

## CHAPTER 6

# Comparison of the European Convention on Human Rights with the Universal Declaration of Human Rights

One year after the adoption of the Universal Declaration of Human Rights, an inter-European organisation called the Council of Europe was formed. Article 1 of the Statute of the Council of Europe categorically mentions that one of the aims of the Council of Europe is the maintenance and further realisation of human rights and fundamental freedoms. Article 3 of the said Statute states that "every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms". Thus, it is apparent that human rights have a very special place in the goals of the Council of Europe. This goal was materialised within a very short period.

It was only one year after its establishment, the Council of Europe, adopted European Convention for the Protection of Human Rights and Fundamental Freedoms, in brief European Convention on Human Rights on 4 November 1950 and it entered into force on 3 September, 1953. States which have ratified the European Convention on Human Rights include: Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Germany, Iceland, Ireland, Italy, Luxembourg, Malta, The Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

The decision to adopt the European Convention was made after the United Nations General Assembly adopted the Universal Declaration of Human Rights and when it became clear that it would take the United Nations a long time to reach agreement on the instruments designed to transform the Declaration into binding treaty obligations. The historic relationship between the Declaration and the European Convention finds expression in the latter's Preamble. There the signatories declare their resolve "as the Government of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take first steps for the collective enforcement of certain

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of the rights stated in the Declaration". Further, in the Preamble to the European Convention, the Universal Declaration is mentioned on three occasions. The provisions of the Universal Declaration and the European Convention are compared below.

<b>The Universal Declaration of Human Rights 1948</b>	<b>The European Convention on Human Rights 1950</b>
<p><i>Equality in dignity and rights</i>  <b>Article 1 :</b> 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.</p>	
<p><i>Non-discriminatory application of right</i>  <b>Article 2 :</b> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.</p>	<p><b>Article 14 :</b> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>
<p><i>Right to life, liberty and security</i>  <b>Article 3 :</b> Everyone has the right to life, liberty and security of person.</p>	<p><b>Article 2(1) :</b> Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. . . .</p>

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	Article 5(1) : Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: . . . .
<i>Prohibition of slavery</i> Article 4 : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.	Article 4(1) : No one shall be held in slavery or servitude. . . .
<i>Prohibition of torture and degrading treatment</i> Article 5 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.	Article 3 : No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
<i>Recognition as a person before the law</i> Article 6 : Everyone has the right to recognition everywhere as a person before the law.	
<i>Equality before the law</i> Article 7 : All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.	
<i>Remedies against violations of rights</i> Article 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.	Article 13 : Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.
<i>Prohibition of arbitrary arrest</i> Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.	

<p><i>Right to a fair trial</i>                  Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p>	<p>Article 6(1) : In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. . . .</p>
<p><i>Presumption of innocence and protection against retroactivity of criminal law</i>                  Article 11(1) : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.                   Article 11(2) : No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</p>	<p>Article 6(2) : Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.                   Article 7(1) : No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.</p>
<p><i>Prohibition of interference with privacy</i>                  Article 12 : No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.</p>	<p>Article 8(1) : Everyone has the right to respect for his private and family life, his home and his correspondence.                  Article 8(2) : There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. . . .</p>

<p><i>Freedom of movement</i></p> <p>Article 13(1) : Everyone has the right to freedom of movement and residence within the borders of each State.</p> <p>Article 13(2) : Everyone has the right to leave any country, including his own, and to return to his country.</p>	<p>Protocol 4 - Article 2(1):<sup>1</sup> Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.</p> <p>Protocol 4 - Article 2(2) :<sup>2</sup> Everyone shall be free to leave any country, including his own. . . .</p>
<p><i>Right to asylum</i></p> <p>Article 14(1) : Everyone has the right to seek and to enjoy in other countries asylum from persecution.</p> <p>Article 14(2) : This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.</p>	
<p><i>Right to a nationality</i></p> <p>Article 15(1) : Everyone has the right to a nationality.</p> <p>Article 15(2) : No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.</p>	
<p><i>Right to marry and to found a family</i></p> <p>Article 16(1) : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.</p>	<p>Article 12 : Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right..</p>

<sup>1</sup> Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto, See, *Human Rights: A Compilation of International Instruments*, Vol. 2 (Regional Instruments) United Nations, New York 1997, p. 97.

<sup>2</sup> Id.

<p>Article 16(2) : Marriage shall be entered into only with the free and full consent of the intending spouses.          Article 16(3) : The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p>	
<p><i>Right to own property</i>          Article 17(1) : Everyone has the right to own property alone as well as in association with others.          Article 17(2) : No one shall be arbitrarily deprived of his property.</p>	<p>Protocol 1 – Article 1:<sup>3</sup> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.</p>
<p><i>Freedom of thought, conscience and religion</i>          Article 18 : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</p>	<p>Article 9(1) : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.</p>

<sup>3</sup> Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto, See, *Human Rights: A Compilation of International Instruments*, Vol. 2 (Regional Instruments) United Nations, New York 1997, p. 92.

	<p>Article 9(2) : Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.</p>
<p><i>Freedom of opinion and expression</i>          Article 19 : Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</p>	<p>Article 10(1) : Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.</p> <p>Article 10(2) : The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.</p>

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<p><i>Freedom of assembly and association</i> Article 20(1) : Everyone has the right to freedom of peaceful assembly and association. Article 20(2) : No one may be compelled to belong to an association</p>	<p>Article 11(1) : Everyone has the right to freedom of peaceful assembly and to freedom of association with others, . . . for the protection of his interests. Article 11(2) : No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.</p>
<p><i>Right to participate in Government</i> Article 21(1) : Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.  Article 21(2) : Everyone has the right of equal access to public service in his country. Article 21(3) : The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held</p>	<p>Protocol 1 - Article 3 :<sup>4</sup> The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.</p>

<sup>4</sup> Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto. See, *Human Rights: A Compilation of International Instruments*, Vol. 2 (Regional Instruments) United Nations, New York 1997, p. 92.

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<p>by secret vote or by equivalent free voting procedures.</p>	
<p><i>Right to social security</i>          Article 22 : Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.</p>	
<p><i>Right to work, equal pay for equal work</i>          Article 23(1) : Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.          Article 23(2) : Everyone, without any discrimination, has the right to equal pay for equal work.          Article 23(3) : Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.          Article 23(4) : Everyone has the right to form and to join trade unions for the protection of his interests.</p>	<p>Article 11(1) : Everyone has the right . . . to form and to join trade unions for the protection of his interests.</p>
<p><i>Right to rest and leisure</i>          Article 24 : Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.</p>	

<p><i>Right to an adequate standard of living</i></p> <p>Article 25(1) : Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</p> <p>Article 25(2) : Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.</p>	
<p><i>Right to education</i></p> <p>Article 26(1) : Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.</p> <p>Article 26(2) : Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and</p>	<p>Article 2 :<sup>5</sup> No person shall be denied the right to education.</p>

<sup>5</sup> Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto. See, *Human Rights: A Compilation of International Instruments*, Vol. 2 (Regional Instruments) United Nations, New York 1997, p. 92.

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<p>shall further the activities of the United Nations for the maintenance of peace.</p> <p>Article 26(3) : Parents have a prior right to choose the kind of education that shall be given to their children.</p>	<p>Article 2 :<sup>6</sup> . . . In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.</p>
<p><i>Right to participate in cultural life</i></p> <p>Article 27(1) : Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.</p> <p>Article 27(2) : Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>	
<p><i>Right to a proper social order</i></p> <p>Article 28 : Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.</p>	
<p><i>Duties to society</i></p> <p>Article 29(1) : Everyone has duties to the community in which alone the free and full development of his personality is possible.</p>	

<sup>6</sup> Id.

