



# HUMAN RIGHTS IN HIGHER EDUCATION

(Part One: Legal framework)

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*“The rights of those who have  
not the rights that they have  
and who have the rights that  
they have not.”*

Session International Days  
Erasmus University

4/12/2024

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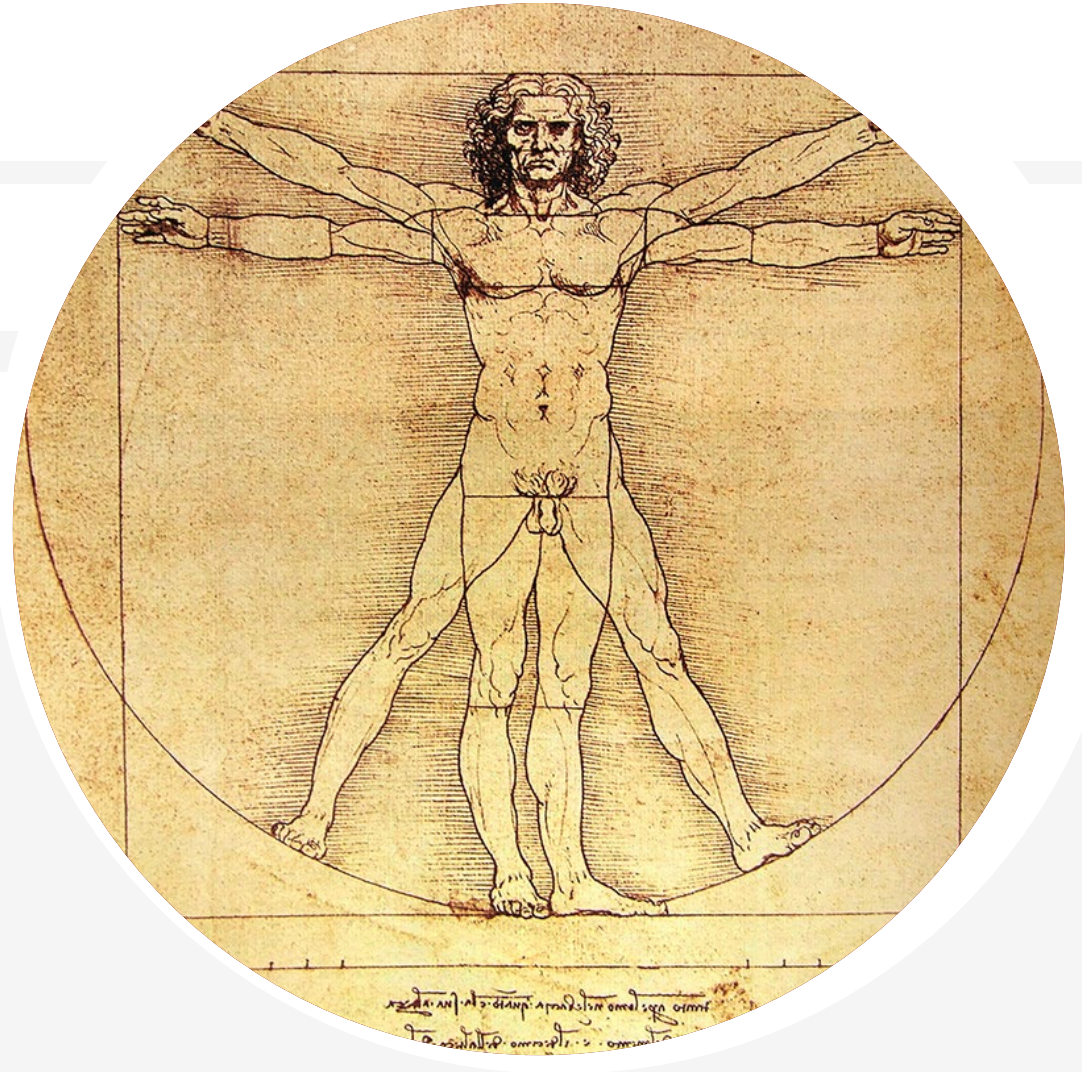
# Introduction

Human Rights are a hybrid category

Roots of modern conception in  
Enlightenment

International Human Rights movement

Struggle to bridge the gap between the  
abstract man of the Treaties and the  
empirical man



# Content

1. The Rule of Law
2. Different Types of Human Rights
3. Toolbox: Treaties, legislation and monitoring
4. Functioning of fundamental socio-economic and cultural rights
5. Government restrictions



# 1. The Rule of Law

Pillar of a liberal democracy

Human Rights is a core principle

Double obligation for the government:

