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A GUIDE ON HOW TO RESPOND TO HUMAN RIGHTS JUSTIFICATIONS

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A HORIZON EU FUNDED
PROJECT THAT EXAMINES
HOW STATES USE HUMAN
RIGHTS JUSTIFICATIONS TO
EXPLAIN AND DEFEND THEIR
ACTIONS AND DECISIONS

Preface

This handbook should be read alongside the accompanying HRJust film, where children from Hammarkullen describe how the Government is using the rights of children to justify repressive laws, and how the laws affect their everyday lives. Together, the two parts aim to connect lived experience with legal analysis, and to support more effective advocacy for the rights of children in future legislative processes.

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A Shift in the Name of Human Rights

For a long time, Sweden has been regarded as a role model for how states should act in the best interests of the child. In 1979, Sweden became the first country in the world to prohibit the spanking of children. Since then, the understanding that violence and punishment do not improve children's behaviour has become a deeply embedded principle in Swedish society.

In recent years, however, this foundational principle has increasingly been put to the test. In response to rising gang-related violence and the exploitation of children by criminal networks, the State has proposed new repressive laws targeting the children living in socially and economically vulnerable areas. Many of the legislative proposals have raised serious concerns, as they appear to conflict with established legal frameworks such as the UN Convention on the Rights of the Child. International and national human rights frameworks provide a shared and legally binding obligation on states to follow. Instruments such as the European

Convention on Human Rights and the UN Convention on the Rights of the Child function as legal and normative frameworks: they safeguard individual rights and define state responsibility – In this way, they offer both the state and civil society a common point of reference for accountability and scrutiny.

At the same time, a new pattern can be identified in contemporary legislative work. Rather than being invoked primarily as limits on state power, human rights are increasingly referenced in preparatory works as a way to legitimize repressive proposals by the State. In these cases, human rights are not used to regulate state action, but to justify it. This phenomenon is referred to in this handbook as Human Rights Justifications (HRJs).

The purpose of this handbook is to support you in identifying, analysing, and responding to HRJ arguments when they appear in government investigations and legislative proposals. The handbook

forms part of a two-part package: a film in which young people, especially children with migrant backgrounds, describe how several repressive laws affect their lives, and this analytical guide, which helps unpack the legal reasoning behind those laws and identify recurring patterns of argumentation.

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What is a Human rights justification?

Definition

When the State uses human rights to justify legislative proposals and political decisions—even when the measure in practice restricts other individual human rights.

Core Problem

Traditionally, human rights function as tools that individuals can invoke against the State in order to protect themselves from abuse of power.

With HRJs, a shift takes place:

- From human rights as tools for the individual - against the State
- To human rights as tools for the State to legitimize repressive or discriminatory measures

This shift carries a significant risk: the State may refer to human rights to justify limitations on individual freedoms, rather than to strengthen and protect them.

Recognizing HRJs

In this chapter, you will learn how to identify when legislative investigations use human rights as a form of justification, and how to flag these arguments for further analysis.

Recognising HRJs early in a government investigation or bill is crucial. These arguments often appear persuasive and legally sophisticated, and they may give the impression that a proposal is firmly grounded in international law even when its practical effect is to expand State power at the expense of individual rights.

3 Common patterns in HRJust arguments

In legislative work concerning children, the State often refers to the UN Convention on the Rights of the Child (CRC) to justify its own actions. These justifications usually present themselves in the following three forms:

1 When the State uses the Child Rights Convention to defend its own actions

This refers to when the State claims that the reasoning behind the legislative proposal is to fulfil a human right. The Convention is presented as a reason why the action is necessary or even required.

Example

In reference to the Stop-and-Search Law, the Departmental Inquiry justifies their reasoning as follows:

“To body search a child fulfills the child’s right to protection from all forms of abuse in article 19 of the Child Rights Convention.”

2 When the State uses the United Nations (UN) Committee’s human rights doctrine to defend its own actions

Here, the State refers to statements made by the UN Committee on the Rights of the Child, such as General Comments or Concluding Observations, to support its position. The UN Committee is responsible for monitoring compliance with the UN human rights treaties. Such references are used to give the impression that the Committee endorses or requires the proposed measure.

Example

Transforming Article §3 of the CRC, concerning “the best interests of the child,” from an individual right of the child to a collective right of all children. Turning the “best interest principle” into an argument for the collective against the individual child.

3 Arguing compliance through the absence of a prohibition

In this form, the State claims that a proposed measure is acceptable simply because it is not explicitly forbidden by the Convention. The absence of a clear prohibition is treated as proof of compliance with children's rights.