<p>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.</p> <p>Article 29(3) : These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.</p>	
<p><i>Prohibition of destruction of rights of others</i></p> <p>Article 30 : 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.</p>	<p>Article 17 : Nothing in this Convention 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 set forth herein . . . .</p>

From the above comparison, it appears that the European Convention and its Protocols have included the following seventeen rights of the Universal Declaration: Non-discriminatory application of rights,<sup>7</sup> Right to life, liberty and security,<sup>8</sup> Prohibition of slavery;<sup>9</sup> Prohibition of torture and degrading treatment,<sup>10</sup> Right to remedy against violation of rights,<sup>11</sup> Right to a fair trial,<sup>12</sup> Presumption of innocence,<sup>13</sup> Prohibition of interference with privacy,<sup>14</sup> Freedom of movement,<sup>15</sup> Right to marry and

<sup>7</sup> The European Convention on Human Rights, 1950, Article 14.

<sup>8</sup> Ibid, Article 2(1) and 5(1).

<sup>9</sup> Ibid, Article 4(1).

<sup>10</sup> Ibid, Article 3.

<sup>11</sup> Ibid, Article 13.

<sup>12</sup> Ibid, Article 6(1).

<sup>13</sup> Ibid, Article 6(2) and 7(1).

<sup>14</sup> Ibid, Article 8(1) and 8(2).

to found a family,<sup>16</sup> Right to own property,<sup>17</sup> Freedom of thought, conscience and religion,<sup>18</sup> Freedom of opinion and expression,<sup>19</sup> Freedom of assembly and association,<sup>20</sup> Right to participate in government,<sup>21</sup> Right to education,<sup>22</sup> and Prohibition of destruction of rights of others.<sup>23</sup>

The following thirteen rights of the Universal Declaration have not been incorporated in the European Convention: Equality in dignity and rights,<sup>24</sup> Recognition as a person before the law,<sup>25</sup> Equality before the law,<sup>26</sup> Prohibition of arbitrary arrest,<sup>27</sup> Right of asylum,<sup>28</sup> Right to a nationality,<sup>29</sup> Right to social security,<sup>30</sup> Right to work, equal pay for equal work,<sup>31</sup> Right to rest and leisure,<sup>32</sup> Right to an adequate standard of living,<sup>33</sup> Right to participate in cultural life,<sup>34</sup> Right to a proper social order,<sup>35</sup> and Duties to society.<sup>36</sup> However, it must be emphasised that some of these rights are to be found in the European Social Charter, 1961 which deals with economic, social and cultural rights.

In many articles the first sentence or paragraph contains a general

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<sup>15</sup> See above, note 2, Article 2(2).

<sup>16</sup> The European Convention on Human Rights, 1950, Article 12.

<sup>17</sup> See above, note 4, Article 3.

<sup>18</sup> The European Convention on Human Rights, 1950, Article 9(1).

<sup>19</sup> *Ibid.*, Article 10(1) and 10(2).

<sup>20</sup> *Ibid.*, Article 11(1) and 11(2).

<sup>21</sup> See above, note 5, Article 3.

<sup>22</sup> See above, note 6, Article 2.

<sup>23</sup> The European Convention on Human Rights, 1950, Article 17.

<sup>24</sup> The Universal Declaration of Human Rights, 1948, Article 1.

<sup>25</sup> *Ibid.*, Article 6.

<sup>26</sup> *Ibid.*, Article 7.

<sup>27</sup> *Ibid.*, Article 9.

<sup>28</sup> *Ibid.*, Article 14.

<sup>29</sup> *Ibid.*, Article 15.

<sup>30</sup> *Ibid.*, Article 22.

<sup>31</sup> *Ibid.*, Article 23.

<sup>32</sup> *Ibid.*, Article 24.

<sup>33</sup> *Ibid.*, Article 25.

<sup>34</sup> *Ibid.*, Article 27.

<sup>35</sup> *Ibid.*, Article 28.

<sup>36</sup> *Ibid.*, Article 29.

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affirmation of the right, often based on the text of the Universal Declaration, and the following paragraphs set out the limitations to which that right may be subjected. For example the right to liberty can be restricted after conviction by a competent Court, or in the event of lawful arrest or detention. Several other rights, such as freedom of expression, freedom of assembly and freedom of association, may be limited in the interests of national security, public safety, protection of rights and freedoms of others, and so on. However, the limitations are carefully formulated and, in general, permitted only when they are prescribed by law and necessary in a democratic society to safeguard some aspects of the public interest.

## CHAPTER 7

# Comparison of the Covenant on the Economic Social and Cultural Rights & the Covenant on Civil and Political Rights with the Universal Declaration of Human Rights

At the time the Universal Declaration was drafted, it was recognised that it would not create legally binding obligations but would simply set "a standard of achievement for all peoples and all nations". It was therefore agreed that the Commission on Human Rights should undertake the drafting of a legally binding human rights instrument modelled on the Declaration. Although the proposed treaty was to include both economic, social and cultural rights and civil and political rights within it, problems arose concerning the appropriate methods of implementation for the different categories of rights. It was therefore proposed that two instruments would be adopted, one dealing with economic, social and cultural rights and the other with civil and political rights. The two covenants were therefore presented to and adopted by the General Assembly in 1966. They did not, however, enter into force until 1976, when the required number of 35 states had ratified them. Both the Covenants have recalled the Universal Declaration in their Preambles. The provisions of the two Covenants and the Universal Declaration are compared below which shows the extent of incorporation of the Declaration's rights into the Covenants.

<b>The Universal Declaration of Human Rights 1948</b>	<b>The ICCPR<sup>1</sup> and the ICESCR<sup>2</sup> of 1966</b>
<i>Equality in dignity and rights</i> Article 1 : 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>1</sup> The International Covenant on Civil and Political Rights

<sup>2</sup> The International Covenant on Economic, Social and Cultural Rights.

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<p><i>Non-discriminatory application of rights</i></p> <p>Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.</p>	<p>ICCPR, Article 2(1) : Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ICESCR, Article 2(2) : The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p>
<p><i>Right to life, liberty and security</i></p> <p>Article 3 : Everyone has the right to life, liberty and security of person.</p>	<p>ICCPR, Article 6(1) : Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>ICCPR, Article 9(1) : Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p>

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<p><i>Prohibition of slavery</i>  <b>Article 4</b> : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.</p>	<p>ICCPR, Article 8(1) : No one shall be held in slavery; and the slave-trade in all their forms shall be prohibited.          ICCPR, Article 8(2) : No one shall be held in servitude.</p>
<p><i>Prohibition of torture and degrading treatment</i>  <b>Article 5</b> : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p>	<p>ICCPR, Article 7 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p>
<p><i>Recognition as a person before the law</i>  <b>Article 6</b> : Everyone has the right to recognition everywhere as a person before the law.</p>	<p>ICCPR, Article 16 : Everyone shall have the right to recognition everywhere as a person before the law.</p>
<p><i>Equality before the law</i>  <b>Article 7</b> : All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.</p>	<p>ICCPR, Article 26 : All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p>
<p><i>Remedies against violations of rights</i>  <b>Article 8</b> : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.</p>	<p>ICCPR, Article 2(3) : Each State Party to the present Covenant undertakes:          (a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;</p>

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	(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
<p><i>Prohibition of arbitrary arrest</i>          Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.</p>	<p>ICCPR, Article 9(1) : Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p>
<p><i>Right to a fair trial</i>          Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p>	<p>ICCPR, Article 14(1) : All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (<i>ordre public</i>) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons</p>

<p>otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.</p>	
<p><i>Presumption of innocence and protection against retroactivity of criminal law</i></p> <p>Article 11(1) : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.</p> <p>Article 11(2) : No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</p>	<p>ICCPR, Article 14(2) : Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.</p> <p>ICCPR, Article 15(1) : No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty the offender shall benefit thereby.</p>
<p><i>Prohibition of interference with privacy</i></p> <p>Article 12 : No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.</p>	<p>ICCPR, Article 17 : No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.</p>