- To respect and comply with the law
- To guarantee human rights

The right to have rights in the nation state that provides legal political protection

If not: people become disenfranchised & thrown back on naked life (cf. Giorgio Agamben)



# Radicalisation of the State

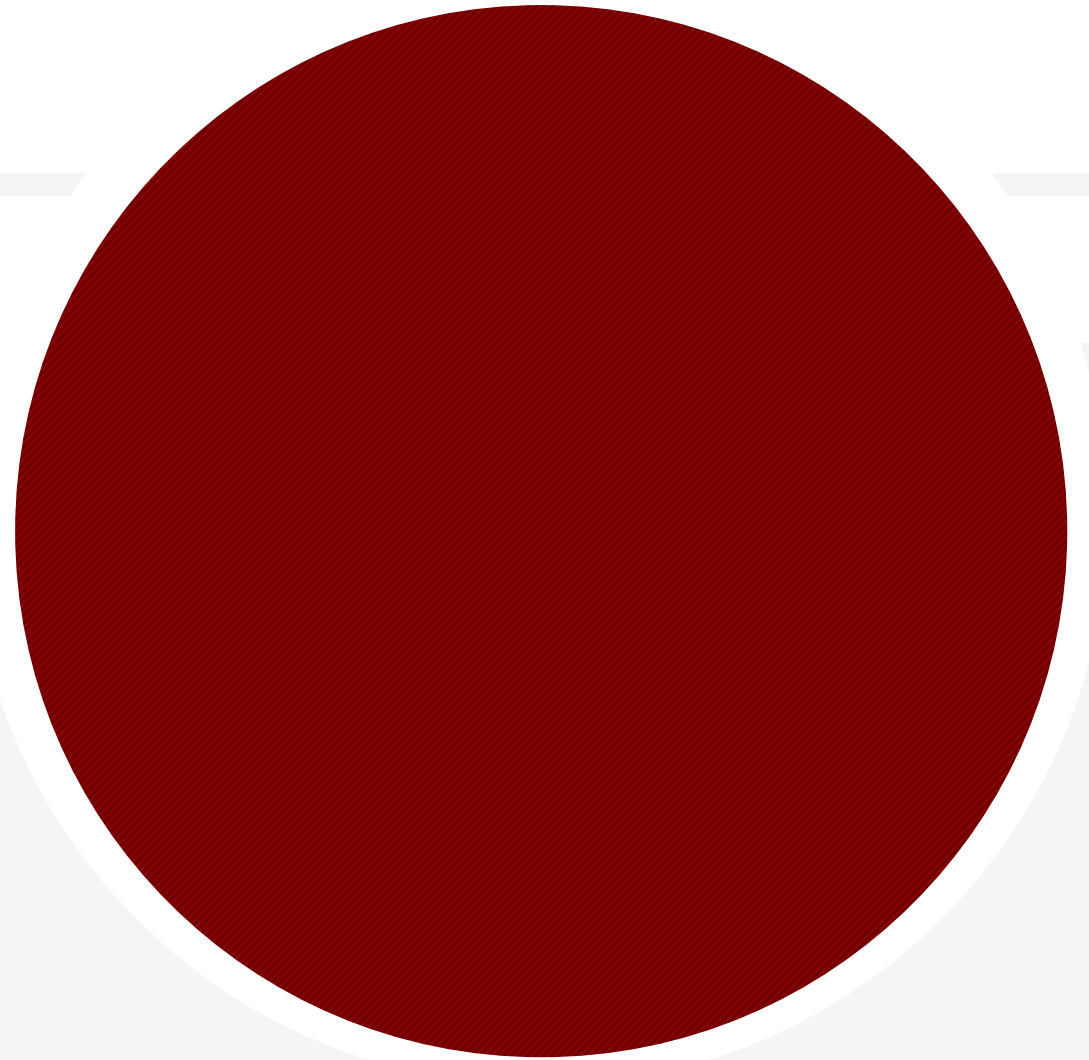
The Rule of Law does not exist or is suspended in many countries worldwide

Human rights violated by different kinds of regimes:

- Authoritarian state
- Dictatorial state
- Totalitarian state

▶ Disrespect of international law

Powerlessness of the international community



## 2. Types of Human Rights

Not all human rights are the same

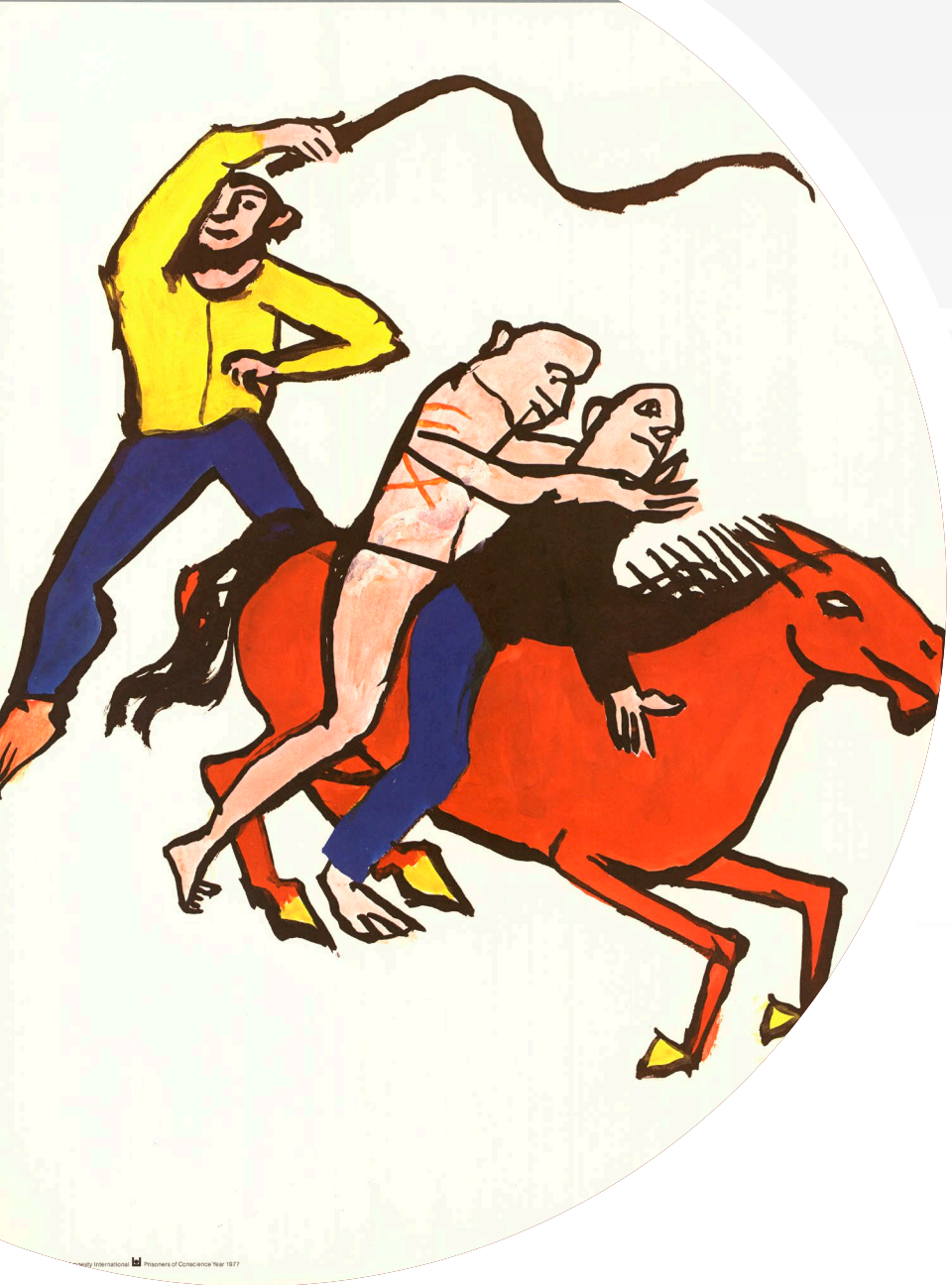
Three generations and four types

Distinction of Western signature and somewhat artificial

Different types overlap and are not mutually exclusive

Distinction is meaningful and relevant because the different types have not the same effect from a legal point of view





## First generation – two types

### Civic fundamental rights

- Negative obligation for the government (duty to abstain)
- Protection of citizens against abuse of power of the State
- Directly enforceable for the courts
- Examples:
  - Right to privacy
  - Right to freedom of expression
  - Right to live
  - Prohibition of torture and inhumane treatment

### Political fundamental rights

- Negative obligation for the government
- To enable citizens to participate in public administration
- Directly enforceable before the courts
- Examples:
  - Right to association
  - Freedom of assembly
  - Right of free elections



# Second generation

## Economic, social and cultural fundamental rights

- Positive obligation for the State
- Guarantee for a dignified life
- Not directly enforceable before the courts
- Examples:
  - Right to labor
  - Right to social security
  - Right to health
  - Right to decent housing
  - ...



