

The Universal Declaration of Human Rights: 70 Years Later

A Human Rights Research Paper
by ELSA Malta



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Foreword

ELSA, the European Law Students' Association is first and foremost a human rights organisation. ELSA's main purpose is "*to contribute to legal education, to foster mutual understanding and to promote social responsibility of law students and young lawyers*".

Over the years, ELSA Malta has focused on publishing a number of research and policy papers, in order to contribute to the discussion of certain topical legal issues. ELSA Malta's most recent publications include '*The Development of Environmental Law in Malta*' and '*Living in a Digital Era: Safeguarding one's rights in today's society*'. The latter publication was released as a celebration of last year's Human Rights Day, which is celebrated annually across the globe. This research paper included a review of International and local Case Law, whilst also discussing the dangers and opportunities related to one's digital rights. ELSA Malta remains committed to be pro-active on several heated issues that have a social impact.

As a celebration of this year's Human Rights Day, the ELSA Malta Human Rights Organising Committee proudly presents ELSA Malta's research paper, '*The Universal Declaration of Human Rights: 70 years later*'. This paper focuses primarily on the UDHR and its evolution over the past 70 years. The UDHR established, for the first time, the universal recognition of human rights. It also declared that human rights are inalienable, equally applicable, indivisible and inherent to every human being, regardless of nationality, colour, origin, religion, belief, sex or any status.

Many people were involved in this project, and without them, this would surely not have been possible. Firstly, I would like to express my gratitude to Mr. Liam Axisa, Treasurer and Director for Social Policy and Legal Publications and Ms. Katrina Sammut, Director for the IFP and Human Rights, the leaders of this Research Paper. Moreover, I would like to thank, Ms. Cristina Aquilina, Ms. Roberta Attard, Ms. Cristina Aquilina, Ms. Roberta Attard, Mr. Mark Borg, Ms. Sylvana Brannon, Ms. Maria Filaktou, Ms. Alex Gaglione, Mr. Miguel Pellegrini Petit, Ms. Tamara Anne Vella and Mr. Neil Zahra for their valuable contribution to this paper. I would also like to extend my gratitude to Dr. Tonio Borg, for

taking the time to review our paper and for providing us with his feedback and guidance.

On behalf of ELSA Malta, we hope that you enjoy reading our paper, take the time to evaluate our suggestions, and lastly follow us and support us in our aim - to always be proactive!

Nina Fauser
President of ELSA Malta
1st December 2018

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Introduction

The Universal Declaration of Human Rights (UDHR) marks an important development in the history of human rights. The UDHR represents the foundation of international human rights law. It established for the first time the universal recognition of human rights and that human rights are inalienable, equally applicable, indivisible, inherent to every human-being, regardless of nationality, colour, origin, religion, belief, sex or any status. Since its proclamation by the United Nations General Assembly in Paris on 10 December 1948, it has served as a common standard of achievements for all peoples and all nations to uphold dignity and justice, acting as a model and inspiration for various international treaties, constitutions, bills and charters guaranteeing human rights at a national, regional and international level. On a practical level, it continues to be an inspiration to the world in addressing injustices, in dealing with conflicts, in aiding societies suffering repression, and generally in instilling a universal culture promoting and guaranteeing the enjoyment of human rights.

Since 1948, the UN has endeavored to protect human rights through various legal instruments. Thus, following the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights entered into force in 1976. The two Covenants, which together with the UDHR, comprise the International Bill of Human Rights, served to develop most of the rights already enshrined in the UDHR, making them effectively binding on States that have ratified them. They set forth everyday rights such as the right to life, equality before the law, freedom of expression, the rights to work, social security and education. A number of other international human rights treaties and other instruments have since continued to expand international human rights law.

The UN also protects human rights through on-the-ground activities. Thus, the Office of the UN High Commissioner for Human Rights (OHCHR) has lead peacekeeping missions in several countries, and has many country and regional offices and centres. It regularly comments and reports upon human rights crisis situations around the world. Further, the UN Security Council is empowered to deal with grave human rights violations, often in conflict areas, by, for instance, investigating and mediating or dispatching peace-keeping missions. The International Court of Justice, the judicial organ of the UN, ensures through its rulings respect for the rule of law and human rights by the member States.¹

¹ '70 Years Of Progress On Human Rights' (*Humanrights70.org*, 2018)
<<https://www.humanrights70.org>> accessed 2 December 2018.

The History of the Universal Declaration of Human Rights

70 years following the 10th December 1948 proclamation of the Universal Declaration of Human Rights, we might want to evaluate what remains of the hopes and enthusiasm that the Declaration raised at the time, as a historic milestone in humanity's long march to ascertain the dignity and equality of all.

Doctrine of Natural Law and Human Rights

One of the oldest western philosophies on the advent of human rights is the natural law theory. This concept emerged from Christian values, being one rule which given by God, which all humans must obey. Natural laws involve an instinctive human ability to distinguish right from wrong.

Hobbes famously wrote:

*"The Right of Nature is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own Nature; that is to say of his own Life; and consequently of doing anything, which in his own judgment and reason he shall conceive to be the aptest means thereunto."*²

Socrates was amongst the first scholars to promote human rights through the theory of natural rights by promoting the idea that human beings need to free themselves from the influence of emotions to have better control over their lives through reason³. As Friedmann has rightly said, '*the history of natural law is a tale of the search of mankind for absolute justice, and its failure.*'⁴ Hugo Grotius, Thomas Hobbes, John Locke and Immanuel Kant were all supporters of the natural rights theory.

Natural rights theories were prevalent before the advent of the nation-state with its organs and political set up. These theories contributed towards the development of the revolutionary concept of equal treatment for all men and women which consequently instigated a number of democratic struggles centred around the protection of the rights of citizens.

John Locke was the chief exponent behind the development of the modern natural rights theory during the Age of Enlightenment. Locke envisaged a state of nature where human beings were in a state of equality and freedom in which none were subjected to the will or authority of another.