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<p><i>Freedom of movement</i>  <b>Article 13(1)</b> : Everyone has the right to freedom of movement and residence within the borders of each State.</p> <p><b>Article 13(2)</b> : Everyone has the right to leave any country, including his own, and to return to his country.</p>	<p>ICCPR, Article 12(1): Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.</p> <p>ICCPR, Article 12(2) : Everyone shall be free to leave any country, including his own.</p>
<p><i>Right to asylum</i>  <b>Article 14(1)</b> : Everyone has the right to seek and to enjoy in other countries asylum from persecution.  <b>Article 14(2)</b> : This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.</p>	
<p><i>Right to a nationality</i>  <b>Article 15(1)</b> : Everyone has the right to a nationality.  <b>Article 15(2)</b> : No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.</p>	<p>ICCPR, Article 24(3) : Every child has the right to acquire a nationality.</p>
<p><i>Right to marry and to found a family</i>  <b>Article 16(1)</b> : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.</p>	<p>ICCPR, Article 23(2) : The right of men and women of marriageable age to marry and to found a family shall be recognised.</p>

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<p>Article 16(2) : Marriage shall be entered into only with the free and full consent of the intending spouses.</p> <p>Article 16(3) : The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p>	<p>ICCPR, Article 23(3) : No marriage shall be entered into without the free and full consent of the intending spouses.</p> <p>ICCPR, Article 23(1) : The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p> <p>ICESCR, Article 10(1) : The States Parties to the present Covenant recognise that: The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.</p>
<p><i>Right to own property</i></p> <p>Article 17(1) : Everyone has the right to own property alone as well as in association with others.</p> <p>Article 17(2) : No one shall be arbitrarily deprived of his property.</p>	
<p><i>Freedom of thought, conscience and religion</i></p> <p>Article 18 : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</p>	<p>ICCPR, Article 18(1) : Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.</p>

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<p><i>Freedom of opinion and expression</i>                  Article 19 : Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</p>	<p>ICCPR, Article 19(1) : Everyone shall have the right to hold opinions without interference.                  ICCPR, Article 19(2) : Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p>
<p><i>Freedom of assembly and association</i>                  Article 20(1) : Everyone has the right to freedom of peaceful assembly and association.                  Article 20(2) : No one may be compelled to belong to an association.</p>	<p>ICCPR, Article 21 : The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (<i>ordre public</i>), the protection of public health or morals or the protection of the rights and freedoms of others.                  ICCPR, Article 22(1) : Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.</p>
<p><i>Right to participate in Government</i>                  Article 21(1) : Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.</p>	<p>ICCPR, Article 25(a) : Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: to take part in the conduct of public affairs, directly or through freely chosen representatives;</p>

<p>Article 21(2) : Everyone has the right of equal access to public service in his country.</p>	<p>ICCPR, Article 25(c) : . . . To have access, on general terms of equality, to public service in his country.</p>
<p>Article 21(3) : The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.</p>	
<p><i>Right to social security</i> Article 22 : Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.</p>	
<p><i>Right to work, equal pay for equal work</i> Article 23(1) : Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.</p>	<p>ICESCR, Article 6(1) : The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. ICESCR, Article 7 : The States Parties to the Present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work</p>

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<p>Article 23(2) : Everyone, without any discrimination, has the right to equal pay for equal work.</p>	<p>ICESCR, Article 7 : The State Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:</p>
<p>Article 23(3) : Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.</p>	<p>(a) Remuneration which provides all workers, as a minimum, with:</p> <p>(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;</p> <p>(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;</p> <p>(b) Safe and healthy working condition;</p> <p>(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;</p>
<p>Article 23(4): Everyone has the right to form and to join trade unions for the protection of his interests.</p>	<p>ICESCR, Article 8 (1) (a) : The States Parties to the present Covenant undertake to ensure:</p>
<p><i>Right to rest and leisure</i></p>	<p>The right of everyone to form trade unions and join the trade union of his choice. . . .</p>
<p>Article 24 : Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.</p>	<p>ICCPR, Article 22(1) : Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.</p>
	<p>ICESCR, Article 7: The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular; . . .</p>

	(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
<p><i>Right to an adequate standard of living</i></p> <p>Article 25(1) : Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</p> <p>Article 25(2) : Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.</p>	<p>ICESCR, Article 11(1) : The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.</p> <p>ICESCR, Article 10(3) : Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.</p> <p>ICESCR, Article 9 : The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.</p>

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	<p>ICESCR, Article 10(2) : Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.</p> <p>ICCPR, Article 24(1) : Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.</p>
<p><i>Right to education</i></p> <p>Article 26(1) : Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.</p> <p>Article 26(2) : Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.</p>	<p>ICESCR, Article 13(1) : The State Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and 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.</p> <p>ICESCR, Article 13(2) : The States Parties to the present Covenant recognise that, with a view to achieving the full realization of this right:</p>

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<p>Article 26(3): Parents have a prior right to choose the kind of education that shall be given to their children.</p>	<p>(a) Primary education shall be compulsory and available free to all;          (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;          (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;</p>
<p><i>Right to participate in cultural life</i>          Article 27(1) : Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.</p>	<p>ICESCR, Article 13(3) : The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.</p>
<p>Article 27(2) : Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>	<p>ICESCR, Article 15(1) : The States Parties to the present Covenant recognise the right of everyone:          a. To take part in cultural life;          b. To enjoy the benefits of scientific progress and its applications;</p> <p>ICESCR, Article 15(1)(c) : To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>

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<p><i>Right to a proper social order</i></p> <p>Article 28 : Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.</p>	
<p><i>Duties to society</i></p> <p>Article 29(1) : Everyone has duties to the community in which alone the free and full development of his personality is possible.</p> <p>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.</p> <p>Article 29(3) : These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.</p>	
<p><i>Prohibition of destruction of rights of others</i></p> <p>Article 30 : 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.</p>	<p>ICESCR, Article 5(1) : Nothing in the present Covenant 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 or freedoms recognised herein, or at their limitation to a greater extent than is provided for in the present Covenant.</p> <p>ICCPR, Article 5(1) : 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.</p>

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From the above it is evident the International Covenant on Economic, Social and Cultural Rights has adopted following rights as specified in the Universal Declaration: Non-discriminatory application of rights,<sup>3</sup> Right to work, equal pay for equal work,<sup>4</sup> Right to rest and leisure,<sup>5</sup> Right to an adequate standard of living,<sup>6</sup> Right to education,<sup>7</sup> Right to participate in cultural life,<sup>8</sup> Prohibition of destruction of rights of others,<sup>9</sup> Right to marry and to found a family,<sup>10</sup>

On the other hand the International Covenant on Civil and Political Rights has incorporated following rights of the Universal Declaration: Non-discriminatory application of right,<sup>11</sup> Right to life, liberty and security,<sup>12</sup> Prohibition of slavery,<sup>13</sup> Prohibition of torture and degrading treatment,<sup>14</sup> Recognition as a person before the law,<sup>15</sup> Equality before the law,<sup>16</sup> Remedies against violation of rights,<sup>17</sup> Prohibition of arbitrary arrest,<sup>18</sup> Right to a fair trial,<sup>19</sup> Presumption of innocence,<sup>20</sup> Prohibition of interference with privacy,<sup>21</sup> Freedom of movement,<sup>22</sup> Right to a

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<sup>3</sup> The International Covenant on Economic, Social and Cultural Right 1966, Article 2(2).

<sup>4</sup> Ibid, Article 6(1).

<sup>5</sup> Ibid, Article 7.

<sup>6</sup> Ibid, Articles 9, Article 10(2), 10(3), Article 11(1).

<sup>7</sup> Ibid, Article 13.

<sup>8</sup> Ibid, Article 15(1).

<sup>9</sup> Ibid, Article 5(1).

<sup>10</sup> Ibid, Article 10(1).

<sup>11</sup> The International Covenant on Civil and Political Rights 1966, Article 2(1).

<sup>12</sup> Ibid, Articles 6(1) and 9(1).

<sup>13</sup> Ibid, Article 8(1) and 8(2).

<sup>14</sup> Ibid, Article 7.

<sup>15</sup> Ibid, Article 16.

<sup>16</sup> Ibid, Article 26.

<sup>17</sup> Ibid, Article 2(3).

<sup>18</sup> Ibid, Article 9(1).

<sup>19</sup> Ibid, Article 14(1).

<sup>20</sup> Ibid, Articles 14(2) and 15(1).

<sup>21</sup> Ibid, Article 17.