Shuhei Hasegawa for Amnesty International Japanese Section Poster Exhibition, Freedom '80s

# Third generation

## Inclusion & solidarity fundamental rights

- Guarantees of a global state of well-being for groups of persons
- Allowing as many people as possible to participate in society
- promoting the rights of minorities and vulnerable people (e.g. asylum seekers and LGBTQIA+)
- Not yet enshrined in treaties and not legally binding (unless provided for in national law)
- Examples:
  - Right to self-determination
  - Rights of minorities
  - Rights of emancipation
  - Right to sustainable development



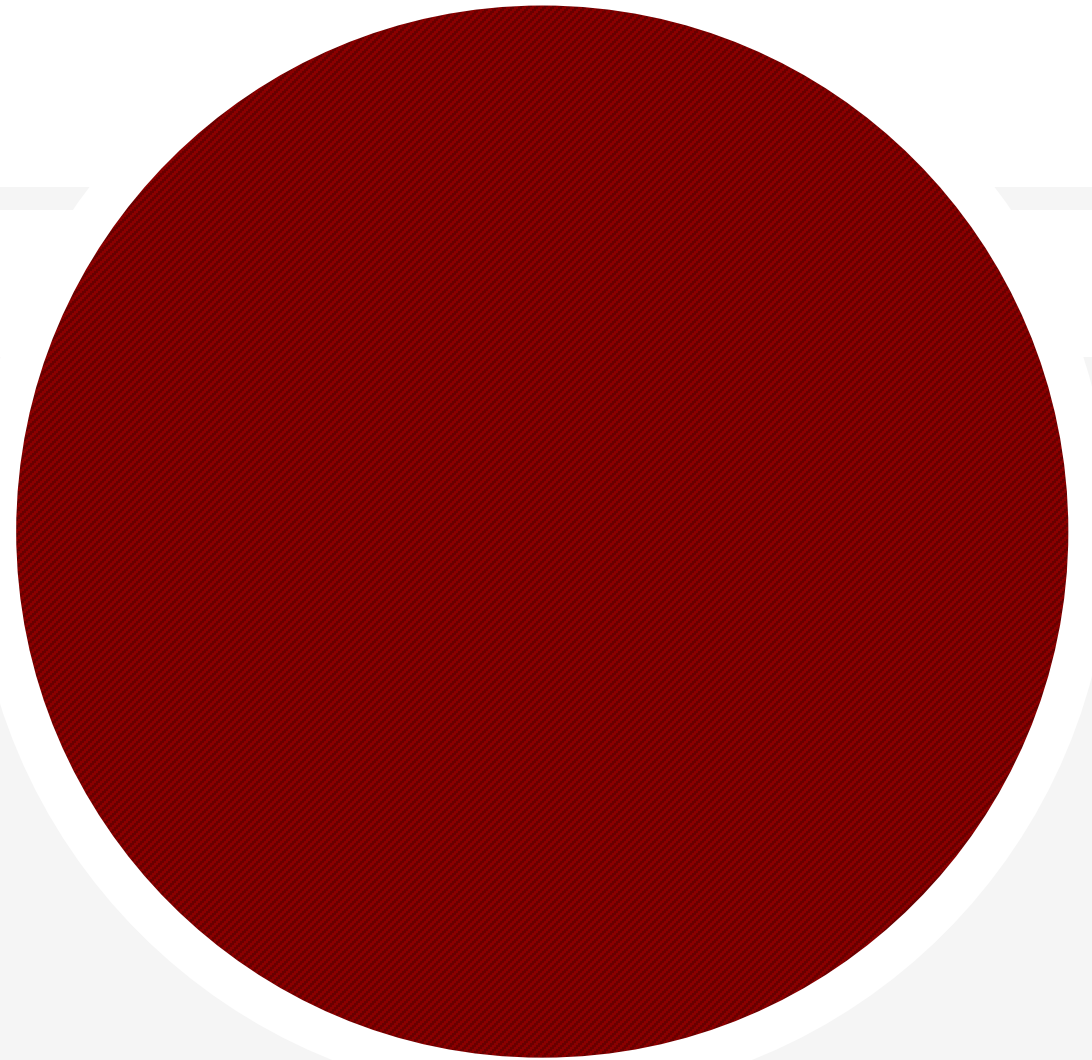
### 3. Toolbox of Human Rights

Milestones:

- French Declaration of the Rights of Man and of the Citizen
- Universal Declaration of Human Rights

Numerous Human Rights treaties of international organisations:

- United Nations
- Council of Europe
- European Union



# Universal Declaration of Human Rights (UDHR)

Fundamental Rights of the first and second generation

No direct effect

Foundation for other Human Rights Treaties





”