² Thomas Hobbes, *Leviathan* (1651)

³ Thomas C. Brickhouse and Nicholas D. Smith. 'Socrates on the emotions' (2015) 15 *Plato Journal* 9

⁴ Wolfgang Gaston Friedmann, *Legal theory* (5th edn, Stevens 1967)

Scholarly contributions towards the development of Human Rights

We find the first known written record of anything resembling Human rights in the Hammurabi Code in 1700 BC in Babylon, where the writing of laws can be considered as a first conquest to protect the individual against the arbitrariness of power. Thus, Hammurabi wanted *'to bring about the rule of righteousness in the land... so that the strong should not harm the weak'*.⁵

Plato – Socrates's student and Aristotle's mentor – contributed extensively towards the development of the concepts of human rights law. In fact, Plato's 'Republic' is postulated through the question:
Is it always better to be just than unjust?

Both Plato and Aristotle visualised the State as an institution where virtues could be imposed on its citizens.⁶ According to them, an individual who did not actively form part of a state was considered to be a 'beast'. The concept of justice, that Aristotle conceptualised was in essence the ideology that would be applied by citizens whom are free and equal before their state.

Plato rationalised the idea of justice by proclaiming that there cannot exist justice in a state where laws are passed for the betterment of a few rather than the society as a whole. Both Plato and Aristotle distinguished between that which was on the one hand naturally just and on the other hand legally just.

Cicero was a proponent of natural law and natural rights. His main focus was to ensure that the universal basis for justice and rights for every individual was implemented. Cicero expressed his views on natural law and its universal nature through three writings: 'On the Republic' (54–51 B.C.), 'On the Laws' (51 B.C.), and 'On Duties' (44 B.C.). In his work 'On the Republic', he envisages the existence of 'a common law of nature' which provides a higher standard than the civil law – a law of nature that gives both privileges or rights, and responsibilities or duties to the truly wise.⁷ In his second work 'On the Law' Cicero speaks about the power of reason, which helps him distinguish between right and wrong and honourable and disgraceful things.

The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran, and the Analects of Confucius are five of the oldest written sources which

⁵ 'The Code of Hammurabi' <<https://www.constitution.org/ime/hammurabi.htm>>

⁶ 'Legal philosophers: a trilogy on great philosophers and the law: Plato and Aristotle: precursors of the Human Rights of world habeas corpus' (1972) 55(2) Marquette Law Review 255

⁷ 'Cicero and the natural law' <<http://www.nlncrac.org/classical/cicero>>

address questions of people's duties, rights, and responsibilities.⁸ Even though the words "Human Rights" do not appear directly in any of these texts, religion provided for some semblance of such. Theologically, human beings are the creation of the Supreme power and should, therefore, be considered sacred. The rights that flow from the religious texts are divine and inalienable by mortal authority.⁹

Origins

In 539 BC the armies of Cyrus the Great conquered Babylon, which he followed by freeing the slaves, declaring that all people had the right to choose their religion, and establishing racial equality. These decrees were recorded on what came to be known as the Cyrus the Great Cylinder, and the first charter of human rights¹⁰. In the 5th century, Sophocles' Antigone proclaimed the superiority of individual consciousness over human law¹¹. In the next century, Plato seeks justice, and Aristotle equity. For his part, Meng-Tseu argued in 300 BC that 'it is acceptable for the subjects to overthrow or even kill a ruler who ignores the people's needs and rules harshly. This is because a ruler who does not rule justly is no longer a true ruler'¹²¹³. Seneca, in the 1st century AD, in line with stoicism, affirms that '*homo hominis res sacra*' ('man is a sacred thing'¹⁴). Christianity for its part will privilege the 'human creature' without exception or distinction in the name of the individual conscience, which will be structured in the 5th century by St Augustine who, emphasises the concept of justice and opens the right to challenge in the name of just freedom of conscience¹⁵. Finally, the Quran also states that 'the human being is the creature who deserves unconditional respect'¹⁶.

⁸ 'A short history of human rights'

<<http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm>>

⁹ Jerome J. Shestack. 'The Philosophic Foundations of Human Rights' (1998) 20(2) Human Rights Quarterly 201

¹⁰ 'The Cyrus the Great Cylinder'

<http://www.iranchamber.com/history/cyrus/cyrus_charter.php>

¹¹ Susan W. Tiefenbrun. 'On Civil Disobedience, Jurisprudence, Feminism and the Law in the Antigones of Sophocles and Anouilh' (1999) 11(1) Cardozo Studies in Law and Literature 35

¹² Wing-tsit Chan, *A Source Book in Chinese Philosophy* (Princeton University Press 2008)

¹³ Yan Xuetong. 'Xun Zi's Thoughts on International Politics and Their Implications' (2008) 2(1) Chinese Journal of International Politics 135

¹⁴ Henry F. Burton. 'Seneca's Idea of God' (1909) 13(3) The American Journal of Theology 350

¹⁵ Anton-Hermann Chroust. 'The Philosophy of Law of St. Augustine' (1944) 53(2) The Philosophical Review 195

¹⁶ Sadaqat Ali. 'Human Rights in The Monotheistic Religions : Justification of Human Rights in the perspective of monotheistic religion according to Human Rights Theories' (MF Norwegian School of Theology 2018)

First Codifications

But all of these were essentially nothing more than philosophical reflections and not founding texts of law. It is in 1215 in England that there will appear the declarations of the rights of the man – the Magna Carta. King John's loss against the French resulted in the violation of a number of ancient laws and customs by which England had been governed. The Magna Carta, signed at Runnymede, made the King subject to law like other citizens.

