

1. With reference to ONE contemporary human rights issue, assess the role of state sovereignty in promoting and enforcing human rights.
 - State sovereignty means that within one country or nation-state there is a group, person or body with supreme lawmaking authority.
 - Domestic affairs of a nation are under the control of that nation
 - Only relationships between countries that are or should be subject to international law
 - International law cannot interfere with what happens within a state without that state's consent

State sovereignty undermines the effectiveness of international law protecting and enforcing human rights, as countries have the ability to make the ultimate decision whether they will protect human rights in their borders. The United States ignored various international instruments, including the UDHR, and continued the indefinite and arbitrary detention in Guantanamo Bay illustrates how state sovereignty enabled a state to ignore international human rights statements and enact laws that violate human rights standards. Although numerous NGOs and human rights experts have criticised such action, because of state sovereignty, the US can enact such laws so they can protect their citizens.

2. Explain the role of the UN in promoting and enforcing human rights.

The United Nations, which consists of 193 sovereign states, is a vast international organisation that largely involves in global promotion and enforcement of human rights. As stated in the UN charter, one of the two major purposes of the UN is to “reaffirm faith in fundamental human rights...” The UN not only provides a forum for international community to voice for their concerns in human rights, but also allows international human rights laws, such as the International Bill of Rights, to develop. Besides, under the doctrine of “Responsibility to Protect”, the UN Security Council also has the power to intervene in a sovereign state if the state fails to protect its own citizen. This further enables the UN to enforce human rights. Lastly, UN also consists of organs that specifically address human rights. For instance the UN Human

Rights Council, which has a series of specific measures to address global human rights abuses. The compulsory periodic reviews of the human rights situation in all member states are examples. Thus, the UN plays a large role in promoting and enforcing human rights.

3. State the five major organs in the UN that have human rights responsibilities. Hence explain how each of them promotes and enforces human rights.

I. UN General Assembly

The UN General Assembly promotes and enforces human rights by providing a forum for international discussions relating to human rights. As all member states are part of the General Assembly and has equal voting power, it allows each state to express their concerns and views on human rights topic. At the same time, many human rights work, committees, programs and other organs, such as the UN Human Rights Council, reports directly to the General Assembly.

II. UN Security Council

The UN Security Council is responsible in maintaining international peace and security. It can exercise its power through legally binding resolutions. When a member states fails to protect human rights and the safety its citizen, the Security Council then has power under the doctrine of R2P to pass resolutions to intervene with military actions, sanctions and peacekeeping operations.

III. Economic and Social Council

The ECOSOC has 54 rotating members meeting annually to assist in promoting international economic and social cooperation and development. It is a central forum of discussing second and third generation human rights issues.

IV. UN Secretariat

The UN Secretariat is head by the UN Secretary General, Ban Ki moon. The body is vital in facilitating other organs to discuss human rights by provides various information, studies and tasks.

V. International Court of Justice

The ICJ has jurisdiction, under the UN Charter, to settle international disputes submitted to it by member states, and produce advisory opinions on matter of international law submitted to it by international organs and the UN General Assembly.

4. Fill in the following table

	OHCHR	UNHRC
Year of establishment	1993	2006
The organ which it reports to	UN Secretariat	UN General Assembly
Aim	Promote and protect the human rights contained in the UDHR and International laws	Address human rights violations worldwide and make recommendations
	<ul style="list-style-type: none"> • Advancing universal ratification and implementation of the UDHR and human rights standards and treaties • Promoting universal enjoyment of human rights and international cooperation • Providing support and information for other UN human rights bodies and treaties monitoring bodies 	<ul style="list-style-type: none"> • A complaint procedures allowing individual people to bring human rights violation issues to the Council's attention • Compulsory periodic reviews of the human rights situation in all 193 member states • An advisory committee to provide expertise and advice and recommend issues for the Council to consider

5. Define IGOs and give two examples of IGOs that support human rights.

Inter-government Organisations are international institution made up of member states. They are created by agreement between states, and each has an international treaty that acts as a charter outlining the organisation's purpose and operation.

- The Commonwealth of Nations, which is made up of 54 members, operates within a framework outlined in the *Singapore Declaration*, in which stated that the main aim of this IGO is to promote democracy, rule of law and human rights. Several members have been suspended due to serious violation of human rights, such as Zimbabwe in 2002.
- African Union, which includes almost all African states, is another example of IGO that promotes and enforces human rights. This IGO includes the African Commission on Human and People's Right, which monitor and promote compliance with the human rights laws.

6. Discuss the role of international courts and tribunals in promoting and enforcing human rights. (P.170)

ICJ

ICC

- Permanent international court and hears cases relating to the most serious of international crimes and gross human rights abuses
- Crimes against humanity and human rights infringements
- Only hear cases if they are not being investigated or prosecuted by a national judicial system
- *Rome statute*
- USA is not a party of the *Rome Statute*

Ad hoc

- Set up by the Security Council under the rules of the UN Charter

- Individuals could be prosecuted for crimes against humanity in these tribunals
- Only 2 ad hoc had been setup in the past
 - Yugoslavia and Rwanda

7. What are statutory authorities?

Authorities that are created in accordance with the provisions of the treaty they monitor.

Role includes:

- Consider the reports made by states to the body
- Consider individual complaints or communications
- Publish general comments on the treaties and organising discussions and forums on their purposes and themes

8. Discuss the role of NGOs in promoting and enforcing human rights.

Non-government organisations play a vital role in promoting and enforcing human rights by collaborating with various governments, intergovernmental organisations and specialised UN Agencies. By investigating, researching, publicising cases of human rights violation and informing the global community, NGOs help ensure greater government compliance. The International Committee of the Red Cross (ICRC), which missions are strictly concerned with international humanitarian law, is an example of one of the most influential NGOs that promote and enforce human rights. Its importance is recognised internationally as in 1990, it has been allowed observer status at the UN General Assembly.