**... fundamental rights and freedoms to which all human beings are entitled, irrespective of their nationality, place of residence, sex, national or ethnic origin, religion, language or any other status. (UVRM 1948)**

”



## Other UN Human Rights Treaties

## International Covenant on Civil and Political Rights (BUPO – UN, 1966)

## International Covenant on Economic, Social and Cultural Rights (UN, 1966)

## Convention on the Elimination of All Forms of Discrimination against Women (UN, 1979)

## Convention on the Rights of the Child (UN, 1989)

## Convention on the Rights of Persons with Disabilities (UN, 2006)



# European Convention on Human Rights (ECHR, 1950) – Council of Europe

Important and influential treaty

Initially only fundamental rights of the first generation

Later supplemented by protocols with fundamental rights of the second generation

Provisions are directly enforceable for the national courts

Own independent court: European Court of Human Rights (ECtHR)

-> Monitor compliance with ECHR by State Parties of the Council of Europe

-> Rulings are legally binding for State Parties



# Charter of Fundamental Rights of the European Union (2000)

Legally binding for the member states of the EU

Inspired by the ECHR

Protection of fundamental rights of the first and second generation

Remark:

EU is not a party at the ECHR and is consequently not submitted to the justice of the ECtHR.



## Monitoring of the international treaties

Special committees of experts, e.g.:

- UN Committee on the Rights of the Children
- European Committee of Social Rights (supervisory body of the European Social Charter)

Monitoring on the basis of periodic reports of states and optional examination of individual complaints

## Follow up of subjects and countries by::

- UN Human Rights Council
- UN Office of the High Commissioner for Human Rights



## 4. Functioning of economic, social and cultural fundamental rights

Social breakthrough in the strict separation between first- and second-generation fundamental rights

Enshrined in Article 23 of the Belgian Constitution

Exceptions of the absence of a direct effect:

- Right to strike and right to legal aid
- Standstill-effect recognized by the highest Belgian courts





”

The standstill obligation prevents that (...) the competent legislature significantly reduces the level of protection afforded by the applicable legislation without there being any reason to do so on grounds relating to the public interest.

”



## 5. Government restrictions

Fundamental rights are not absolute

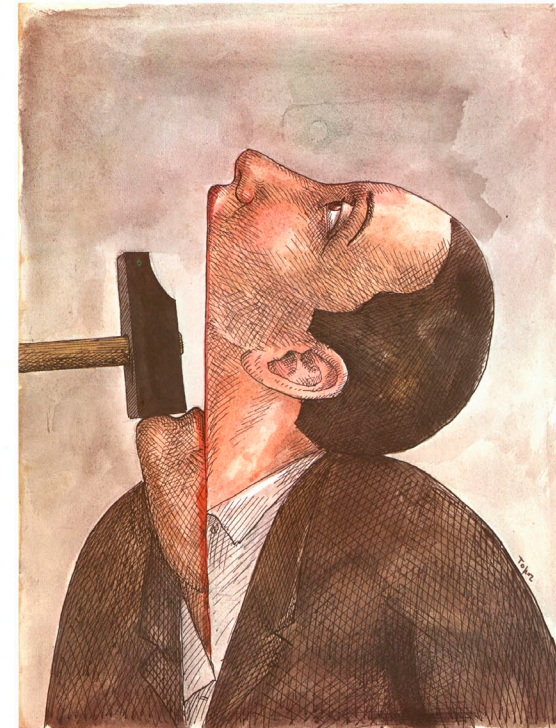
Exception: prohibition of torture (Art. 3 ECHR)

Three cumulative conditions for government restrictions:

- **Legality:** foreseeable legal basis
- **Legitimacy:** higher legitimate objective
- **Proportionality:** proportionate to the objective pursued

Government must opt for effective and less far-reaching measures without targeting vulnerable groups.