The movement was perpetuated with the Petition of the Rights in 1628 which was to be institutionalized in 1679 with the Habeas Corpus, which recognized that every arrested man has the right to be presented immediately to a judicial body that decides on the legitimacy of this arrest¹⁷. In 1689, the Bill of Rights defined the rights of Parliament and citizens. The Bill of Rights addressed the primary concern of its time: making the King subject to the rule of law like any other citizen. It restricted non-Parliamentary taxation, imprisonment without just cause and the use of martial law. Additionally, each act by monarchy had to be approved by the Parliament in order to uphold the rights and liberties of the citizens in all situations¹⁸.

The philosopher John Locke, considering that a social pact does not annihilate the natural rights of individuals, opened the way to the first modern text on human rights; the Virginia Bill of Rights in May 1776¹⁹. This was essentially taken up in the Declaration of Independence of July 4, 1776 which holds 'these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness' and that 'to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed'²⁰.

Philosophically, the Declaration stressed two themes: individual rights and the right of revolution, by providing that whenever any Government becomes destructive of these rights, the people have a right to abolish it and institute a new Government.²¹ But unfortunately, it did not extend human rights to all

¹⁷ 'The Background to the Universal Declaration of Human Rights' <<https://owlcation.com/humanities/The-Background-to-the-Universal-Declaration-of-Human-Rights>>

¹⁸ *ibid*

¹⁹ Kenneth D. Stern. 'John Locke and the Declaration of Independence' (1966) 15(1) *Cleveland State Law Review* 186

²⁰ 'Declaration of Independence: A Transcription' <<https://www.archives.gov/founding-docs/declaration-transcript>>

²¹ 'Jefferson on the right to change one's government (1776)' <<https://oll.libertyfund.org/quote/327>>

human beings. It preserved the institution of slavery and did not grant equal rights to women and men who were not white.^{22,23}

The United States Constitution's first ten amendments became known as the Bill of Rights. They contributed to the Constitution explicit safeguards of personal rights and freedoms, unambiguous limits on the government's power in judicial proceedings, and clear declarations that all powers not specifically delegated to Congress by the Constitution are reserved for the states or the people²⁴. The Bill of Rights protects freedom of speech, freedom of religion, the right to keep and bear arms, the freedom of assembly and the freedom to petition. It also prohibits unreasonable search and seizure, cruel punishment and compelled self-incrimination. The Bill prohibits Congress from making any law regarding an establishment of religion. It also prohibits the federal government from depriving any person of life, liberty or property without due process of law.²⁵ Since its inception, the Bill of Rights has contributed significantly in the development of human rights law in the United States.

Throughout the eighteenth century, key philosophers of the enlightenment period envisaged a new democratic society which would ensure the equal legal treatment of citizens of equality of legal treatment, security and happiness. Thus, we saw the emergence of a relatively autonomous legal system through a relation democratic procedures which ultimately provided for a set of recognizable and stable norms capable of being invoked against both the Power and civil society²⁶.

In 1789, France's National Constituent Assembly passed The Declaration of the Rights of Man and of the Citizen (French: 'Déclaration des droits de l'homme et du citoyen'), which served as a fundamental document of the French Revolution and in the history of human and civil rights. The declaration was influenced by Thomas Jefferson and the doctrine of natural rights²⁷.

²² William Cohen. 'Thomas Jefferson and the Problem of Slavery' (1969) 56(3) *The Journal of American History* 503

²³ 'Jefferson's "original Rough draught" of the Declaration of Independence' <<https://www.loc.gov/exhibits/declara/ruffdrft.html>>

²⁴ Patrick M. Garry. 'Liberty through limits: The bill of rights as limited government provisions' (2009) 62(4) *SMU Law Review* 1745

²⁵ 'A brief history of human rights: the United States Declaration of Independence (1776)' <<https://www.humanrights.com/what-are-human-rights/brief-history/declaration-of-independence.html>>

²⁶ 'Hobbes, Locke, Montesquieu, and Rousseau on Government' (2018) <<http://www.crf-usa.org/bill-of-rights-in-action/bria-20-2-c-hobbes-locke-montesquieu-and-rousseau-on-government.html>>

²⁷ Georg Jellinek and Farrand, Max, , translator, *The declaration of the rights of man and of citizens; a contribution to modern constitutional history* (Henry Holt and Co. 1901) <<https://oll.libertyfund.org/titles/1176>>

This declaration is considered to be a fundamental text because it is of general scope and addresses men at all times and in all countries, thus defining its vocation as 'universal'. It defines 'natural, inalienable and sacred rights'²⁸, the most precious being freedom and hence the possibility given to everyone to do anything that does not harm others. However, this freedom only makes sense by relying on the principle of equality, which gives it its revolutionary character. Article 1 states that 'Men are born free and equal in rights. Social distinctions can be founded only on the common good'; and Article 2 states that 'The goal of any political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety and resistance against oppression'²⁹. Emphasis is placed on civil and political rights, and in fact the preamble specifically refers to appropriate practice of these rights: 'ignorance, neglect, or contempt of human rights, are the sole causes of public misfortunes'.

Through this document, the people of France brought about the abolishment of the absolute monarchy and set the stage for the establishment of the first French Republic. The Declaration of the Rights of Man and the Citizen sees law as an expression of the general will.³⁰ It established the basic human right of treating all men as equal and free. The declaration called for the destruction of aristocratic privileges through the declaration of an end to feudalism and to exemptions from taxation. Furthermore, the preservation of the rights to liberty, property, security and the resistance to oppression are also affirmed. However, through this declaration, only a few men received political rights, and these were subsequently deemed to be active citizens. The passive citizens included women, slaves, children, and foreigners, who were deprived of their political rights³¹. Furthermore, the declaration did not revoke the institution of slavery.

A second and lengthier declaration, known as the Declaration of the Rights of Man and Citizen of 1793 was written but never formally adopted. The difference between the two declarations is in the egalitarian tendencies. The 1793 version included new rights for citizens including that to work. However, this marked a new beginning for social rights based on citizenship³². It was said that a lot more would be done for the real emancipation and true progress of the lower classes.

