renounced, Lost, Forfeited Or Sold Away<sup>44</sup>.

### **iii.1.3. The Concept Of Fundamentality**

The Fact That Human Rights Are Considered As Fundamental Means That Only The Most Important Rights Should Be Called Human Rights. Articles 1 To 28 Of The Universal Declaration Of Human Rights Contain A List Of The Rights And Freedoms That Were Considered Important Enough In 1948. In Addition, Human Rights Are Fundamental In The Sense That They Should Be Protected By The Law Even If Those In Power, Or A Majority Of The Population Or Other Significant Interests, Wish Them To Be Removed Generally Or From Individuals Or Groups. In Other Words They Should Be Protected Even Against Strong Arguments That The Common Good, The Collective Interest, Would Be Benefited Were They Removed<sup>45</sup>. Human Rights, Therefore, Embody Entitlements And Values Inherent In A Kind Of Superior Law, A Law Which Conditions And Must Be Taken Into Account By The Processes Of Making And Putting The Ordinary, Positive, Law Into Effect<sup>46</sup>.

Human Rights Are Also Inherent Rights Of Every Individual Because Every Human Being Has Them By The Virtue Of His Or Her Humanity; And Equal Which Means That They Are To Be Held Without Distinction<sup>47</sup>. In Addition, They Are Regarded As Indivisible And Interdependent. In Other Words, The Protection Of One Category Of Rights Is Dependent Upon The Protection Of The Other<sup>48</sup>. As Provided For In Article 5 Of 1993 Vienna Declaration, Rights May Also Be Interrelated And Non-Derogable, Namely Not Limited In Times Of War Or National Emergency.

## **iii.2. Philosophical Basis Of Human Rights**

Numerous Theoretical Approaches Have Been Advanced To Explain How Human Rights Become Part Of Social Expectation. Natural Theories Base Human Rights On The Natural Moral Order Based On Religious Precepts, The Assumed Common Understandings Of Justice, Or The Belief That Moral Behaviour Is A Set Of Objectively Valid Prescriptions<sup>49</sup>. In Legend, Literature, Religion And Political Thought, Justice (And Eventually The Concept Of Human Rights) Became Socially Constructed Overtime Into Complex Webs Of Social Interaction Striving Toward A Social Order In Which Human Beings Are Treated Fairly. Religious Societies Tend To Try To Justify Human Rights Trough Religious Arguments<sup>50</sup>. The Basis Of The Doctrine Of Natural Law Is The Belief In The Existence Of A Natural Moral Code Based Upon The Identification Of Certain Fundamental And Objectively Verifiable Human Goods<sup>51</sup>. Our Enjoyment Of These Basic Goods Is To Be Secured By Our Possession Of Equally Fundamental And Objectively Verifiable Natural Rights. Natural

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<sup>44</sup>Donnelly (1993) 19.

<sup>45</sup> Davis *Human rights and Civil liberties* (2003)10.

<sup>46</sup> *Id.*

<sup>47</sup> Crawshaw (1999) 37.

<sup>48</sup> *Id.*

<sup>49</sup> See Ishay (2004) 19.

<sup>50</sup> Ishay (2004) 20-21.

<sup>51</sup> *Ibid.*

Law Was Deemed To Pre-Exist Actual Social And Political Systems<sup>52</sup>. Natural Rights Were Thereby Similarly Presented As Rights Individuals Possessed Independently Of Society Or Polity. Natural Rights Were Thereby Presented As Ultimately Valid Irrespective Of Whether They Had Achieved The Recognition Of Any Given Political Ruler Or Assembly. The Quintessential Exponent Of This Position Was The 17<sup>th</sup> Century Philosopher John Locke; At The Centre Of Locke's Argument, Is The Claim That Individuals Possess Natural Rights, Independently Of The Political Recognition Granted To Them By The State<sup>53</sup>.

### **iii.3. Moral Relativism**

Philosophical Supporters Of Human Rights Are Necessarily Committed To A Form Of Moral Universalism. As Moral Principles And As A Moral Doctrine, Human Rights Are Considered To Be Universally Valid. However, Moral Universalism Has Long Been Subject To Criticism By So-Called Moral Relativists. Moral Relativists Argue That Universally Valid Moral Truths Do Not Exist. For Moral Relativists, There Is Simply No Such Thing As A Universally Valid Moral Doctrine. Relativists View Morality As A Social And Historical Phenomenon<sup>54</sup>. Moral Beliefs And Principles Are Therefore Thought Of As Socially And Historically Contingent, Valid Only For Those Cultures And Societies In Which They Originate And Within Which They Are Widely Approved. Relativists Point To The Vast Array Of Diverse Moral Beliefs And Practices Apparent In The World Today As Empirical Support For Their Position. Moral Relativism, The Belief That Moral Values (And Thus Conceptions Of Human Rights) Are Determined By History, Culture, Economics, Or Some Other Independent Social Force, Is Best Seen As A Matter Of Degree. At One Extreme Is A Radical Relativism That Sees Culture (Or History, Or Economics) As The Source Of All Values<sup>55</sup>. Jack Donnelly Proceeded To Argue That Such A Position In Effect Denies The Very Idea Of Human Rights, For It Holds That There Are No Rights That Every One Is Entitled To Equally, Simply As A Human Being. Donnelly Went So Far To Argue That Radical Relativism Can Be Ignored Once We Have Decided, As We Have Above, That There Are Human Rights, Rights That All Human Beings Have, Independent Of Society And Irrespective Of Their Particular History Or Culture<sup>56</sup>. Moreover, The Relativist Position Can Then Be Understood Simply To Assert As An Empirical Matter That The World Contains An Impressive Diversity In Views About Right And Wrong That Is Linked To The Diverse Underlying Cultures<sup>57</sup>. Moral Relativism Does Not However Equate To Moral Pluralism, Or Value Pluralism (Which Acknowledges The Co-Existence Of Opposing Ideas And Practices, But Does Not Require That They Be Equally Valid). Moral Relativism, In Contrast, Contends That Opposing Moral Positions Have No Truth-Value, And That No Preferred Standard Of Reference Exists To Judge Them. Relativists Would Regard The Notion That No Preferred Standard Of Truth Exists As A Straw Man Argument. Not That Any Belief Is Equally As Valid As Any Other.

## **II. GENERAL CONCLUSION**

As It Has Been Stated In The Development Of This Paper, Human Rights Relate To The Idea Of Certain Freedoms, Understood As Entitlements, Which Are To Be Enjoyed By All Persons On A Basis Of Equality For The Sufficient Reason That They Are Persons (Or Human Beings). This Paper Demonstrated The Nature And The Scope Of The Concept Of Human Rights In Its Whole Scientific Understanding. It Briefly Showed That The Background Of The Concept Of Human Rights Has Been Systematized By The International Legal And Human Rights Community Such That There Is Now A Known Core Content Of Human Rights Susceptible To Social Scientific Operationalization Using A Variety Of Indicators Across Their Different Categories Including The Positive And Negative Dimensions Of Civil, Political, Economic, Social, Cultural And Solidarity Rights.

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<sup>52</sup> See Symonides (2002) 36.

<sup>53</sup> Symonides (2002) 37-38.

<sup>54</sup> Donnelly (1993) 34.

<sup>55</sup> Donnelly (1993) 36.

<sup>56</sup> *Ibid.*

<sup>57</sup> Steiner & Alston *International Human Rights in context: law, politics, morals* (2000) 367; Donnelly *Universal Human rights in theory and practice* (2003) 90.

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