<sup>22</sup> Ibid, Article 12(1) and 12(2).

nationality,<sup>23</sup> Right to marry and to found a family,<sup>24</sup> Freedom of thought, conscience and religion,<sup>25</sup> Freedom of opinion and expression,<sup>26</sup> Freedom of assembly and association,<sup>27</sup> Right to participate in government,<sup>28</sup> Prohibition of destruction of rights of others.<sup>29</sup>

Thus, although there are important differences, the catalogue of rights set forth in the two Covenants are essentially the same as that of the Universal Declaration. However, the following rights have been mentioned in the Declaration but has not been incorporated in the Covenants: Right to asylum,<sup>30</sup> Right to own property,<sup>31</sup> Right to social security,<sup>32</sup> Right to a proper social order,<sup>33</sup> Duties to society.<sup>34</sup>

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<sup>23</sup> Ibid, Article 24(3).

<sup>24</sup> Ibid, Article 23.

<sup>25</sup> Ibid, Article 18(1).

<sup>26</sup> Ibid, Article 19(1) and 19(2).

<sup>27</sup> Ibid, Articles 21 and 22(1).

<sup>28</sup> Ibid, Article 25(a) and 25(c).

<sup>29</sup> Ibid, Article 5(1).

<sup>30</sup> The Universal Declaration of Human Rights, 1948, Article 14.

<sup>31</sup> Ibid, Article 17.

<sup>32</sup> Ibid, Article 22.

<sup>33</sup> Ibid, Article 28.

<sup>34</sup> Ibid, Article 29.

## CHAPTER 8

# Comparison of the American Convention on Human Rights with the Universal Declaration of Human Rights

The American Convention on Human Rights was adopted at a special inter-governmental conference of the Organization of American States (OAS) at San Jose, Costa Rica in 1969 and entered into force in July 1978. The Additional protocol to the American Convention on Human Rights which is known as Protocol of San Salvador was approved by the State parties of OAS in 1988. The parties to the American Convention on Human Rights include Chile, Colombia, Costa Rica, El Salvador, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Uruguay and Venezuela.

The preamble to the American Convention on Human Rights, in its third paragraph, has recalled the Universal Declaration of Human Rights. The fourth paragraph of the preamble emphasizes as follows: "Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights". Thus, the impact of the Universal Declaration is apparent on the American Convention on Human Rights. However, the following comparison between the two documents, will further highlight the above contention.

<b>The Universal Declaration of Human Rights 1948</b>	<b>The American Convention on Human Rights 1969</b>
<i>Equality in dignity and rights</i> Article 1 : 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.	

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<p><i>Non-discriminatory application of Rights</i></p>	<p>Article 1 (1): The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.</p>
<p>Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.</p>	
<p><i>Right to life, liberty and security</i> Article 3 : Everyone has the right to life, liberty and security of person.</p>	<p>Article 4(1): Every person has the right to have his life respected. . . . Article 7 (1): Every person has the right to personal liberty and security.</p>
<p><i>Prohibition of slavery</i> Article 4 : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.</p>	<p>Article 6 (1): No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade . . . .</p>
<p><i>Prohibition of torture and degrading treatment</i> Article 5 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p>	<p>Article 5 (2): No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.</p>
<p><i>Recognition as a person before the law</i> Article 6 : Everyone has the right to recognition everywhere as a person before the law.</p>	<p>Article 3: Every person has the right to recognition as a person before the law.</p>

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<p><i>Equality before the law</i>          Article 7 : All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.</p>	<p>Article 24: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.</p>
<p><i>Remedies against violations of rights</i>          Article 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.</p>	<p>Article 25 (1): Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, . . .</p>
<p><i>Prohibition of arbitrary arrest</i>          Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.</p>	<p>Article 7(3): No one shall be subject to arbitrary arrest or imprisonment.</p>
<p><i>Right to a fair trial</i>          Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p>	<p>Article 8(1): Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights . . .</p>
<p><i>Presumption of innocence and protection against retroactivity of criminal law</i>          Article 11(1): Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.</p>	<p>Article 8 (2): Every person accused of a criminal offence has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: . . .</p>

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<p><b>Article 11(2):</b> No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</p>	<p><b>Article 9 :</b> No one shall be convicted of any act or omission that did not constitute a criminal offence, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offence was committed. . . .</p>
<p><i>Prohibition of interference with privacy</i>  <b>Article 12 :</b> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.</p>	<p><b>Article 11 (2):</b> No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honour or reputation.  <b>Article 11 (3)::</b> Everyone has the right to the protection of the law against such interference or attacks.</p>
<p><i>Freedom of movement</i>  <b>Article 13(1):</b> Everyone has the right to freedom of movement and residence within the borders of each State.</p> <p><b>Article 13(2):</b> Everyone has the right to leave any country, including his own, and to return to his country.</p>	<p><b>Article 22(1):</b> Every person lawfully in the territory of a State Party has the right to move about in it and to reside in it subject to the provisions of the law.</p> <p><b>Article 22(2):</b> Every person has the right to leave any country freely, including his own.</p>
<p><i>Right of asylum</i>  <b>Article 14(1):</b> Everyone has the right to seek and to enjoy in other countries asylum from persecution.  <b>Article 14(2):</b> This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.</p>	<p><b>Article 22(7):</b> Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.</p>

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<p><i>Right to a nationality</i>          Article 15(1): Everyone has the right to a nationality.</p> <p>Article 15(2): No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.</p>	<p>Article 20 (1) Every person has the right to a nationality.</p> <p>Article 20(3): No one shall be arbitrarily deprived of his nationality or of the right to change it.</p>
<p><i>Right to marry and to found a family</i>          Article 16(1) : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.</p> <p>Article 16(2): Marriage shall be entered into only with the free and full consent of the intending spouses.</p> <p>Article 16(3): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p>	<p>Article 17(2): The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, in so far as such conditions do not affect the principle of the nondiscrimination established in this Convention.</p> <p>Article 17(3): No marriage shall be entered into without the free and full consent of the intending spouses.</p> <p>Article 17(1): The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.</p>
<p><i>Right to own property</i>          Article 17(1): Everyone has the right to own property alone as well as in association with others.</p> <p>Article 17(2): No one shall be arbitrarily deprived of his property.</p>	<p>Article 21(1): Everyone has the right to the use and enjoyment of his property. ...</p> <p>Article 21(2): No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.</p>

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<p><i>Freedom of thought, conscience and religion</i>  <b>Article 18 :</b> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</p>	<p><b>Article 12(1):</b> Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.</p>
<p><i>Freedom of opinion and expression</i>  <b>Article 19 :</b> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</p>	<p><b>Article 13(1):</b> Everyone shall have the right to freedom of thought and expression. This right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of his choice.</p>
<p><i>Freedom of assembly and association</i>  <b>Article 20(1):</b> Everyone has the right to freedom of peaceful assembly and association.</p> <p><b>Article 20(2):</b> No one may be compelled to belong to an association.</p>	<p><b>Article 15:</b> The right of peaceful assembly, without arms, is recognized</p> <p><b>Article 16(1):</b> Everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes.</p>
<p><i>Right to participate in Government</i>  <b>Article 21(1):</b> Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.</p>	<p><b>Article 23 (1):</b> Every citizen shall enjoy the following rights and opportunities:  a) to take part in the conduct of public affairs, directly or through freely chosen representatives;</p>

<p>Article 21(2): Everyone has the right of equal access to public service in his country.</p> <p>Article 21(3): The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.</p>	<p>c) to have access, under general conditions of equality, to the public service of his country.</p> <p>b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters;</p>
<p><i>Right to social security</i></p> <p>Article 22 : Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.</p>	
<p><i>Right to work, equal pay for equal work</i></p> <p>Article 23(1): Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.</p> <p>Article 23(2): Everyone, without any discrimination, has the right to equal pay for equal work.</p>	<p>Additional Protocol - Article 6(1):<sup>1</sup> Everyone has the right to work, ...</p> <p>Additional Protocol - Article 7:<sup>2</sup> The State parties to this Protocol recognize ...</p> <p>... (E)veryone shall enjoy that right under just, equitable and satisfactory conditions, ...</p>

<sup>1</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights - "Protocol of San Salvador", See, *Human Rights: A Compilation of International Instruments*, Volume 2 (Regional Instruments, United Nations, New York 1997, p. 39.