²⁸ 'The Declaration of the Rights of Man and of the Citizen, 1789' <https://www.americanbar.org/content/dam/aba/migrated/2011_build/human_rights/french_dec_rightsofman.authcheckdam.pdf>

²⁹ *ibid*

³⁰ Kiley Bickford. 'Nationalism in the French Revolution of 1789' (University of Maine 2014)

³¹ Immanuel Wallerstein. 'Citizens all? Citizens some! The making of the citizen' (2003) 45(4) *Comparative studies in society and history* 650

³² 'Declaration of the Rights of Man and Citizen from the Constitution of Year I (1793)' <<http://www.columbia.edu/~iw6/docs/dec1793.html>>

The League of Nations

After World War I, attempts were made to secure a peace settlement and preserve human rights through the establishment of the League of Nations. Even though there was certain reluctance to include provisions pertaining to the protection of minorities and the equality of nations, two articles relating to human rights did find their place in the covenant of the League of Nations. Article 22 provided that the countries which were formerly governed by the Sovereign States and are inhabited by people who cannot yet stand by themselves in the current world will be put under the tutelage of advanced nations³³. These advanced nations will be the mandatories on behalf of the League of Nations and would be responsible for administration, including ensuring freedom of conscience and religion and the prohibition of abuses within these territories³⁴.

Article 23 enunciated that members of the Covenant will attempt to secure and maintain fair and humane labour conditions, secure just treatment for the native inhabitants and commit the supervision of agreements relating to the trafficking of women and children with the League³⁵. The League of Nations also contributed towards the protection of slaves by creating a committee to study slavery which further drafted the Slavery Convention of 1926. However, the League failed to provide adequate security guarantees for its members like an alliance should have, and thus encouraged more aggressive policies by the authoritarian states leading to an arms race. It also failed to achieve the disarmament goals it set out in the 1920s and 1930s, due to the hostile circumstances that the Disarmament Conference was held under.³⁶

International Labour Organization

International Labour Organization (ILO), like the League of Nations, was also created after the First World War. The ILO was established with an objective to pursue the vision that universal, lasting peace can be established only if it is based on social justice. It was recognised as the first specialised agency of the United Nations Organization in 1946. Since its origin, the ILO has adopted over a hundred conventions which fix international standards on areas many of which deal with human rights.

Second World War, The Birth of United Nations and Universal Declaration of Human Rights.

³³ Hurst Hannum, S. James Anaya and Dinah Shelton, *International human rights: problems of law, policy, and practice* (5th edn, Wolters Kluwer, Law & Business (Aspen Casebook Series) 2011)

³⁴ *ibid*

³⁵ *ibid*

³⁶ Jari Eloranta. 'Why did the League of Nations fail?' (2011) 5(1) *Cliometrica* 27

The Second World War saw horrible atrocities committed by the Axis Powers on minorities, targeting people of the Jewish faith, Romani and homosexual people in what we refer to as the Holocaust.

In the wake of the two destructive World Wars, there were revolutionising developments in the realm of international law of human rights. As the Second World War came to an end, the world felt horrified at the effects produced by wars and the governments then committed themselves to establish the United Nations Organization with an objective 'to promote respect for human rights and fundamental freedoms'.³⁷ In late 1945, leaders of the world's nations met in San Francisco to form the United Nations. Inspired by the great South African pre-apartheid leader Field-Marshal Smuts, they included in the preamble to the Charter of the UN, an important reference to human rights which reads as:

*'We the peoples of the United Nations determined ...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'*³⁸.

The UN Charter provided for the establishment of a Commission of Human Rights and placed the promotion of human rights equal to the maintenance of international peace and security. Through Articles 55 and 56, signatories to the Charter pledge to take joint and separate action 'in cooperation with the Organization' for the promotion and universal respect of human rights³⁹. In an advisory opinion on the Continued Presence of South Africa in Namibia⁴⁰, the ICJ has reiterated the importance of these provisions by stating that the members are bound to observe and respect human rights.

Apart from a few other references to human rights in the UN Charter, Article 68 was inserted that provided for setting up a Commission on Human Rights by the Economic and Social Council. In 1947, the first Commission was set up and assigned the task of drafting an International Bill of Human Rights. This Commission for Human Rights was composed of Eleanor Roosevelt (United States, Chairman), Chang Peng-Chun (China, Vice-Chairman), and Charles Malik (Lebanon, rapporteur).

³⁷ 'United Nations Charter' <<http://www.un.org/en/charter-united-nations/index.html>>

³⁸ *ibid*

³⁹ *ibid*

⁴⁰ *Legal consequences for states of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)* (Advisory Report, International Court of Justice 1971)

The Commission on Human Rights decided that the International Bill of Human Rights would have three parts: a declaration, a convention(s) and measures of implementation.⁴¹ The Commission decided that the declaration

should contain both civil and political, and also economic and social rights but the same time it should be concise and an inspirational document that serves as a foundation for all human rights. For this reason, the Commission decided to separate the formally legally binding covenants, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights from the initial declaration. The Commission decided to name the document as Universal Declaration of Human Rights (UDHR) to emphasize its objective of laying down standards of rights for all people everywhere – whether male or female, black or white, communist or capitalist, victor or vanquished, rich or poor, for members of a majority or a minority in the community.

It was the French Rene Cassin, also a member of the Commission and a reputed jurist, who was in charge of drafting the preliminary draft and who can be considered as the main inspirer of the Declaration that he often compared 'to the portico of a temple'. The parvis of the temple, which represents the unity of the human family, has as its corresponding element the preamble of the Declaration, the different degrees of which allow us to rise from the recognition of human dignity to the foundation. The foundations are constituted by the general principles of freedom, equality, non-discrimination and fraternity proclaimed in Articles 1 and 2. Of the four equal columns of the portico which form the body of the Declaration, the first represents the rights and freedoms of a personal nature (articles 3 to 11), the second, the rights of the individual in his relations with the groups to which he belongs and the things of the outside world (Articles 12 to 17); the third, spiritual faculties, public freedoms and fundamental political rights (Articles 18 to 21); the fourth, economic, social and cultural rights (articles 22 to 27). The whole is crowned by a pediment that defines the links between the individual and society (articles 28 to 30)⁴².

