

International Instruments on Human Rights

**Volume II
Islamic and Regional Instruments**

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Professor M. Cherif Bassiouni

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General Introduction

This two volumes series is the first comprehensive publication on human rights to be published in Arabic. Volume I contain 126 United Nations instruments and documents as well as excerpts of instruments which criminalize violations of international human rights law. Volume II contains 55 Islamic instruments, as well as regional European, Inter-American, African and Arab instruments.

While many of the instruments and documents contained in Volume I are available in Arabic from United Nations sources, most of them are not however available on the U.N.'s website, nor are they available at U.N. depositories. Almost half of the documents contained in Volume I had to be translated, as were the documents contained in Volume II. The task of translating this large number of documents was in itself a difficult but important undertaking for the Arabic-speaking audience.

I undertook a similar task twelve years ago through the International Institute of Higher Studies in Criminal Sciences (ISISC) with a grant from the Ford Foundation which also resulted in the publication of four volumes, but focusing only on United Nations instruments.⁽¹⁾ ISISC was able to distribute over 3,000 copies of the four-volume set to Arab law faculty libraries, selected government law libraries, experts and human

(1) HUKUK AL-INSAAN (Arabic), 1 HUMAN RIGHTS: INTERNATIONAL AND REGIONAL INSTRUMENTS (M. Cherif Bassiouni, M.S. Dakkak, & A. Wazir, eds.) (Dar-ilm lil-Malayan Publishers, Beirut, Lebanon, 1988); 2 HUKUK AL-INSAAN (Arabic), 2 HUMAN RIGHTS: APPLIED STUDIES, (M. Cherif Bassiouni, M.S. Dakkak, & A. Wazir, eds.) (Dar-ilm lil-Malayan Publishers, Beirut, Lebanon, 1988); 3 HUKUK AL-INSAAN (Arabic), 3 HUMAN RIGHTS: SELECTED STUDIES, (M. Cherif Bassiouni, M.S. Dakkak, & A. Wazir, eds.) (Dar-ilm lil-Malayan Publishers, Beirut, Lebanon, 1989); 4 HUKUK AL-INSAAN (Arabic), 4 HUMAN RIGHTS: TEACHING METHODS, (M. Cherif Bassiouni, M.S. Dakkak, & A. Wazir, eds.) (Dar-ilm lil-Malayan Publishers, Beirut, Lebanon, 1989).

rights organizations. As a result of these publications and a significant educational program developed at ISISC between the mid-70s up till now, during which some 2,200 Arab jurists participated in human rights seminars, the human rights movement in the Arab world acquired more solid roots. Those who came to Siracusa developed into a significant network which contributed to strengthening human rights in the Arab world.⁽²⁾

In 1998, the international community celebrated the Fiftieth anniversary of the Universal Declaration of Human Rights and the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide. That same year, another historically significant instrument was also adopted in Rome, the Treaty for the Establishment of the International Criminal Court,⁽³⁾ for which I had the honor of serving as Chairman of the Drafting Committee of the Rome Diplomatic Conference.

Since WWII, there has been significant progress in the elaboration and adoption of international and regional human rights law instruments, as well as in the establishment of enforcement mechanisms and the diffusion of a culture of legality and respect for human rights all over the world. These developments are the result of a historic evolution which are the product of civilization's progress in the course of millennia which

(2) See International Institute of Higher Studies in Criminal Sciences, 30th Anniversary volume (2002).

(3) See Rome Statute of the International Criminal Court, U.N. Doc. A/Conf.183/9 (17 July 1998); ALMAHKAMA ALJINAIYA ALDAWLIA: NASHA'ATOUHA WA NIZAMUHA ALASASI, MA'A DIRASA LI TAREKH LIGAN ALTAHQIQ ALDAWLIA WA'L MAHA-KIM ALGINAIYA ALDAWLIA ALSABIQA (Arabic), (THE INTERNATIONAL CRIMINAL COURT: ITS CONCEPTION AND ITS STATUTE WITH A STUDY OF THE HISTORY OF THE INTERNATIONAL INVESTIGATION COMMITTEES AND THE PAST INTERNATIONAL CRIMINAL TRIBUNALS) (Nadi Al-Qudat, The National Association of Judges, Cairo, Egypt, 2001); THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A DOCUMENTARY HISTORY (compiled by M. Cherif Bassiouni, 1999); Ratification and National Implementing Legislation, 71 REV. INT'LE DE DROIT PENAL (M. Cherif Bassiouni ed., 2000).

reflect the existence of commonly shared fundamental human values. These values derive from the three-monotheistic faiths and their influence on the evolution of human civilization, notwithstanding the diversity of these civilizations. The sum and substance of these values can be summed up in three fundamental principle values, namely, freedom, equality and justice.