<sup>2</sup> Id.

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<p>Article 23(3): Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.</p>	<p>Additional Protocol - Article 7(a):<sup>3</sup> The State parties to this Protocol recognize . . . particularly with respect to: Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction;</p>
<p>Article 23(4): Everyone has the right to form and to join trade unions for the protection of his interests.</p>	<p>Additional Protocol - Article 8(1)(a):<sup>4</sup> The State parties shall ensure: The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interest. . . .</p>
<p><i>Right to rest and leisure</i> Article 24 : Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.</p>	<p>Additional Protocol - Article 7(g)&amp;(h):<sup>5</sup> The State parties to this Protocol recognize . . . particularly with respect to: A reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work; Rest, leisure and paid vacations as well as remuneration for national holidays.</p>

<sup>3</sup> Id.

<sup>4</sup> Ibid, p. 40.

<sup>5</sup> Id.

<p><i>Right to an adequate standard of living</i></p> <p>Article 25(1): Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</p> <p>Article 25(2): Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.</p>	<p>Additional Protocol - Article 9(1):<sup>6</sup> Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents.</p> <p>Additional Protocol - Article 15(3)(a):<sup>7</sup> The State Parties hereby undertake...: To provide special care and assistance to mothers during a reasonable period before and after childbirth;</p> <p>Additional Protocol - Article 16:<sup>8</sup> Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. ...</p>
<p><i>Right to education</i></p> <p>Article 26(1): Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.</p>	<p>Additional Protocol - Article 13(1):<sup>9</sup> Everyone has the right to education.</p> <p>Additional Protocol - Article 13(3):<sup>10</sup> The State parties to this Protocol recognize that in order to achieve the full exercise of the right to education:</p> <p>a. Primary education should be compulsory and accessible to all with out cost;</p>

<sup>6</sup> Id.

<sup>7</sup> Ibid, p. 43.

<sup>8</sup> Id.

<sup>9</sup> Ibid, p. 41.

<sup>10</sup> Ibid, p. 42.

Article 26(2): Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Article 26(3): Parents have a prior right to choose the kind of education that shall be given to their children.

b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;

c. Higher education should be made equally accessible to all on the basis of individual capacity, by every appropriate means, and in particular by the progressive introduction of free education.

Additional Protocol - Article 13(2):<sup>11</sup>  
The State Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

<sup>11</sup> Ibid, pp. 41-42.

<p><i>Right to participate in cultural life</i>  <b>Article 27(1)</b> : Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.  <b>Article 27(2)</b> : Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>	<p>Additional Protocol - Article 14 (1):<sup>12</sup>  The State Parties to this Protocol recognize the right of everyone;  a. To take part in the cultural and artistic life of the community;  b. To enjoy the benefits of scientific and technological progress;  c. To benefit from the protection of moral and material interests deriving from any scientific, literary or artistic production of which he is the author.</p>
<p><i>Right to a proper social order</i>  <b>Article 28</b> : Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.</p>	
<p><i>Duties to society</i>  <b>Article 29(1)</b>: Everyone has duties to the community in which alone the free and full development of his personality is possible.</p>	<p><b>Article 32(1)</b>: Every person has responsibilities to his family, his community, and mankind.</p>
<p><b>Article 29(2)</b>: 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.</p> <p><b>Article 29(3)</b>: These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.</p>	<p><b>Article 32(2)</b>: The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.</p>

<sup>12</sup> Ibid, p. 42.

<i>Prohibition of destruction of rights of others</i>	
Article 30: 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 29: No provision of this Convention shall be interpreted as: (a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein: . . .

From the above it is evident that the American Convention on Human Rights proclaims the following rights which have been specified in the Universal Declaration: Non-discriminatory application of rights,<sup>13</sup> Right to life and security,<sup>14</sup> Prohibition of slavery,<sup>15</sup> Prohibition of torture and degrading treatment,<sup>16</sup> Recognition as a person before the law,<sup>17</sup> Equality before the law,<sup>18</sup> Remedies against violation of rights,<sup>19</sup> Prohibition of arbitrary arrest,<sup>20</sup> Right to a fair trial,<sup>21</sup> Presumption of innocence,<sup>22</sup> Prohibition of interference with privacy,<sup>23</sup> Freedom of movement,<sup>24</sup> Right to asylum,<sup>25</sup> Right to a nationality,<sup>26</sup> Right to marry and found a family,<sup>27</sup> Right to own property,<sup>28</sup> Freedom of thought, conscience and religion,<sup>29</sup> Freedom of opinion and expression,<sup>30</sup> Freedom of assembly and

<sup>13</sup> The American Convention on Human Rights, 1969, Article 1(1)..

<sup>14</sup> Ibid, Articles 4(1) and 7(1).

<sup>15</sup> Ibid, Article 6(1).

<sup>16</sup> Ibid, Article 5(2).

<sup>17</sup> Ibid, Article 3.

<sup>18</sup> Ibid, Article 24

<sup>19</sup> Ibid, Article 25(1).

<sup>20</sup> Ibid, Article 7(3).

<sup>21</sup> Ibid, Article 8(1).

<sup>22</sup> Ibid, Articles 8(2) and 9.

<sup>23</sup> Ibid, Article 11(2), 11(3).

<sup>24</sup> Ibid, Article 22(1), 22(2).

<sup>25</sup> Ibid, Article 22(7).

<sup>26</sup> Ibid, Article 20(1), 20(3).

<sup>27</sup> Ibid, Article 17.

<sup>28</sup> Ibid, Article 21(1) and 21(2).

<sup>29</sup> Ibid, Article 12(1).

<sup>30</sup> Ibid, Article 13(1).

association,<sup>31</sup> Right to participate in government,<sup>32</sup> Right to work, equal pay for equal work,<sup>33</sup> Right to rest and leisure,<sup>34</sup> Right to adequate standard of living,<sup>35</sup> Right to education,<sup>36</sup> Right to participate in cultural life,<sup>37</sup> Duties to society,<sup>38</sup> Prohibition of destruction of rights of others.<sup>39</sup>

These guarantees are supplemented by a broad non-discrimination clause and an undertaking by the States Parties to take progressive measures for the full realization of the rights. The Convention allows the States Parties to derogate from their obligations "in time of war, public danger, or other emergency that threatens independence or security."

Both the American Convention of Human Rights and its Protocol contain the traditional range of civil, political, economic and social, rights although it is clear that a number of the rights in both the Convention and Protocol are drafted in much broader terms than those in analogous instruments. As in other international human rights treaties, the dichotomy between the two broad groups of rights is identifiable. The civil and political rights are expressed in absolute and immediate terms and are to be implemented progressively. Article 1(1) of the American Convention of Human Rights requires states parties to "respect the rights and freedoms recognized" and to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms . . .", while Article 1 of the Protocol simply demands that states parties take appropriate measures "for the purpose of achieving progressively . . . the full observance of the rights recognized in the Protocol".

Following are the rights, which have been mentioned in Universal Declaration but have not been included in the American Convention on Human Rights and its Additional Protocol: Equality in dignity and rights,<sup>40</sup> Right to social security,<sup>41</sup> and Right to proper social order.<sup>42</sup>

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<sup>31</sup> Ibid, Articles 15 and 16(1).

<sup>32</sup> Ibid, Article 23(1).

<sup>33</sup> See above, note 1, Article 6(1).

<sup>34</sup> See above, note 1, Article 7(g) and 7(h).

<sup>35</sup> See above, note 1, Article 9(1).

<sup>36</sup> See above, note 1, Article 13(1).

<sup>37</sup> See above, note 1, Article 14(1).

<sup>38</sup> The American Convention on Human Rights, Article 32.

<sup>39</sup> Ibid, Article 29.

<sup>40</sup> The Universal Declaration of Human Rights, 1948, Article 1.

<sup>41</sup> Ibid, Article 22.

<sup>42</sup> Ibid, Article 28.