On December 10, 1948, at the symbolic Palais de Chaillot in Paris, the final text of the Universal Declaration of Human Rights was solemnly adopted with 48 out of 56 votes, with 8 countries abstaining. In the 21st century, the UDHR is regarded as possibly the single most important document for establishing human rights standards universally. It is based on the foundational belief of creating a world where each human being can live in dignity and peace. Now the Declaration has achieved such a stature in the realm of human rights

⁴¹ Hurst Hannum, S. James Anaya and Dinah Shelton, *International human rights: problems of law, policy, and practice* (5th edn, Wolters Kluwer, Law & Business (Aspen Casebook Series) 2011)

⁴² Mary Anne Glendon. 'The rule of law in the Universal Declaration of Human Rights' (2004) 2(1) *Northwestern Journal of International Human Rights*

law that its founders wouldn't have expected. The UDHR has become an integral part of the UN and is often referred in various resolutions. It has certainly become a part of the customary international law as well and its importance continues to grow steadily.

But even though 198 states have signed the UDHR so far, all these proclaimed principles are only a 'guide', a 'beacon of hope'⁴³, a 'basis for future commitments' because, in a simple resolution adopted by the General Assembly of the United Nations, the Declaration has no binding legal force for the Member States⁴⁴. However, from it arose a range of international agreements which are legally binding on the countries that ratify them.

The Universality and Legal Status of the UDHR

The European Bloc:

The universality and legal status of the Universal Declaration of Human rights is evident in the European Union. Therefore, the UDHR, even seventy years on, influences greatly the structures and activities occurring within Europe. Consequently, the principles discussed in the UDHR are embraced within each member-state of the EU. This can be observed by thorough analysis of the historic development of the EU in terms of its relationship with human rights.

The European Coal and Steel Community:

In Paul Kearns' article entitled 'THE EU AND HUMAN RIGHTS: AN UNLIKELY EVOLUTION', he observes that '*The European Union was not designed to be a human rights organisation and yet, (...) the EU has now committed itself unqualifiedly to being a staunch defender of human rights.*' When observing the origin of the EU, as well as its initial purposes of the Union, Kearns' statement is validated.

Kearns proceeds by explaining that the '*EU began as a totally economically-oriented body of six states concerned with primarily coal and steel, and the enhancement of their trade in these areas.*' The EU's origins lie in the 'European Coal and Steel Community', established in 1951. In an opening address⁴⁵, Jean Monnet expressed the main purposes of the ECSC as the establishment of a common market by abolishing cartels, as well as the aligning of countries. The creation of the ECSC would also be characterised by

⁴³ 'The Universal Declaration of Human Rights at 60: Beacon of Hope or Dead End?' (James Madison Program Media 2017)

⁴⁴ John P. Humphrey, *Human rights & the United Nations : a great adventure* (1984)

⁴⁵ "European Coal and Steel Community." International Organization, vol. 8, no. 2, 1954, pp. 286-290. JSTOR, JSTOR, www.jstor.org/stable/2704329.

the formulation of a High Authority, which would create closer links between states in the common market through the pooling in of resources, including mainly coal and steel.

This strategy was favoured to push for the integration of Europe. One may enquire why Schuman, Monnet, and other fathers of the EU proposed the creation of this monetary union as the solution for European integration. This can be understood through the context of the after-effects of the two World Wars. One of the major obstacles to reconciliation between the German and French nations following World War Two was coal and steel production question. The largest concentration of steel and coal were found in Ruhr Valley, located in West Germany.⁴⁶ The production of these resources was limited by France to avoid German re-armament. Therefore, due to this Franco-German tension, the formulation of the European Coal and Steel Community was proposed.

This solution was proposed by French Foreign Minister Schuman. Schuman introduced the concept through the Schuman Declaration, where he advocated⁴⁷:

“By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the preservation of peace.”

It is clear that the purposal of the European Coal and Steel Community was not, therefore, to protect human rights, regardless of the Universal Declaration of Human Rights being adopted by the UN General Assembly in 1948, around three years prior to the ratification of the Treaty of Paris. In fact, Kearns, in the article aforementioned, adds how *‘human rights did not feature as an EU concern at its beginning is that the founding states were disorientated after World War II and did not wish to give up significant power to an international body such as the EU.’* The mere aim of the ECSC was solely the preservation of peace in Europe through the establishment of a monetary union supervised by a high authority.

However, this would soon change, as, naturally, the protection of human rights is a necessity to establish peace much desired by the fathers of the European Union. In fact, Europe was quickly influenced by the UDHR. This is seen through the establishment of the various institutions of the EU.

⁴⁶ 'The European Coal And Steel Community – EU Learning' (Carleton.ca, 2018) <<https://carleton.ca/ces/eulearning/history/moving-to-integration/the-european-coal-and-steel-community/>> accessed 3 November 2018

⁴⁷ 'The Schuman Declaration – 9 May 1950 – European Union – European Commission' (European Union, 2018) <https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en> accessed 3 November 2018

The Establishment of the Institutions of the EU:

The institutions of the EU⁴⁸ each have important roles in defending, supporting and promoting Human Rights advocated in the UDHR. These bodies include the European Court of Justice, the European Parliament the Council of the EU and the European Parliament.