The post-WWII evolution of human rights can be examined from two perspectives. The first is the historical perspective and the second is the subject matter one. The former views the evolution of human rights on a temporal basis by observing the evolution of human rights instruments in the chronology of their adoption. The latter distinguishes the subject matter of these instruments and classifies them on the basis of the intended protected human and social interests.

From the perspective of the subject matter evolution of human rights, we can observe that the first stage of international human rights law development as concerned with individual, civil and political rights which are frequently referred to as the first generation of human rights. It was followed by the second generation whose focuses on collective rights, namely economic, social and cultural rights. Though it is individuals who are the intended beneficiaries of economic, social and cultural rights, these rights are nonetheless couched in collective terms. Lastly, the third generation of rights deals with concerns about the quality of life and its enjoyment, and applies to the environment, economic development, and human development.

Within each of these generations which overlap in their historic evolution, we can observe their progression through five stages, though not all of these rights have necessarily gone through each of these stages in a systematic manner.⁽⁴⁾

Stage 1 is usually a period of intellectual ferment in which scholars, experts and human rights organizations identify a particular human or so-

(4) M. Cherif Bassiouni, *The Proscribing Function of International Criminal Law in the Process of International Protection of Human Rights*, 8 YALE J. WORLD PUB. ORD. 193. Boston, USA (1982)

cial interest which is deemed to require recognition and protection. It results in the identification and formulation of a given right. Stage 2 is usually the stage of promulgation of such a right in the nature of a general principle sometimes included in guiding principles or declarations adopted by international bodies. These instruments do not necessarily have at the time of their adoption, binding legal force, e.g., the Universal Declaration of Human Rights (1948).⁽⁵⁾ The third stage is the inclusion of certain rights in specific international legal instruments with binding legal effects on the State parties to the treaties which embody them. These treaties usually deal with a greater degree of specificity with what was contained in greater generalities in the stage of promulgation, e.g., the International Covenant on Civil and Political Rights (1966)⁽⁶⁾ and the International Covenant on Economic, Social and Cultural Rights (1966).⁽⁷⁾ The fourth stage is usually characterized by greater specificity and particularity in the formulation of certain specific rights, which are contained in the treaties elaborated in the third stage. The fourth stage may also include the development of implementation mechanisms and measures to enforce some of the rights stipulated in instruments developed in the preceding stages. Lastly, the fifth stage is the criminalization of the violations of certain specific rights protected by international treaties elaborated in the previous stages, such as the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)⁽⁸⁾ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).⁽⁹⁾

By way of illustration, we can see that the Universal Declaration on Human Rights which was not developed as a binding international legal instrument contained the enunciation of a variety of rights whose textual formulation either enunciates these rights or identifies them in general terms. This was followed by the two covenants respectively elaborating

(5) See document 1.

(6) See document 6

(7) See document 11

(8) See document 36

(9) See document 77

with greater detail and with more specificity on civil and political rights and on economic, social and cultural rights. Thereafter, other treaties dealt with specific rights, such as the elimination of racial discrimination,⁽¹⁰⁾ elimination of discrimination against women,⁽¹¹⁾ elimination of discrimination against workers,⁽¹²⁾ and then finally the criminalization of Apartheid as the most odious form of racial discrimination.⁽¹³⁾ Another example is the enunciation of rights and protections of individuals detained or held in custody,⁽¹⁴⁾ leading to the adoption of a convention which criminalizes torture.⁽¹⁵⁾

In the field of international humanitarian law we can also notice a similar evolution both in time and as subject matter with the elaboration of the 1907 Hague Convention and Annex Regulations⁽¹⁶⁾ applicable to international armed conflicts followed by the 1929 Geneva Convention on the Protection of Prisoners of War,⁽¹⁷⁾ the four 1949 Geneva Conventions⁽¹⁸⁾ and their two Pro-

(10) See document 35

(11) See document 44

(12) See document 47

(13) See document 48

(14) See document 36

(15) See document 77

(16) Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539, 3 MARTENS NOUVEAU RECUEIL (ser. 3) 461, reprinted in 2 AM. J. INT'L L. 90 (1908) (Supp.), 1 FRIEDMAN 308, 1 BEVANS 631.

(17) Convention Relative to the Treatment of Prisoners, signed at Geneva, 47 Stat. 2021, 118 L.N.T.S. 343, 30 Martens Nouveau Recueil (ser. 3) 846, entered into force 19 June 1931; A MANUAL ON INTERNATIONAL HUMANITARIAN LAW AND ARMS CONTROL AGREEMENTS (M. Cherif Bassiouni ed., 2000).

