



## TRANSCRIPT

Source: [Louv2.01x] The protection of human rights at national level

Welcome to Section 7 of this course on international human rights, in which we will study the role of domestic authorities, national authorities, in the protection of human rights. This is a very important topic and it's important for a few reasons.

The first one of which is, very simply, that in international human rights law it is at the domestic level first and foremost that rights, human rights, can be effectively protected. The international mechanisms that ensure the protection of human rights, of course, in some cases are quite robust. And we'll see in Section 8 that we have, for example, at the regional level, international courts that are established to protect human rights, whose judgments are well-respected, complied with, and enforced by the states to whom they are addressed.

But we should not forget one major weakness of enforcement of international human rights at the international level. And that is that human rights treaties, as we have seen, are not like commercial or investment treaties that are concluded as an exchange of advantages between states. Human rights treaties are not like that. Human rights treaties are promises that states make to the populations under their jurisdiction. They are commitments that states take towards the people over whom they exercise control. They are not concluded as an exchange of advantages, of interests between the states concerned.

And so there is little incentive for states to control each other. There is little that can be expected from the horizontal enforcement, if you wish, of international human rights law, which is normally how international law gets enforced. It's by states reacting to another state committing a violation, by adopting countermeasures, by expressing its discontent. This does not work as effectively as it should, as regards human rights treaties.

So domestic enforcement of human rights is extremely important. It's also important for another reason. Which is that there is a relationship that is very interesting to analyze and to understand,

between the right of individuals to an effective remedy in order to complain about the human rights violation that they believe they have been a victim of, on the one hand, and, on the other hand, the duty of the individual to use the local remedies available before filing a complaint, before filing a communication, an application at the international level.

Most procedures that are established at the international level, allowing to engage the responsibility of the state before an international court or an expert body, require that the victim first exhaust the local remedies available, the remedies available in the domestic legal order. And that corresponds, indeed, also to a right of the individual to have access to effective remedies. Remedies that can allow the individual to obtain a cessation of the violation or to be compensated for the violation that has taken place.

So, it is the duty of the individual to use these remedies before attacking the state on the international plane. But it is in the interest of the state, at the same time, to provide the individual with effective remedies at the domestic level, in order not to be accused at the international level. Before being given a chance, really, to remedy the situation and to provide reparation to the individual aggrieved.

So this interaction between the right to an effective remedy, on the one hand, and the duty to exhaust the local remedies available, on the other hand, is one topic that we will discuss in this section. Of course, it is before domestic courts that most often human rights violations will be claimed and that reparation will be sought. But at the same time, it's important to realize that courts cannot always act with the effectiveness required in order to address human rights violations. In most cases they are able to order a cessation of the violation, they are able provide reparation to victims of human rights violations. But there are some limitations to what courts may do.

First of all, it's important to note that some human rights violations are widespread and affect a large number of individuals. And as a result, it may well be the case that no single individual would be willing to file a claim to denounce this violation. Because after all, if many other people are equally affected by the violation in question, why would this one individual accept the burden of litigating a case, accept the costs and time imposed on an individual to file a claim against a particular situation if many other individuals would be equally in a position to file that claim. So, paradoxically, some human rights violations could remain unaddressed, unpunished precisely because they are widespread and because there is no clear answer to this collective action problem that arises.

Secondly, of course courts may intervene post hoc once a violation has taken place, to order a cessation of the violation if it's continuing, or to provide compensation to the victim. But courts are not particularly well-suited to prevent future human rights violations from occurring. Usually, they can only be competent when the violation has already taken place. Moreover, they are not usually well equipped to transform in a more structural or systematic fashion the states or the institution that has been responsible for the human rights violation in the first place. There are many limitations to what courts may achieve as agents, if you wish, of social change that can bring about the structural transformations required, for the risk of human rights violations to be eliminated or reduced in the future.

So for these reasons, really, there are limitations to what courts may achieve. And in this section we will also look at other non-judicial mechanisms that can be established at the domestic level to prevent human rights violations and to improve how human rights are protected at the domestic level. Now these mechanisms are diverse. We have, for example, parliamentary committees, who can screen the legislation that is proposed to them for adoption, to assess whether that legislation is compatible with the requirements of human rights. They can perform human rights impact assessments to that effect.

We also have, since about 20 years now, a very significant development that results from the establishment in many countries of National Human Rights Institutions, also called National Institutions for the Promotion and Protection of Human Rights. These are institutions that are independent from government, that are tasked with preparing recommendations addressed to government or to parliament, as to how human rights could be better protected at domestic level. And they are institutions that usually are pluralistic in their composition, or that at least in their working methods shall work together with civil society organizations, trade unions, churches, academics, in order to provide recommendations and adopt reports that will be as well-informed as possible by the various sensitivities present in the society concerned.

National Human Rights Institutions have been developing significantly over the past 20 years after a set of principles were adopted that describe their role, their mandates and also the working methods that they should in principle adopt. And these principles are called the Paris Principles. They were initially adopted in 1991 at a meeting convened in Paris by the French National Advisory Commission on Human Rights, the French *Commission nationale consultative des droits de l'homme*, which was the first ever national human rights institution established back in 1947. And these Paris Principles were adopted then by the Commission on Human Rights at the time, and then by the United Nations General Assembly in a resolution the 20th of December, 1993.

So these principles defined the functions, methods of work, and composition of national human rights institutions and they have been proliferating in recent years in many countries, particularly in the global South. So we'll end up with a discussion of these national human rights institutions, these non-judicial mechanisms that complement the role of domestic courts in protecting human rights at domestic level.

I wish you good work and I look forward to our week of exchanges on these topics with you.