The European Court of Justice:

The European Court of Justice was established in 1952. Elizabeth F. Defeis⁴⁹, in her Law Journal article, notes how through *'decisions of the European Court of Justice, human rights have been placed at the forefront of the agenda of the European Union'*

The author observes that the European Court of Justice focuses on many cases dealing with fundamental rights such as non-discrimination, freedom of religion, expression and association. Coincidentally, the court therefore dealt with principles which were strongly advocated in the UDHR.

The integration of the UDHR's policies within the European Economic Community were hence becoming evident. In fact, this is seen clearly in Article 119 of the EEC Treaty:

"[e]ach Member State shall ... maintain the application of the principle that men and women should receive equal pay for equal work. '

This is clearly an echo of Article Two of the UDHR, stating that:

'everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex (...)'

Hence, it is safe to say that Article 119 of the EEC Treaty was heavily influenced by Article 2 of UDHR, forbidding discrimination. A ground-breaking case relating to all this occurred in 1976, where a female worker challenged certain policies in her work environment, where male workers were paid more than female workers. The ECJ imposed Article 119 of the EEC. From cases like this one, the equality principle in EU law expanded and provided a basis for regulating gender equality. Consequently, the Amsterdam Treaty expanded this equality principle, hence allowing the council to take action to mitigate discrimination. In more recent years, the ECJ has successfully incorporated UDHR provisions as well as decisions of the European Court of Human Rights into its general jurisprudence.

⁴⁸ Anon, 'Developing and Implementing EU Human Rights Policies' [2009] () ProQuest

⁴⁹ Defeis E, 'Human Rights And The European Court Of Justice: An Appraisal'

It is therefore concluded, and important to note, that *'this integration of human rights under the leadership of the ECJ is particularly striking since, as noted earlier, there is no specific provision in the EEC Treaty affecting human rights of individuals.'*

However, it is interesting to note how, Kearns, in the previously mentioned article, points out various of flaws of the ECJ when dealing with Human rights:

'the lack of a doctrine of precedent in the ECJ led to contradictory decisions on human rights. On a practical level, the ECJ's judges were ill-equipped to adjudicate human rights cases, not least from a lack of expertise in this field.'

Therefore, Kearns believed that the ECJ produced court decisions which contradicted each other. Apart from this, another major issue was the fact that judges were not trained to deal with these types of cases. The writer suggests certain solutions:

- Enhanced training of the ECJ Judges.
- Promoting human rights as a higher plateau of judicial concern.

These suggestions could, potentially, reform the ECJ into a court of human rights, aligned with the principles of the Universal Declaration of Human Rights.

The European Parliament: 1958

Kearns also observes how *'The EU institutions, such as the European Parliament, developed human rights roles; together with the European Council, the Parliament still monitors contemporary human rights issues.'*

The European Parliament was set up in 1958. Today, it is the EU's directly elected body.⁵⁰ It holds legislative, budgetary and supervisory powers. Through these powers, the Parliament has the potential to protect the fundamental human rights of European citizens through its resolutions. However, the European Parliament also vows to defend human rights beyond the EU. In fact, MEPs often discuss human rights issues of non-EU countries, since the UDHR advocates that these rights are universal, and thus response to violations of human rights must be consistent everywhere. The universality of the UDHR is prominent in this point.

⁵⁰ 'Powers And Procedures' (Powers and procedures, 2018)

<<http://www.europarl.europa.eu/about-parliament/en/powers-and-procedures>> accessed 6 November 2018

The Council of the EU:

The Council of the European Union is part of the bicameral legislature of the EU, the other chamber being the previously mentioned parliament. This council consists of ministers or heads of states, which represent their own national interests. Its main role is adopting EU law and coordinating policies. Thus, EU human rights actions are driven by guidelines issues by this council, on such issues as the death penalty, torture, and so on.

The European Commission:

The European Commission adopts the role of proposing legislation, as well as implementing decisions and upholding the treaties. In this regard, this Commission implemented the Common Foreign Security Policy of the EU, where human rights play a central part. Similarly, this body contributes frequently to the formulation as well as implementation of human rights policies. Its network of numerous delegations also play a vital role of promoting policies to protect these rights.

Therefore, it's clear that through the functions of the bodies of the EU, the principles of the UDHR are applied thoroughly in all of Europe, improving socio-economic situations in all member states.

The Council of Europe:

The Council of Europe was set up in 1949. One of its main aims is to uphold human rights. In fact, in its statute, the CoE outlines its *'pursuit of peace'* through its reaffirmation of devotion to moral values which are *'the true source of individual freedom, political liberty and the rule of law.'* This concept of individual freedom, liberty and rule of law stem from the preamble of the UDHR:

'Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,'

The UDHR, through its principles, therefore, inspired the Council of Europe to protect human rights. Coincidentally, the best-known body of this council is the European Court of Human Rights, which enforces the European Convention of Human rights, both of which are devoted to protecting Human Rights.

The European Convention on Human Rights:

The CoE drafted the European Convention on Human Rights in 1950, and the document came into force in 1953. This convention may be considered as *'the most effective system in providing individual protection of civil and*

*political rights.*⁵¹ It provides a basic catalogue of human rights, and was compiled in order to secure these basic rights.⁵² The convention has been amended several times over the years, as many more rights have been added to the list.

The ECHR's alignment with the UDHR is seen clearly in its preamble:

'Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;'

From this section of the preamble it is assumed that the principles advocated in the ECHR echo those of the UDHR. In fact, a closer look at the convention allows for one to realize how certain articles of the convention and articles of the declaration are very similar, and almost alike. Certain similar articles include:

- Right to Life.
- Prohibition of Torture.
- Prohibition of Slavery and Forced Labour.
- Right to Liberty and Security.
- Prohibition of Discrimination.
- Freedom of Movement.
- Right to a Fair Trial.

It is therefore clear that from that point, states in Europe became more inclined to apply the UDHR principles into their own countries.