(18) Conventions signed at Geneva, Aug. 12, 1949: (a) Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I), 75 U.N.T.S. 31, 6 U.S.T. 3114, T.I.A.S. No. 3362. (b) Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea (Geneva Convention II), 75 U.N.T.S. 85, 6 U.S.T. 3217, T.I.A.S. No. 3363. (c) Convention Relative to the Treatment of Prisoners of War (Geneva Convention III), 75 U.N.T.S. 135, 6 U.S.T. 3316, T.I.A.S. No. 3364. (d) Convention Relative to the Protection of Civilian Per-

ocols of 1977.⁽¹⁹⁾

It goes without saying that the legislative evolution in the fields of international humanitarian law and international human rights law has not always followed the above-described pattern or, for that matter, of any definitive pattern. This is probably due to the fact that international legislative process is the result of the interaction of many factors and influences that impact upon it.

These factors and influences include international political considerations, as well as the occurrence of historic events which condition or compel the need to recognize and establish certain human rights in need of protection. At times the process is driven by such historic events and at times it is the product of the commitment of certain governments, organizations and individuals who are able to bring about the formulation and adoption of international legal instruments for the protection of human rights. Thus, for example, the events of WWII and the intellectual contributions of Raphael Lemkin who brought about the adoption in 1948 of the Genocide Convention. In 1975, the combined efforts of Amnesty International, the International Association of Penal Law (AIDP) and the International Commission of Jurists⁽²⁰⁾ at the Fifth United Na-

sons in Time of War (Geneva Convention IV), 75 U.N.T.S. 287, 6 U.S.T. 3516, T.I.A.S. No. 3365; A MANUAL ON INTERNATIONAL HUMANITARIAN LAW AND ARMS CONTROL AGREEMENTS (M. Cherif Bassiouni ed., 2000).

(19) Protocol Additional to Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, opened for signature Dec. 12, 1977, U.N. Doc. A/32/144 Annex I, reprinted in 16 ILM 1391, SCHINDLER/TOMAN 551 [Protocol I]; Protocol Additional to Geneva Convention of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, opened for signature, Dec. 12, 1977, U.N. Doc. A/32/144 Annex II, reprinted in 16 ILM 1391, SCHINDLER/TOMAN 619 [Protocol II]; A MANUAL ON INTERNATIONAL HUMANITARIAN LAW AND ARMS CONTROL AGREEMENTS (M. Cherif Bassiouni ed., 2000).

(20) See M. Cherif Bassiouni & Daniel Derby, An Appraisal of Torture in International Law and Practice: The Need for an International Convention for the Prevention and Suppression of Torture, 48 REV. INT'LE DE DROIT PENAL 17 (1977).

tions Conference of Crime Prevention and Criminal Justice that brought about the adoption of a Resolution which in time evolved into the adoption of the 1984 Convention on the Prohibition of Torture.⁽²¹⁾ Similarly, the work of the International Association of Penal Law since 1924, as well as that of a number of experts resulted in time, with the involvement of a wide range of government and NGOs, in the adoption in 1998 of the Treaty for the Establishment of an International Criminal Court.⁽²²⁾

There is no doubt that the evolution of international human rights law, its instruments, implementation and enforcement mechanisms and their worldwide dissemination could be credited in large part to NGOs, a relatively limited number of concerned governments and the work of the United Nations.⁽²³⁾

As for international humanitarian law, there is no doubt that the International Committee of the Red Cross, the world community would not have reached the level of progress it has so far. NGOs have also played a primary role in the dissemination of the knowledge and culture international human rights law, much as they have assumed the functions of watchdog and of disseminators of violations by different governments. The investigations and disclosures they have been able to make have produced a powerful tool for the enforcement of human rights by means of naming and shaming those who commit violations of established norms. But NGOs have also played an important positive role in producing studies and research, as well as in hosting meetings and organized conferences which helped international organizations and governments. Among these organizations which deserve special recognition are Amnesty International-

(21) See document 76 .

(22) See 18 NOUVELLES ETUDES PENALES 45 (1999); THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A DOCUMENTARY HISTORY (compiled by M. Cherif Bassiouni, 1999); M. Cherif Bassiouni, Negotiating the Treaty of Rome on the Establishment of an International Criminal Court, 32 CORNELL INT'L L.J. 443 (1999).