Review by national courts and by ECtHR



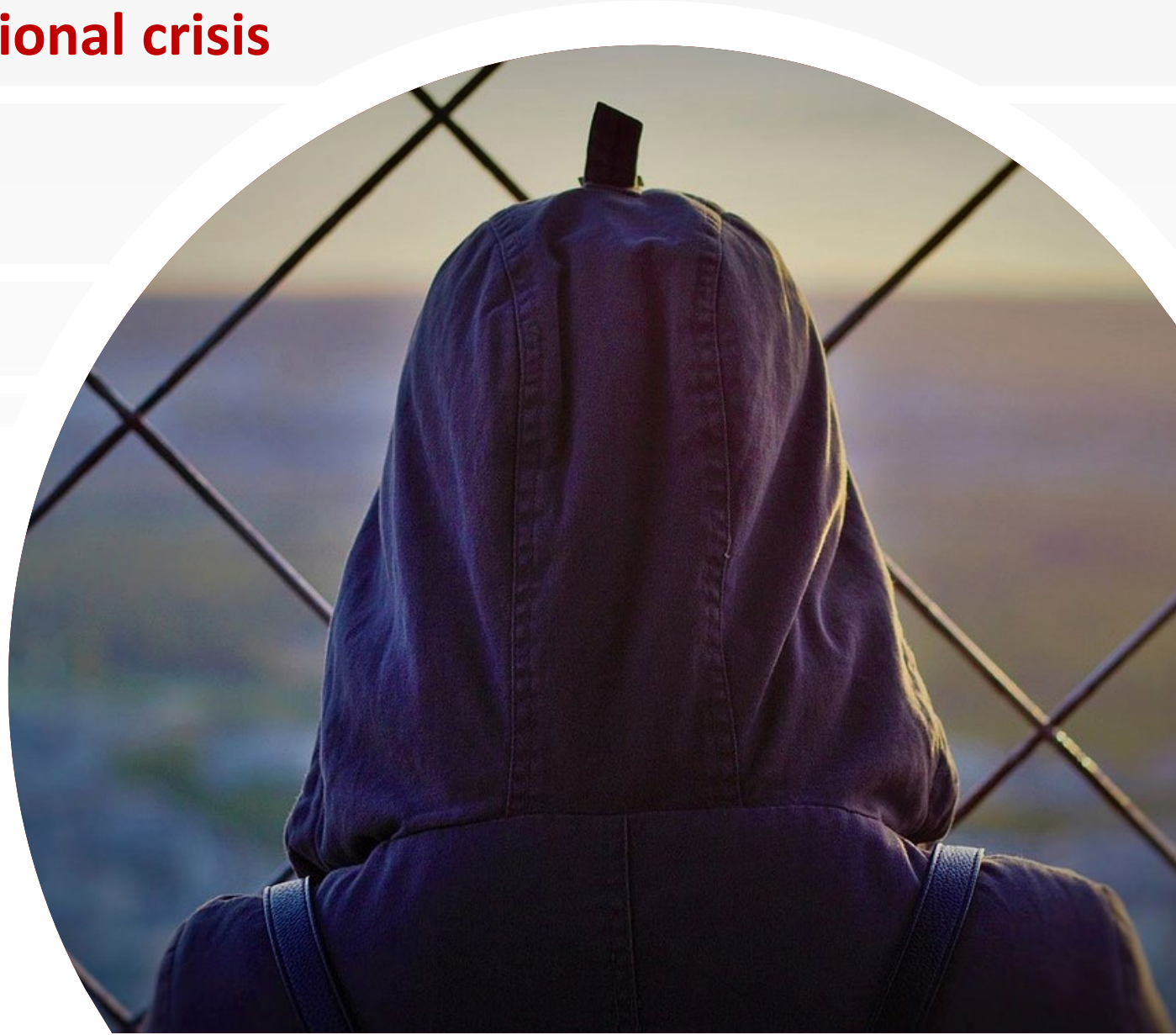
# Quid state of emergency in exeptional crisis situations (e.g. COVID-pandemic)

Dilemma for the government:

- Measures to safeguard some fundamental rights vs. measures ad odds with other rights (e.g. right to health vs. freedom of movement)

Obligation of States to notify the Council of Europe

In Belgium it is not possible to invoke a state of emergency





“

It is possible for State Parties to impose restrictions on human rights beyond what is permissible under normal circumstances in “an exceptional state of crisis or emergency affecting the entire population and posing a threat to the organized life of the community” (e.g. COVID).  
(Art. 15 ECHR)

”






## Human rights organisations and activism

- UN Human Rights Council
- Unia
- Federal Human Rights Institute (FIRM)
- Flemish Human Rights Institute
- Hannah Arendt Institute
- International Criminal Court
- Amnesty International
- Human Rights Watch
- League for Human Rights
- Progress Lawyers Network