Coincidentally, three institutions, established through this convention, are responsible for enforcing these rights:

The European Commission of Human Rights:

The European Commission was established in Article 19(1) of the Convention, *"to ensure observance of the engagements undertaken by the High Contracting Parties."*

The European Commission of Human Rights was a special tribunal. From 1954 to 1998, individuals did not have direct access of the European Court of Human Rights, and hence applications were made to this Commission. If

⁵¹ Maša Marochini. (2014). The interpretation of the European Convention on Human Rights. Zbornik Radova Pravnog Fakulteta U Splitu, 51(1), 63–84.

⁵² 'What Is The European Convention On Human Rights? | Equality And Human Rights Commission' (Equalityhumanrights.com) <<https://www.equalityhumanrights.com/en/what-european-convention-human-rights>> accessed 6 November 2018

the commission found the case to be of certain relevance it would launch the case in the Court on behalf of the individual.

John T, White, in *'The European Commission of Human Rights: An Analysis and Appraisal'*⁵³ observes how, unlike most bodies created by the CoE, the Commission did not act in the best interests of the State, but ensured that the principles of the Convention were upheld. Essentially, the Commission was *'an agent to the Convention.'* It is clear that the body held extreme devotion to the human rights endorsed in the ECHR. In this way, the principles of the UDHR were therefore applied throughout Europe in a consistent way.

However, in 1998, through protocol 11, the Commission was abolished and replaced with a single permanent court.

The Committee of Ministers:

This body can be referred to as the Council of Europe's statutory decision-making body. This is declared very clearly in Chapter IV of the statute of the Council of Europe.

Clearly, the body makes decisions keeping upholding the principles of the Convention as well as those of the UDHR. In fact, in the 'Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities' adopted in 2008, this is clearly advocated. Once again, the application and echoing of the UDHR is implied:

'Recalling the United Nations Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms of 9 December 1998'

The European Court of Human Rights

This body can be considered as the most important body of the CoE. It is an international court, consisting of a number of judges coming from each member-state of the Council who have ratified the ECHR.⁵⁴ The main role of this court is the application of the ECHR by ensuring that all member states follow its principles. The court does so by examining complaints, known as applications, launched against a certain state which has breached a right of the Convention. The violation could include torture, ill-treatment of prisoners, as well as discrimination. The court will then encourage parties to

⁵³ John T White, 'The European Commission of Human Rights: An Analysis and Appraisal ' [] 3(2) Brooklyn Journal of International Law.

⁵⁴ 'European Court of Human Rights: Questions and Answers' (,) <<http://www.echr.coe.int>> accessed 8 November 2018

reach a friendly settlement, and if no settlement is reached, it will determine whether a violation has actually occurred. The judgement the court produces is binding.

The universality of the Court of Human Rights and the Convention is seen in the fact that one does not need to be a national of one of the States bound by the said Convention. This trait of universality definitely derives from the UDHR.

The Court's devotion to human rights is, therefore, clearly evident in its execution of judgements in cases of individual applications.⁵⁵ Within a judgement, the ECtHR will state whether there has been a violation by the accused State, and, if so, which articles of the Conventions have been actually violated. It is the State in question who is responsible for the execution of the judgements of the ECtHR, but this application is monitored by the Committee of Ministers of the Council of Europe. This highlights the extent of the fairness of the trial, respecting the rights of both the individual prosecutor and the accused.

A clear limit of the ECtHR is that it cannot invalidate laws or decisions of national courts. It can only state that the national court has violated human rights, but cannot annul such acts. However, States are bound to these findings, and are required to ensure that the violations terminate. This enhances the way human rights principles are applied in Europe.

The ECtHR, nonetheless, has its problems, the biggest being the Court's overload. Factors to this increase in case-load include the greater awareness of rights, the enlargement of the CoE, as well as the Court's broad interpretation of the rights included in the ECHR. Protocol 14 of the Convention, however, tries to mitigate the creation of further cases, through regulations such as the introduction of a single judge. This change, amongst others, represents an attempt to increase the efficiency of the Court at a time when it is facing case overload. However, despite these changes, the caseload continues to grow constantly. It is clear now that the changes introduced by Protocol 14 will not be sufficient. Therefore, it is of necessity that further change is carried out for proper justice to be served, consistently, in order to further implement human rights in Europe.

⁵⁵ CCBE, 'THE EUROPEAN COURT OF HUMAN RIGHTS QUESTIONS & ANSWERS FOR LAWYERS' [2014]

The Development of the EU institutions:

As the years passed, the EU institutions developed further in relation to their human rights policies. For instance, in 1977⁵⁶, the EP, the Council and the Commission adopted a joint declaration on Fundamental Rights. This suggests new efforts made within the European Union to implement human rights into member states at a higher degree.

Charter of Fundamental Rights of the European Union:

What is the Charter of Fundamental Rights of the EU?

Following the 50th anniversary of the Universal Declaration of Human Rights, a 'European Charter of Human Rights', was drafted 1999, focusing on fundamental rights protection already inherent in the legal systems of the EU member states and the EU. The scope of the Charter was to draft a single document containing all those rights included in CJEU case law, in addition to those which are contained in the common constitutional traditions of EU member states.

This resulted in the publication of 'The Charter of Fundamental Rights of the EU.' The charter enshrines political, social and economic rights of the EU. It may be considered as '*the most recent and most visible sign of the European Union's efforts to protect and promote basic human rights.*'⁵⁷

The charter was proclaimed in 2000, by the EP, the Council of Ministers and the European Commission. However, it did not receive legal status at time of publication.

What is included in this Charter?

The rights included in the Charter are divided into six sections: Dignity, Freedom, Equality, Solidarity, Citizens' rights and Justice⁵⁸. These rights are evidently based on the fundamental rights and freedoms recognised by the European Convention on Human Rights. Therefore, it is clear that these principles derive from the UDHR.