(23) See THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A DOCUMENTARY HISTORY (compiled by M. Cherif Bassiouni, 1999); M. Cherif Bassiouni, Negotiating the Treaty of Rome on the Establishment of an International Criminal Court, 32 CORNELL INT'L L.J. 443 (1999).

al, the International Commission of Jurists, Human Rights Watch, NGO Coalition for an International Criminal Court and ISISC. The latter in particular has in the last 30 years organized almost 300 conferences, seminars and meetings of experts at which some 16,000 jurists from 140 countries participated.⁽²⁴⁾ Among these meetings were training seminars and technical legal assistance programs, as well as the hosting of meetings of experts attended by government officials and representatives of international organizations during which international instruments were elaborated which found their way through the United Nations to becoming adopted. Thus, in 1977, a committee of experts convened at Siracusa to draft the text of what became the 1984 Convention Against Torture.⁽²⁵⁾ In the same vein, a committee of experts in 1984 developed the Basic Principles of the Rights of Victims of Crime and Abuse of Power, which the United Nations adopted in 1985.⁽²⁶⁾ And lastly, between 1995 and 1998, it hosted several meetings of the General Assembly Committee on the Establishment of an International Criminal Court whose work contributed significantly to the adoption of the Treaty establishing the ICC.

These two volumes are intended to offer the Arab reader a comprehensive perspective on international and regional human rights law. It provides scholars, researcher, government officials, NGO representatives and students of human rights a single source in which to find a collection of texts otherwise unavailable to them. It is hoped that this contribution will enhance human rights in the Arab world.

In each volume the included instruments are divided in accordance with a certain methodology based on subject matter and historic evolution. It also contains the description of treaty bodies established to implement certain treaties.

(24) See International Institute of Higher Studies in Criminal Sciences, 30th Anniversary volume (2002).

(25) UN Doc. submitted by AIDP(E/CN.4/NGO/213, 1 February 1978)

(26) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, U.N. GA Resolution A/RES/40/34 (29 November 1985); International Protection of Victims, 7 NOUVELLES ETUDES PENALES (M. Cherif Bassiouni ed., 1988).

Volume I contains all the United Nations instruments on human rights and is divided as into eleven chapters:

Chapter 1 addresses the "International Bill of Human Rights," and is divided in four sections dealing with universal instruments, instruments dealing with civil and political rights, and economic, social and cultural rights. Section three is divided into ten sub-sections covering Social Security, Right to Food, Rights of Indigenous and Tribal Peoples, Social Development, Social Policy, Right of Correction, Right to Shelter, Scientific and Technological Progress, Right to Privacy, and the International Commitment to fighting HIV/AIDS. Chapter 2 addresses "Prevention of Discrimination," and contains three sections, each dealing with the respective categories on protected persons, and includes Prevention of Racial Discrimination, Prevention of Discrimination against Women, and Prevention of Discrimination against Workers. Chapter 3 deals with the "Rights of Workers." Chapter 4 deals with "Prevention and Prohibition of Slavery and Slave-Related Practices." Chapter 5 deals with "Protection of Prisoners and Detainees held in the Custody of States." It is divided into four sections, which include: Enforced Disappearances, Rights of Prisoners, Protection Against Torture, and the Death Penalty. Chapter 6 deals with "Rights and Principles Concerning the Administration of Criminal Justice." Chapter 7 deals with "Nationality and the Rights of Refugees." Chapter 8 deals with "Specific Social Rights," and is divided into five sections, which include: Marriage, Children, Youth, the Physically Disabled, and the Mentally Disabled. Chapter 9 deals with "Collective Rights and the Right of Self-Determination." Chapter 10 deals with "Procedures for the Enforcement and Protection of Human Rights." Chapter 11 deals with "Penal Protection of Human Rights."

Volume II contains all the Islamic and regional instruments on human rights, and is divided in two parts. The first part consists of the main Islamic documents related to human rights developed in the early days of Islamic state, starting with the era of Prophet Mohamed (PBUH) and his successors. The second part deals with regional instruments, and is divided into four chapters. Chapter 1 deals with "European Human Rights Instruments." Chapter 2 deals with "Inter- American Human Rights Instru-

ments." Chapter 3 deals with "African Human Rights Instruments," and Chapter 4 deals with "Arab Human Rights Instruments."

The documents contained in these two volumes reflect the evolution in its various stages, of different protections of human rights established by International and Regional norms and regimes.

This publication is to serve the needs of scholars and researchers as well as activists in the field of human rights but it is also of interest to each person who sees human beings in light of how the Quran and other monotheistic faiths have represented God's creation.