# **Human Rights in higher education**

## **(Part Two: The Platform of Social Work**

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# Content

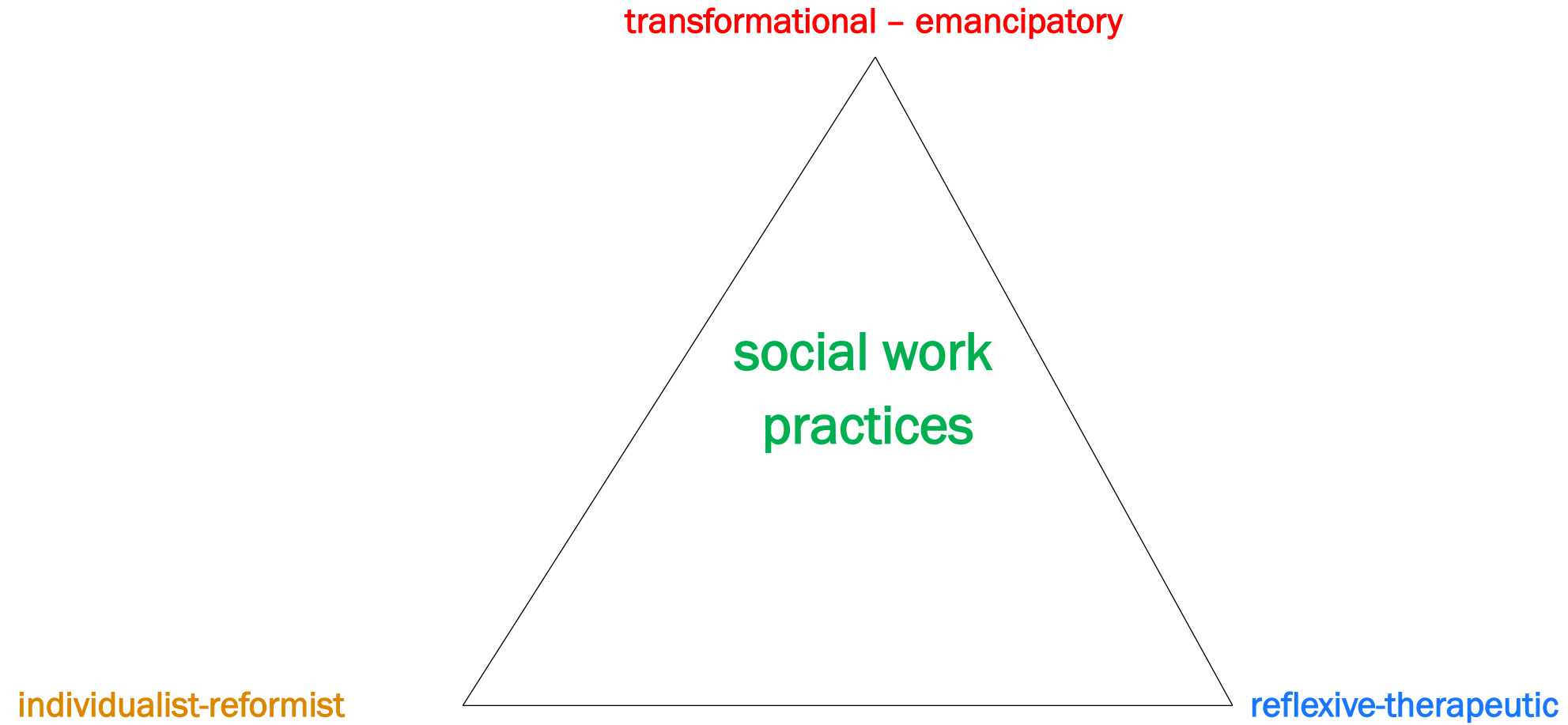
1. International definition of social work
2. Juridification
3. Developments and challenges
4. Towards a specific approach of human rights in social work
5. Implementation of human rights in higher education

# 1. International definition of social work

*‘Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledges, social work engages people and structures to address life challenges and enhance wellbeing’*

Source: IASSW, *New Definition of Social Work*, International Association of Schools of Social Work, 2014, [www.iasw-aiets.org](http://www.iasw-aiets.org)

# Three-way discourse of social work



## 2. Juridification

Increasing influence of law reflected in:

- Extensive regulation of legal and regulatory instruments
- Increased recourse to the law
- Judicial and extrajudicial procedures

**Legal framing:** human relations conceived and formulated in legal and contractual terms - more legal disputes to be settled by a third party

**Advantages:** legal certainty + enhanced legal protection

**Disadvantages:** threat to relationship of trust and the autonomous scope for action of the social worker

# 3. Developments: Reconfiguration of the welfare state

The welfare state has evolved into a participation society and social investment state.

The role of the government has changed.

## Responsibility and activation of citizens

- Conditionalization of social protection
- Criminalization
- Moralization
- Greater social inequality
- Underprotection (non take up of rights)
- Social exclusion of vulnerable people

## Socialisation

- Outsourcing of public services to citizens and local community
- Counterproductive for people who are neither self-reliant nor have a network
- Problematic if motivated by austerity motives

## Marketisation

- Privatization and outsourcing social services to commercial service providers
- Financial and business market logic
- Exclusion mechanisms



# Other developments

Social workers have to deal with new actors within the broad social work as well as with a management logic.