## CHAPTER 9

# Comparison of the African Charter on Human and Peoples' Rights with the Universal Declaration of Human Rights

The advances which led to the establishment of regional organisations in Europe and America have also produced results in Africa. The Organisation of African Unity (OAU) was established in 1963 by the Charter of the OAU. Article II of the Charter includes among the aims of the OAU "to promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights". Although many national Constitutions refer to, and sometimes incorporate, the provisions of the Universal Declaration, this is for the first time that the constituent instrument of a new international organisation had done so.

However, the formation of an African Commission on human rights was first proposed at the African Conference on the Rule of Law, organised by the International Commission of Jurists in Lagos in 1961. The Conference adopted the 'Law of Lagos', in which it declared that: "in order to give full effect to the Universal Declaration of Human Rights, this Conference invites the African Governments to study the possibility of adopting an African Convention on Human Rights . . .".<sup>1</sup> This was the first step in a process which extended over the next twenty years, and culminated in the adoption of an African Charter on Human and Peoples' Rights in 1981.

Thus, the African Charter on Human and Peoples' Rights, sometimes known as the Banjul Charter after the capital of Gambia where it was drafted is the most recent of the regional human rights instruments to come into force. It was adopted at the Eighteenth Assembly of Heads of

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<sup>1</sup> Quoted by Robertson, A. H., and Merrills, J. G., *Human Rights in the World*, Manchester, 1989, p. 201.

State and Government of the Organization of African Unity in Nairobi, Kenya in June 1981 and entered into force on 21 October 1986. A comparison between the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights is furnished below.

<b>The Universal Declaration of Human Rights 1948</b>	<b>The African Charter on Human and Peoples' Rights 1981</b>
<p><i>Equality in dignity and rights</i>                      Article 1 : 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.</p>	<p>Article 19 : All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.</p>
<p><i>Non-discriminatory application of right</i>                      Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.                      Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.</p>	<p>Article 2 : Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.</p>
<p><i>Right to life, liberty and security</i>                      Article 3 : Everyone has the right to life, liberty and security of person.</p>	<p>Article 4 : Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.</p>

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	Article 6 : Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. . . .
<i>Prohibition of slavery</i> Article 4 : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.	Article 5 : . . . All forms of exploitation and degradation of man, particularly slavery, slave trade, . . . shall be prohibited.
<i>Prohibition of torture and degrading treatment</i> Article 5 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.	Article 5 : . . . All forms of exploitation and degradation of man, particularly . . . , torture, cruel, inhuman or degrading punishment and treatment, shall be prohibited.
<i>Recognition as a person before the law</i> Article 6 : Everyone has the right to recognition everywhere as a person before the law.	Article 5 : Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. . . .
<i>Equality before the law</i> Article 7 : All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.	Article 3(1) : Every individual shall be equal before the law. Article 3(2) : Every individual shall be entitled to equal protection of the law.
<i>Remedies against violations of rights</i> Article 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.	Article 7(1) : Every individual shall have the right to have his cause heard. This comprises: a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by

	<p>conventions, laws, regulations and customs in force; . . .</p> <p>c) The right to defence, including the right to be defended by counsel or tribunal. . . .</p>
<p><i>Prohibition of arbitrary arrest</i></p> <p>Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.</p>	<p>Article 6 : . . . (N)o one may be arbitrarily arrested or detained.</p>
<p><i>Right to a fair trial</i></p> <p>Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p>	<p>Article 7(1)(d) : Every individual shall have the right to have his cause heard. This comprises: . . . (T)he right to be tried within a reasonable time by an impartial Court or Tribunal.</p>
<p><i>Presumption of innocence and protection against retroactivity of criminal law</i></p> <p>Article 11(1) : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.</p> <p>Article 11(2) : No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</p>	<p>Article 7(1)(b) : Every individual shall have the right to have his cause heard. This comprises: . . . (T)he right to be presumed innocent until proved guilty by a competent court or tribunal;</p> <p>Article 7(2) : No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed: . . .</p>
<p><i>Prohibition of interference with privacy</i></p> <p>Article 12 : No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.</p>	

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<p><i>Freedom of movement</i>                  Article 13(1) : Everyone has the right to freedom of movement and residence within the borders of each State.                   Article 13(2) : Everyone has the right to leave any country, including his own, and to return to his country.</p>	<p>Article 12(1) : Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.                   Article 12(2) : Every individual shall have the right to leave any country including his own, and to return to his country.</p>
<p><i>Right to asylum</i>                  Article 14(1) : Everyone has the right to seek and to enjoy in other countries asylum from persecution.                  Article 14(2) : This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.</p>	<p>Article 12(3) : Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.                  Article 12(4) : A non-national legally admitted in a territory of a State Party to the present Charter may only be expelled from it by virtue of a decision taken in accordance with the law.                   Article 12(5) : The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.</p>
<p><i>Right to a nationality</i>                  Article 15(1) : Everyone has the right to a nationality.                  Article 15(2) : No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.</p>	

<p><i>Right to marry and to found a family</i>  <b>Article 16(1)</b> : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.  <b>Article 16(2)</b> : Marriage shall be entered into only with the free and full consent of the intending spouses.</p> <p><b>Article 16(3)</b> : The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p>	<p><b>Article 18(1)</b> : The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health.</p>
<p><i>Right to own property</i>  <b>Article 17(1)</b> : Everyone has the right to own property alone as well as in association with others.  <b>Article 17(2)</b> : No one shall be arbitrarily deprived of his property.</p>	<p><b>Article 14</b> : The right to property shall be guaranteed. It may be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.</p>
<p><i>Freedom of thought, conscience and religion</i>  <b>Article 18</b> : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</p>	<p><b>Article 8</b> : Freedom of conscience, ... free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.</p>
<p><i>Freedom of opinion and expression</i>  <b>Article 19</b> : Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek receive and impart information</p>	<p><b>Article 9(1)</b> : Every individual shall have the right to receive information.  <b>Article 9(2)</b> : Every individual shall have the right to express and disseminate his opinions within the law.</p>

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<p>and ideas through any media and regardless of frontiers.</p>	
<p><i>Freedom of assembly and association</i>          Article 20(1) : Everyone has the right to freedom of peaceful assembly and association.          Article 20(2) : No one may be compelled to belong to an association.</p>	<p>Article 10(1) : Every individual shall have the right to free association provided that he abides by the law.          Article 10(2) : Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.          Article 11 : Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.</p>
<p><i>Right to participate in Government</i>          Article 21(1) : Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.</p>	<p>Article 13(1) : Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.</p>
<p>Article 21(2) : Everyone has the right of equal access to public service in his country.</p>	<p>Article 13(2) : Every citizen shall have the right of equal access to the public service of his country.</p>
<p>Article 21(3) : The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.</p>	

Chapter 9

<p><i>Right to social security</i>          Article 22 : Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.</p>	
<p><i>Right to work, equal pay for equal work</i>          Article 23(1) : Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.          Article 23(2) : Everyone, without any discrimination, has the right to equal pay for equal work.          Article 23(3) : Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.          Article 23(4) : Everyone has the right to form and to join trade unions for the protection of his interests.</p>	<p>Article 15 : Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.</p>
<p><i>Right to rest and leisure</i>          Article 24 : Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.</p>	

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<p><i>Right to an adequate standard of living</i></p>	<p>Article 16(1) : Every individual shall have the right to enjoy the best attainable state of physical and mental health.</p> <p>Article 16(2): States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.</p>
<p>Article 25(2) : Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.</p>	
<p><i>Right to education</i></p>	<p>Article 17(1) : Every individual shall have the right to education.</p>
<p>Article 26(1) : Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.</p> <p>Article 26(2) : Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.</p> <p>Article 26(3) : Parents have a prior right to choose the kind of education that shall be given to their children.</p>	

<p><i>Right to participate in cultural life</i>                  Article 27(1) : Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.                  Article 27(2) : Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>	<p>Article 17(2) : Every individual may freely take part in the cultural life of his community.                  Article 17(3) : The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.</p>
<p><i>Right to a proper social order</i>                  Article 28 : Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.</p>	<p>Article 23(1) : All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.</p>
<p><i>Duties to society</i>                  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.                  Article 29(3) : These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.</p>	<p>Article 27(1) : Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.                   Article 27(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.</p>

*Prohibition of destruction of rights of others*

Article 30 : 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.