"Verily We have honored the children of Adam. We carry them on the land and the sea, and have made provision of good things for them, and have preferred them above many of those whom We created with a marked preferment".

«بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ» ﴿وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا﴾ . صدق الله العظيم⁽²⁷⁾ ،

"O mankind! Lo! We have created you male and female, and have made you nations and tribes that ye may know one another. Lo! the noblest of you, in the sight of Allah, is the best in conduct. Lo! Allah is Knower, Aware".

«بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ» ﴿يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ﴾ . صدق الله العظيم⁽²⁸⁾ ،

M. Cherif Bassiouni

1 MARCH 2003

(27) Noble Qu'ran, Surat AlEsraa, Ayat 70

(28) Noble Qu'ran, Surat Al-Hujurât, Ayat 13

Table of Contents

Acknowledgments :	7
General Introduction	9
Part 1. Islamic Human Rights Instruments	
Introduction :	23
1. The Treaty of Medina (1 A.H.)	27
2. The Peace Accord of Hudeibiya (6 A.H.)	30
3. The Peace Accord of Najran (10 A.H.).....	31
4. The Farewell Speech of the Prophet (10 A.H.)	32
5. The Inaugural Speech of Abou-Bakr (11 A.H.)	34
6. The Admonition of Abou-Bakr to the troops before the Syrian Campaign (12 A.H)	35
7. Pledge of Umar Ibn-el-Kattab to Abou-Mousa Al-Asha'ri on Rules of Judgments (14 A.H.)	36
8. The Jerusalem Pledge of Umar Ibn-el-Khattab (15 A.H.)	37
9. The Peace Accord of Amr-ibn-el-As with the People of Egypt (20 A.H.)...	38
10. The Cairo Declaration on Human Rights in Islam (1990).....	39
Part 2. Regional Instruments	
Chapter 1. European Human Rights Instruments	
Introduction :	49
11. European Convention for the Protection of Human Rights and Funda- mental Freedoms (1950)	54
12. Protocol No.1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952)	69
13. Protocol No. 2 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions (1963).....	71

14. Protocol No. 3 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention (1963)	73
15. Protocol No. 4 to the European 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 (1963)	75
16. Protocol No. 5 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention (1966)	78
17. Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty (1983)	80
18. Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1984).....	82
19. Protocol No. 8 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1985).....	86
20. Protocol No. 9 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1994)	90
21. Protocol No. 10 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1992)	93
22. Protocol No. 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1998)	95
23. Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2000).....	110
24. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989)	113
25. Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1993)	119
26. Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1993)	121
27. European Convention on the Exercise of Children's Rights (1996).....	123

28. European Agreement relating to Persons Participating in Proceeding of the European Court of Human Rights (1996)	133
29. Treaty Establishing the European community (revised) (1997).....	138
30. European Social Charter (revised) (1996)	143
31. Charter of Fundamental Rights of the European Union (2000)	170

Chapter 2. Inter- American Human Rights Instruments

Introduction :	185
32. Charter of the Organization of American States (1948).....	188
33. American Declaration of the Rights and Duties of Man (1948)	196
34. American Convention on Human Rights (1969)	203
35. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)	229
36. Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1990)	239
37. Inter-American Convention to Prevent and Punish Torture (1987)	241
38. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994)	247
39. Inter-American Convention on Forced Disappearance of Persons (1996).....	254
40. Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999)	260
41. Proposed American Declaration on the Rights of Indigenous Peoples (1997).....	267
42. Statute of the Inter-American Court on Human Rights (1980).....	280
43. Rules of Procedure of the Inter-American Court on Human Rights (1991)	290
44. Statute of the Inter-American Commission on Human Rights (1980).....	312
45. Regulations of the Inter-American Commission on Human Rights (1992).....	319
46. Rules of Procedure of the Inter-American Commission on Human Rights.....	346

Chapter 3. African Human Rights Instruments	
Introduction :	375
47. African [Banjul] Charter on Human and Peoples' Rights (1981)	379
48. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1997)	394
49. Rules of Procedure of the African Commission on Human and Peoples' Rights (1995)	403
50. African Charter on the Rights and Welfare of the Child (1990)	432
51. The Addis Ababa Document on Refugees and Forced Population Dis- placements in Africa (1994)	451
52. Convention Governing the Specific Aspects of Refugee Problems in Af- rica (1974)	467
53. The Kampala Declaration on Intellectual Freedom and Social Respon- sibility (1990)	476
Chapter 4. Arab Human Rights Instruments	
Introduction :	483
54. Draft Charter of Human Rights and the People in the Arab World (1986).....	485
55. Arab Charter on Human Rights (1997).....	508