9. Evaluate the effectiveness of the Media in promoting and enforcing human rights.

Media is extremely effective as it plays a crucial role in the 'naming and shaming' of governments and human rights violators by investigating, reporting and then exposing instances of human rights abuse.

- Example

- NGOs and Media goes hand and hand with each other

10. Defines monist and dualist system. Hence state its implication in terms of incorporating human rights into domestic law.

Monist system deems treaties enforceable in the domestic law as soon as they have been signed. To a certain extent, this system is more effective as it ensures resource efficiency.

Dualist system doesn't deem treaties enforceable domestically until and unless the treaty is ratified by the state. The treaty will need to be incorporated into domestic law. Australia for instance, an international treaty isn't ratified until the Australian parliament passes a statute law which incorporates the treaty.

11. State two ways that the Australian constitution has promoted and enforced human rights.

Separation and Division of Power

Separation of power

- The judiciary is independently appointed
- Because of the way how judges are appointed (not politically), it tends not to be influenced by the executive unless there're cases
- The judiciary can strike out any legislation that violates human rights

Division of powers

- Act as a check on government by ensuring that power is not too centralised, the commonwealth's power has grown significantly, for instance the use of corporations power.
- Commonwealth has the external affairs power outlined in section 51.
 - Gives the Commonwealth authority to legislate external affairs, including Australia's treaty obligations.
 - Human rights treaties have transformed Australia by enabling the Commonwealth Parliament to bind states to those rights and if

necessary legislation to protect rights universally across Australian jurisdiction.

Express and implied rights

- Express rights are rights that are written in the constitution. Since Australia does not have a bill of rights, express rights are usually found in the constitution.
 - Example of express rights include freedom of religion (s116), the right to vote in Commonwealth elections (s41), and the right to a trial by jury in federal indictable cases (s80)
- Implied rights are rights that can be implied through the text, structure or purpose of a document, in this case, the constitution. These rights are normally interpreted through cases in the High Court.
 - *Lange V Australian Broadcasting Corporation (1997) 189 CLR 520*
 - The constitution contains an implied right to freedom of political communication, a type of freedom of speech, in order for Australia's political system as established in the constitution to function effectively.
 - *Roach Case 2007*
 - Facts:
 - Roach was in jail
 - Federal law states that prisoner in jail for more than 12 months could not vote
 - Roach took the case to High Court
 - Decision
 - It is an implied and expressed rights to vote
 - Law overturn

12. With reference to at least two examples, evaluate the effectiveness of common law and statute law in promoting and enforcing human rights in Australia.

Common law

- Has evolved over many centuries and carries the power to protect many human rights
 - The presumption of innocence, the burden of proof and the right to a fair trial
 - *Dietrich Case* ensures fair legal representation
- Common law however does not offer absolute protection since common law rights are not fixed. Act of Parliament can alter judgements. For instance, the recent anti-terrorism law removed basic freedom.

Statute law

- Powerful tool in human rights protection as many laws have been wide-reaching
- *Racial Discrimination Act 1975 (Cwth)* and *Anti-Discrimination Act 177 (NSW)* both enshrine various international treaties
- However, like common law, rights laid out in statute are not fixed—they too can be removed by a later Act of Parliament

13. Outline the role of Australian Human Rights Commission in promoting and enforcing human rights.

AHRC

- An independent federal body that was set up by the *Human Rights Commission Act 1986 (Cwth)*
- Deals with alleged violations of Australian anti-discrimination legislation
- Receive and investigate complaints

- Any discrimination—the commission will investigate and try to conciliate the complaint
- Complaints on human rights breaches in Australian law and international human rights law—Commission can make a report to the Attorney-General, who is required to table the report in parliament,
- Promote public awareness about human rights and provide legal advice
- Conduct public inquiries into human rights issues and produce recommendations
- Give advice and make submissions to parliament and governments on the development of laws, policies and programs consistent with human rights
 - Bringing them Home Report into the Stolen Generation recommended the Australian Government make an apology to the victim
 - Eventual success in 2009

14. Evaluate the effectiveness of the High Court of Australia in promoting and enforcing human rights.

To a large extent, the High Court is possibly the most effective and important protector of human rights in Australia:

- Declare legislation inconsistent or invalid eg *Tasmania Dam Case*
- Uphold the rights provided for in the constitution e.g. *Roach Case* and the right to vote
- Continue to develop common law through binding precedents e.g. *Toonen Case (1997)*—discrimination of homosexuality
- Interpret legislation and be guided by international law e.g. *Mabo Case*
- However, some has argued that the High Court exceeded its power when it opened up the numerous international human rights documents to domestic consideration

15. Discuss the arguments for and against a Charter of Rights for Australia.

Australia do not have a federal Charter of Rights, only ACT and Victoria has a charter of Right

For	Against
Redressing the inadequacy of existing human rights protections	The adequacy of current human rights protections in Australia
Reflecting basic Australian value	Undermining a tradition of parliamentary sovereignty, including transferring legislative power to unelected judges
Protecting the marginalised and disadvantaged	No better human rights protection is guaranteed
Improving the quality and accountability of government	Potentially negative outcomes for human rights
Contributing to a culture of respect for human rights	Excessive and costly litigation
Improving Australia’s international standing in relation to human rights and bringing Australia into line with other democracies	Democratic processes and institutions offer better protection of rights