From the above comparison it is evident that the African Charter on Human and Peoples' Rights incorporates the following rights which have been specified in the Universal Declaration: Equality in dignity and rights,<sup>2</sup> Non-discriminatory application of rights,<sup>3</sup> Right to life, liberty and security,<sup>4</sup> Prohibition of slavery,<sup>5</sup> Prohibition of torture and degrading treatment,<sup>6</sup> Recognition of a person before the law,<sup>7</sup> Equality before the law,<sup>8</sup> Remedy against violation of rights,<sup>9</sup> Prohibition of arbitrary arrest,<sup>10</sup> Right to a fair trial,<sup>11</sup> Presumption of innocence,<sup>12</sup> Freedom of movement,<sup>13</sup> Right of asylum,<sup>14</sup> Right to marry and to found a family,<sup>15</sup> Right to own property,<sup>16</sup> Freedom of thought, conscience and religion,<sup>17</sup> Freedom of opinion and expression,<sup>18</sup> Freedom of assembly

<sup>2</sup> The African Charter on Human and People's Rights, 1981, Article 19.

<sup>3</sup> Ibid, Article 2.

<sup>4</sup> Ibid, Article 4.

<sup>5</sup> Ibid, Article 5.

<sup>6</sup> Ibid, Article 5.

<sup>7</sup> Ibid, Article 5.

<sup>8</sup> Ibid, Article 3(1) and 3(2).

<sup>9</sup> Ibid, Article 7 (1) (a), (c).

<sup>10</sup> Ibid, Article 6.

<sup>11</sup> Ibid, Article 7(1)(d).

<sup>12</sup> Ibid, Article 7(1) (b) and 7(2).

<sup>13</sup> Ibid, Article 12(1) and 12(2).

<sup>14</sup> Ibid, Article 12(3), 12(4) and 12(5).

<sup>15</sup> Ibid, Article 18(1).

<sup>16</sup> Ibid, Article 14.

<sup>17</sup> Ibid, Article 8.

<sup>18</sup> Ibid, Article 9(1).

## Chapter 9

and association,<sup>19</sup> Right to participate in government,<sup>20</sup> Right to work, equal pay for equal work,<sup>21</sup> Right to an adequate standard of living,<sup>22</sup> Right to education,<sup>23</sup> Right to participate in cultural life,<sup>24</sup> Right to a proper social order,<sup>25</sup> and Duties to society.<sup>26</sup>

The following rights have been mentioned in the Universal Declaration but have not been included in the African Charter on Human and Peoples' Rights: Prohibition of interference with privacy,<sup>27</sup> Right to a nationality,<sup>28</sup> Right to social security,<sup>29</sup> Right to rest and leisure,<sup>30</sup> and Prohibition of destruction of rights of others.<sup>31</sup>

The African Charter on Human and Peoples' Rights records in its preamble that it was concluded "... to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa and to promote international co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights". The influence of the Universal Declaration is further evident in article 60 of the Charter which provides that the African Commission on Human and Peoples' Rights shall draw inspiration from international law on Human and Peoples' Rights, particularly from the provisions of the Universal Declaration of Human Rights.

<sup>19</sup> Ibid, Articles 10(1) and 11.

<sup>20</sup> Ibid, Article 13.

<sup>21</sup> Ibid, Article 15.

<sup>22</sup> Ibid, Article 16(1) and 16(2).

<sup>23</sup> Ibid, Article 17(1).

<sup>24</sup> Ibid, Article 17(2) and 17(3).

<sup>25</sup> Ibid, Article 23(1).

<sup>26</sup> Ibid, Article 27(1) and 27(2).

<sup>27</sup> The Universal Declaration of Human Rights, 1948, Article 12.

<sup>28</sup> Ibid, Article 15.

<sup>29</sup> Ibid, Article 22.

<sup>30</sup> Ibid, Article 24

<sup>31</sup> Ibid, Article 30.

## CHAPTER 10

# Endorsement of the Universal Declaration of Human Rights in the National Constitutions of the World

The Universal Declaration of Human Rights has served directly and indirectly as a model for many domestic Constitutions, laws, regulations and policies that protect fundamental human rights. These domestic manifestations include direct constitutional reference to the Universal Declaration or incorporation of its provisions and reflection of the substantive articles of the Universal Declaration in national legislation. No matter how effective international procedures may become, it is national governments that are ultimately responsible for guaranteeing human rights within their territory. The relevance of the Declaration to national Constitutions thus may be the starting point for any analysis of the Declaration's impact.

The Universal Declaration of Human Rights has been referred in the Constitutions of the twenty five countries of the world. These are: Afghanistan, Benin, Burkina Faso, Burundi, Cambodia, Chad, Comoros, Ivory Coast, Equatorial Guinea, Gabon, Republic of Guinea, Haiti, Moldova, Nicaragua, Niger, Portugal, Romania, Rwanda, Sao Tom' and Principe, Senegal, Somalia, South Africa, Spain, Tanzania and Togo.

Of these, sixteen countries have endorsed the Declaration in their constitutional Preambles and these countries are Afghanistan, Benin, Burkina Faso, Burundi, Chad, Comoros, Ivory Coast, Equatorial Guinea, Gabon, Republic of Guinea, Haiti, Mali, Niger, Rwanda, Senegal, Togo. The other nine countries mention the Declaration in the substantive provisions of the Constitution and the countries are: Cambodia, Haiti, Moldova, Nicaragua, Portugal, Romania, Sao Tom' and Principe, Somalia, Spain and Tanzania. However, Afghanistan, Burundi and Haiti endorse the Declaration both in their Preambles and in the articles. Various endorsements of the Universal Declaration in national Constitutions are presented in the following pages.

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### Constitution of Republic of Afghanistan 1990

*Preamble* : "... respecting the valuable heritages of the constitutionalist movement and in conformity with the Universal Declaration of Human Rights"...<sup>1</sup>

*Article - 133*: The Republic of Afghanistan respects and observes Universal Declaration of Human Rights...<sup>2</sup>

### The Constitution of the Republic of Benin 1990

*Preamble* : "We the Beneniese People- Reaffirm our attachment to the principles of democracy and human rights as they have been defined by the Universal Declaration of 1948..."<sup>3</sup>

### Constitution of Burkina Faso 1991

*Preamble* : "We, the Sovereign People of Burkina Faso ... subscribing to the Universal Declaration of the Rights of Man of 1948 and to the international instruments concerning economic, political, social and cultural problems ... adopt the present constitution..."<sup>4</sup>

### Constitution of the Republic of Burundi 1992

*Preamble* : "We, the Burundian People ... proclaiming our commitment to the respect of fundamental human rights in accordance with the Universal Declaration of Human Rights of December 10, 1948, the International Human Rights Covenants of December 16, 1966, the African Charter on Human and Peoples' Rights of June 18, 1981, and the charter of National Unity..."<sup>5</sup>

*Article - 10* : "The rights and duties proclaimed and guaranteed by the Universal Declaration of Human Rights, the International Covenants relative to Human Rights, the African Charter on Human and Peoples' Rights and the Charter of National Unity shall be an integral part of this Constitution..."<sup>6</sup>

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<sup>1</sup> See, Blaustein, A.P., and Flanz G.H., (ed.) *Constitutions of the Countries of the World*, Oceana Publications, Inc., New York, 1998. Vol. I, p. 1.

<sup>2</sup> *Ibid*, at p. 38.

<sup>3</sup> See, Blaustein, A.P., and Flanz G.H., above note 1, Vol.II, at p. 1.

<sup>4</sup> See, Blaustein, A.P., and Flanz G.H., above note 1, Vol.III, at p. 51.

<sup>5</sup> *Ibid*, at p. 3.