How can social workers position themselves in the face of these challenges?

## New actors involved in the broad social work

- Filling shortages and gaps of classical social work
- Private initiatives of citizens, collectives, companies and profit organizations to alleviate the daily needs of vulnerable people
- Problematic in the absence of a structural solution

## Management logic

- Many rules, procedures and protocols
- Logic of measuring and controlling
- Emphasis on efficiency, cost savings and control
- At the expense of quality and sustainability of care and social services

## Positioning of social workers

- Some discretionary room for manoeuvre to interpret rules from the bottom up
- Identifying the inadequacy of policy and legislation
- Human rights as a frame for politicizing work and self-critical reflection on power structures that social work creates and maintains

# Human rights vs. social work

Social work is considered to be a human rights profession.

What role do social workers play in this and how are human rights approached in social work?

## Role of social workers

- Social workers as **guardians** of social fundamental rights and as **co-creator** of human rights
- Protect, promote and contribute to the realisation of human rights in the tense dynamics between lifeworld and systemworld

## Approaches of human rights

- Different approaches: ethical, juridical, philosophical, ...
- Human rights as one of the **methods** of social work
- Human rights as a **compass** (orientation point for action) in function of social justice
- Human rights as a **means** to achieve goals of social work
- Social work is **complementary** to the law to enable people to exercise their human rights effectively.

## 4. Towards a specific approach of human rights in social work

Social work as an **independent field of expertise** with an **unique human rights approach**

Account of human rights as a **socio-political framework for action**

**Framework of action** developed by a team of Dutch and Flemish lecturers

Five central **building blocks**:

- System-world-oriented action
- Life-world-oriented action
- Participatory action
- Politicizing action
- Delimiting action

Human rights are shaped **from the bottom up**

# Human rights and critical social work

Social work is part of the existing political order.

Human rights as levers for the articulation in a political action for the questioning and breaking open of existing social roles and positions .

The real bearers of human rights are “the part of those with no part” (Jacques Rancière) inviting social work to take a stand.

Needs and claims can form the basis not only for the realisation of rights awarded but also for the development and expansion of rights.

## 5. Implementation of human rights in higher education: Eight messages for social work

1. Cherish the understanding of human rights as a compass for social justice.
2. Follow the fundamental social rights of the Treaties and the Constitution
3. Adopt an ethical perspective when working in a solution-oriented and structural way.
4. Continuously monitor social justice through a test of the effectiveness of human rights.
5. In the rights perspective, combine the social and legal dimensions as well as the structural and individual dimension.
6. Make fundamental social rights clear, accessible and realistic for vulnerable people and groups.
7. Strive for a more common understanding of human rights.
8. Invest in a socially responsible sociolegal practice in function of humanising justice.

Source: B. HUBEAU, "Sociaal werk is een sociale rechtvaardigheidsberoep. Acht opdrachten voor de toekomst", *Sociaal.Net*, 18 mei 2018.

# Implementation of human rights in higher education: Ten recommendations

1. Make clear the meaning and enforceability of human rights as fundamental rights as well as the distinction between civil-political, socio-economic and inclusion fundamental rights in terms of functioning.
2. Use a meta-perspective to acquire a critical understanding of human rights and fundamental rights, in particular on the basis of insights from legal and political philosophy.
3. Describe in clear, unambiguous and workable terms what are the core values of social work and what precisely should be understood by them.
4. Pay attention to the functioning of human rights institutions to which a complaint can be filed in the event of a human rights violation.
5. Make sure there is enough space to familiarize students with the different forms of judicial control of respect for fundamental rights.
6. Teach students to systematically look up legislation and jurisprudence through appropriate search engines and websites, so that they can keep up with developments concerning human rights and fundamental rights.

## Ten recommendations (continuation)

7. Familiarize students with innovative and inspiring social work practices (e.g. Housing First) and raise awareness among them to follow and participate in the initiatives and activities of platforms such as Strong Social Work.
8. Introduce students and let them experience the importance of activism of human rights organizations such as Amnesty International and the League for Human Rights, as well as multidisciplinary collaboration/alliance building with no-profit organizations, civil society movements and other professional groups that stand up for human rights.
9. Focus on the professionalisation of lecturers in the field of human rights and fundamental rights.
10. Stimulate scientific research to promote the embedding of human rights and fundamental rights in the curricula of higher education.



**Thank you for your attention!**

If you have further questions or comments or  
you want to discuss about the topic of this  
session, please feel free to contact me:  
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