Example

Treating human rights as a ceiling instead of as a floor

A common formulation in legislative investigations is illustrated by the following statement:

"Even though constitutional regulation and international commitments set certain limits on how a system of security zones may be designed, there is room to structure the system in many different ways."

(Ds 2023:21, p. 90)

This statement suggests that as long as a measure stays within the explicit limits set by human rights law, it is automatically compatible with human rights.

➤ *Why this is misleading*

Human Rights treaties set minimum standards that states must meet and may not fall below. States can always go beyond these minimum standards, and countries like Sweden are expected to do so. Sweden also has a moral obligation to use its maximum available resources to fulfill children's rights under the Convention.

When the State argues that “there is room” to design repressive measures simply because they are not explicitly prohibited - the State is wrong. Human rights are then being reduced to a technical checklist rather than serving their core purpose: protecting the dignity, autonomy, and rights of the individual child to the maximum extent of available resources.



Assessing Whether an HRJ is Problematic

Not every reference to human rights in legislative work is automatically done in bad faith or with negative effects. The key question is not whether human rights are mentioned, but how they are used and what function they serve in the argument.

How to test if a Human Rights Justification is “good or bad”

A basic rule of thumb is to ask:

→ Does this interpretation make the individual human right stronger or weaker?

If the interpretation results in a weaker protection of the right, a higher level of scrutiny is required. Ask whether the individual whose rights are being limited belongs to a minority group or another protected group. The purpose of this step is to ensure that the human rights justification is not, in practice, a form of disguised discrimination.



Does the human rights argument function to critique the state, or does it praise the state and support its position?

If the argument serves to legitimize or defend state action rather than to hold the state accountable, it should be examined more closely. In such cases, apply heightened scrutiny to assess whether the human rights reference is being used as a tool of persuasion, propaganda, or to advance a political agenda rather than to function as a genuine legal safeguard.

If the justification strengthens one right while restricting another or distorts the meaning, purpose, and protective function of the Convention, further scrutiny is required.

— Practical HRJust Assessment Checklist —

Use the questions below as a quick tool when reviewing investigations or drafting a consultation response:

- ☒ Does the proposed interpretation strengthen or weaken the individual human right?
- ☒ If it weakens the right, who is affected?
- ☒ Are migrants, minorities, or other protected groups disproportionately impacted?
- ☒ Are human rights being used to protect individuals, or to defend State action?
- ☒ Does the argument limit State power, or does it expand it?
- ☒ Could this human rights reference function as a form of legitimization or political messaging rather than legal analysis?

[If several answers point in the same direction, this indicates that the argument may constitute a problematic Human Rights Justification (HRJust).]

How to Challenge Human Rights Justifications in Practice

When responding to HRJs, the goal is not only to disagree, but to clearly expose how the argument functions and why it is problematic. When doing this, it is important to not let social needs arguments overshadow the legal obligations of the State. For a more detailed, practice-oriented illustration of how we challenge HRJs, see our report *Pathways Towards Impact* at hrjust.org/io/sci.reports/.

➔ **1** A useful starting point is to address the justification on its own terms:

- On its face value – is what the State claims about the specific human right correct?
- As a human rights organisation, do you agree with the State's interpretation and use of the right in question?

➔ **2** Identify the type of argument being used

Is the State hiding behind a Human Rights Convention as a justification?

➔ **3** Apply further scrutiny

Consider asking:

- Is the State using one human right to justify limiting the human rights of specific individuals or groups?

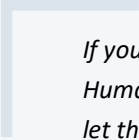
- Does the right function in a way that aligns with the State's claims regarding its intended purpose?
- Is the interpretation consistent with the text, purpose, and protective function of the larger human rights convention? For example, if the State uses the Child Rights Convention as a justification, is the proposed law for the benefit of children or not?

By systematically challenging HRJ arguments, we can help re-centre human rights as safeguards against State overreach, rather than as tools for legitimising it.

4 How to Respond to a Legislative Inquiry

- Reassert the core human rights principle
- Hold the State Accountable for its use of Human Rights Justifications in bad faith
- Re-centre the individual, and challenge the use of human rights in bad faith

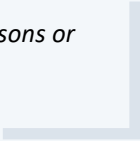




If you, as a human rights organisation, find that the State is using a Human Rights Justification (HRJ) in bad faith, call the State out. Don't let the State limit its legal obligations under international human rights law by using HRJs.

If the State uses HRJs against a minority or vulnerable group, give this a heightened scrutiny to make sure it is not a hidden form of discrimination.

If the State claims that an HRJ is in the best interest of the persons or groups affected, and it is not - object!



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Human Rights Justification



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