<sup>6</sup> *Ibid*, at p. 10

The Constitution of Cambodia 1993

*Article - 31* : "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights. . .".<sup>7</sup>

The Constitution of the Republic of Chad 1996

*Preamble* : "We the Chadian People: - Reaffirm our commitment to the principles of the Rights of Man as defined by the Universal Declaration of the Rights of Man of 1948. . .".<sup>8</sup>

Constitution of the Federal Republic of Comoros 1992

*Preamble* : The People reaffirm their commitment to principles defined by the Charter of the United Nations, by the Charter of the Organisation of African Unity and by the Organisation of Islamic Conference. . .

Inspired by the Universal Declaration of Human Rights of man of the United Nations, . . . [the (Comorian) people] proclaim and guarantee in particular; [a list of nineteen specific rights follows] . . .".<sup>9</sup>

Constitution of the Republic of Ivory Coast 1960

*Preamble* : "The people of the Ivory Coast declare their adherence to the principles of Democracy and the rights of Man, as they have been defined by the Universal Declaration of 1948, and as they have been guaranteed by this Constitution . . .".<sup>10</sup>

Fundamental Law of Equatorial Guinea 1991

*Preamble* : "We the people of Equatorial Guinea relying on principles of social justice and the solemn reaffirmation of the rights and liberties of mankind defined and consecrated by the Universal Declaration of Human Rights in 1948. . .".<sup>11</sup>

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<sup>7</sup> Ibid, at p. 4.

<sup>8</sup> See, Blaustein, A. P., and Flanz, G.H., above note 1, Vol. IV, at p. 1.

<sup>9</sup> Ibid, at p. 42.

<sup>10</sup> See, Blaustein, A. P., and Flanz, G.H., above note 1, Vol.V, at p. 1.

<sup>11</sup> See, Blaustein, A. P., and Flanz, G.H., above note 1, Vol.VI, at p. 25.

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### Constitution of the Gobonese Republic 1991

*Preamble* : "The Gobonese people . . . [s]olemnly affirms its adherence to Human Rights and the fundamental liberties . . . consecrated by the Universal Declaration of Human Rights of 1948, . . .".<sup>12</sup>

### Fundamental Law of the Republic of Guinea 1990

*Preamble* : "The People of Guinea, Proclaim: . . . Its adherence to the ideals and principles, rights and duties established in the Universal Declaration of the Rights of Man, the Charter of the Organization of African Unity, and the African Charter on Human and Peoples' Rights. . .".<sup>13</sup>

### Constitution of the Republic of Haiti 1987

*Preamble* : "The Haitian people proclaim this constitution in order to: Ensure their inalienable and imprescriptible rights to life, liberty and the pursuit of happiness; in conformity with the Universal Declaration of Human Rights of 1948. . .".<sup>14</sup>

*Article - 19* : "The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of Human Rights. . .".<sup>15</sup>

### Constitution of Mali 1992

*Preamble* : "The sovereign people of Mali: . . . subscribe to the Universal Declaration of Human Rights of December 10, 1948 and to the African Charter of Human and Peoples' Rights of June 27, 1981. . .".<sup>16</sup>

### Constitution of the Republic of Moldova 1994

*Article - 4(1)* : "Constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties encorsed by the Republic of Moldova . . .".<sup>17</sup>

<sup>12</sup> See, Blaustein, A. P., and Flanz, G.H., above note 1, Vol.VII, at p. 3.

<sup>13</sup> See, Blaustein, A. P., and Flanz, G.H., above note 1, Vol.VIII, at p. 1.

<sup>14</sup> Ibid, at p. 7.

<sup>15</sup> Ibid, at p. 11.

<sup>16</sup> See, Blaustein, A. P., and Flanz, G. H. , above note 1, Vol. XI, at p. 1.

<sup>17</sup> See, Blaustein, A. P., and Flanz, G. H. , above note 1, Vol. XII, at p. 50.

**Political Constitution of the Republic of Nicaragua 1987**

*Article - 46* : "All persons in the national territory shall enjoy protection and recognition by the state of the rights inherent to human beings, as well as unrestricted respect, promotion and protection of human rights, and the full exercise of the rights set forth in the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of the United Nations . . .".<sup>18</sup>

**The Constitution of the Republic of Niger 1996**

*Preamble* : "The people of Niger declare their attachment to the principles of democracy and human rights as defined by the Universal Declaration of Human Rights of 1948 and those which are guaranteed by the present Constitution . . .".<sup>19</sup>

**Constitution of Portuguese Republic 1976**

*Article - 16(2)* : The constitutional principles and laws relating to fundamental rights must be construed and interpreted in harmony with the Universal Declaration of Human rights . . .".<sup>20</sup>

**Constitution of Romania 1991**

*Article - 20(1)* : "Constitutional provisions on the rights and liberties of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights and with other treaties and covenants to which Romania is a party. . .".<sup>21</sup>

**Constitution of the Republic of Rwanda 1991**

*Preamble* : "Faithful to democratic principles and concerned about ensuring the protection of human rights and promoting respect for fundamental freedoms, in accordance with the 'Universal Declaration of Human Rights' and the 'African Charter of Human and Peoples' rights' . . .".<sup>22</sup>

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<sup>18</sup> See, Blaustein, A. P., and Flanz, G. H., above note 1, Vol. XIII, at p. 16.

<sup>19</sup> Ibid, at p. 3.

<sup>20</sup> See, Blaustein, A. P., and Flanz, G. H., above note 1, Vol. XV, at p. 6.

<sup>21</sup> See, Blaustein, A. P., and Flanz, G. H., above note 1, Vol. XVI, at p. 7.

<sup>22</sup> Ibid, at p. 1.

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Constitution of the Democratic Republic of Sao Tom' and Principe 1975  
*Article - 17(2)* : "The precepts relative to fundamental rights are interpreted and integrated in harmony with the Universal Declaration of the rights of Man . . .".<sup>23</sup>

Constitution of the Republic of Senegal 1963  
*Preamble* : "The people of Senegal solemnly proclaim their independence and their attachment to fundamental rights as they are defined in the Universal Declaration of 10 December 1948 . . .".<sup>24</sup>

Constitution for Somali Democratic Republic 1979  
*Article - 19* : "The Somali Democratic Republic shall recognize the Universal Declaration of Human Rights and generally accepted rules of international law . . .".<sup>25</sup>

The Spanish Constitution 1978  
*Article - 10(2)* : "The norms relative to basic rights and liberties which are recognised by the Constitution, shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain . . .".<sup>26</sup>

Constitution of the United Republic of Tanzania 1984  
*Article - 9(1)* : " . . . [T]he Authority of the State and all its instruments must direct all their activities and policies towards the task of ensuring . . . (f) that human dignity is preserved and maintained in accordance with the International [sic] Declaration of Human Rights . . .".<sup>27</sup>

Constitution of the Fourth Republic of Togo 1992  
*Preamble* : We the Togolese people, putting ourselves under the protection of God and: - Convinced that we shall not be able to build such a state except on political pluralism, principle of democracy and of protection of human rights as defined by the Universal Declaration of the Rights of Man of 1948, . . .".<sup>28</sup>

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<sup>23</sup> Ibid, at p. 9.

<sup>24</sup> Ibid, at p. 21.

<sup>25</sup> See, Blaustein, A. P., and Flanz, G. H., above note 1, Vol. XVII, at p. 5.

<sup>26</sup> See, Blaustein, A. P., and Flanz, G. H., above note 1, Vol. XVIII, at p. 45.

<sup>27</sup> See, Blaustein, A. P., and Flanz, G. H., above note 1, Vol. XIX, at pp. 11-12.

<sup>28</sup> Ibid, at p. 182.

Thus, it appears that the Universal Declaration has served as a model or inspiration for numerous constitutional provisions of the member states of the United Nations. Of course, the mere reference of the Declaration in the Constitution may not necessarily reflect an honest intention to adhere to it. The mere fact that a state has accepted certain international obligations in the field of human rights does not automatically imply that those obligations have binding domestic effect. Most states adhere to a dualist conception of the relationship between international law and domestic law, and non-self-executing treaties may enjoy no greater status as domestic law than does the Universal Declaration. However, it must be emphasised that the Universal Declaration remains the primary source of global human rights standards, and its recognition in the national Constitutions throughout the world distinguishes it from conventional obligations.