This can be clearly seen when taking a closer look at some of the Charter's titles:

⁵⁶ The Charter of Fundamental Rights'
(<http://www.europarl.europa.eu/factsheets/en/sheet/146/the-charter-of-fundamental-rights>,) <> accessed 9 November 2018

⁵⁷ Lulasz Bojarski , 'The Charter of Fundamental Rights as a Living Instrument: Guidelines for a Civil Society'

⁵⁸ 'The Charter of Fundamental Rights of the European Union'
(http://www.europarl.europa.eu/charter/default_en.htm,) <> accessed 9 November 2018

TITLE 2: Freedoms:

Within this title, rights to liberty are upheld, as well as rights to freedom of thought and religion. This aligns with Article 18 of the UDHR in which it is declared that *'everyone has the right to freedom of thought, conscience and religion.'* Article 19 also equates to these same principles: *'everyone has the right to freedom of opinion and expression.'*

TITLE 4: Solidarity:

Title four ensures the protection for the rights of workers, just as Article 23 declares in the UDHR, where it is stated that *'everyone has a right to work'*.

TITLE 6: Justice:

This title reaffirms the rights to an effective remedy and fair trial, as famously seen in the UDHR, in Articles 10 and 11, where it is advocated that *'everyone is entitled in full equality to a fair and public hearing'*, and that *'everyone charged with a penal offence has the right to be presumed innocent until proven guilty'*, respectively.

Through this analysis it is safe to say that the Charter reaffirms certain rights which already existed in certain states. However, it clear that, apart from this, it is also innovative in some aspects. This is seen through the explicit mentioning of disability, age and sexual orientation as prohibited grounds of discrimination. This highlights development and improvement of human rights principles declared in the UDHR.

The application of the Charter:

Title 7 of this Charter includes provisions governing the method of application and of this document. The method of application implies universality, as declared in the UDHR, as the Charter recognises that the rights are to be granted to *'everyone'*, regardless of nationality or status. The main method of application of the Charter may be considered as the EU Agency for Fundamental Rights, which was established by a Council regulation in 2007 to provide EU institutions and member states with assistance in the field of Fundamental Human Rights.

The Legal Status of the Charter:

It was of paramount importance that this charter focusing on human rights became legally enforceable. Thus, through the adoption of the Treaty of Lisbon in 2009 the Charter came into direct effect, as well as legally binding. This is evident in Article 6(1) of the Treaty on European Union:

'[t]he Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union [...], which shall have the same legal value as the Treaties'

Thus, through this treaty the legal status of human rights is elevated greatly. This is due to the fact that now the institutions of the EU, as well as each member state became obliged to secure the rights and freedoms stated in the Charter. Consequently, the Charter has become a legal tool in the jurisprudence of the CJEU, as it is constantly being referred to in its judgements.

The Situation Today:

Nine years have passed since the ratification of the Treaty of Lisbon. Naturally, from that point on, Europe has continued to develop their human rights policies, hence embedding the principles of the UDHR further into European countries.

A major milestone, in relation to human rights, made during this period is the EU accession to the ECHR⁵⁹, as specified in article 6(2) of the TEU, defining that the EU 'shall accede' to the ECHR. This accession definitely had a beneficial impact to the protection of human rights. These benefits include the increase in legal protection of EU.

Apart from this, in two resolutions made in 2014, the EP also called for the creation of a 'Copenhagen mechanism', which would constitute a more efficient tool to ensure that Member States fully respect the fundamental values of the EU and the requirements of democracy and the rule of law. Furthermore in 2016, the EP adopted a resolution with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights. These actions made by the EP highlight the determination of the EU to improve the status of human rights further.

However, this does not mean that Europe has succeeded in respecting all the principles of the UDHR: *Europe isn't perfect, and human rights abuses still plague the continent.*⁶⁰

⁵⁹ "The Protection of Fundamental Rights in the EU Post-Lisbon" (E-International Relations) <<https://www.e-ir.info/2013/12/01/the-protection-of-fundamental-rights-post-lisbon/>> accessed November 11, 2018

⁶⁰ "The EU's Top 5 Human Rights Issues" (Public Radio International) <<https://www.pri.org/stories/2012-10-12/eus-top-5-human-rights-issues>> accessed November 12, 2018

In fact, certain human rights principles are still being violated on a daily basis. This is evident⁶¹ when analysing Europe's major issues at this point in time:

Migration and Asylum:

The issue of migration and asylum continues to grow in Europe. While member states less affected by direct arrivals remain reluctant to share responsibility for asylum seekers, the ECtHR ruled that Hungary was in violation of its human rights obligations for the way it detained asylum seekers and returned them to Serbia under the "safe third country" argument. Similarly, Croatia forced back migrants who entered the country, without even examining their asylum documents.

All of these actions imply complete diversion from Article 14 of the UDHR, advocating that *'Everyone has the right to seek and to enjoy in other countries asylum from persecution'*.

Discrimination and Intolerance.

Human Rights Watch states how *"Racist and xenophobic incidents and policies, particularly affecting the Roma and Sinti, Jewish, and Muslim populations, as well as migrants, were an issue in a number of EU states,"*⁶² Therefore, racist, xenophobic, and anti-Muslim sentiment continue to intensify across the EU due to socio-political issues. This is evident in the Council of Europe's June Annual Report, where the Commission against Racism and Intolerance noted that nationalistic populism and xenophobic hate speech had entered the political mainstream in the region.

Apart from this, Italy's policies against Roma Populations are also deemed discriminatory, as well as Germany's racism-related incidents against Jewish and Muslim communities.

The instances mentioned all go against principles advocated in the UDHR related to discrimination and inclusivity.

⁶¹ "World Report 2018: Rights Trends in European Union" (Human Rights Watch January 18, 2018) <<https://www.hrw.org/world-report/2018/country-chapters/european-union>> accessed November 12, 2018

⁶² "EU States Criticised for Human Rights Violations" (EUobserver) <<https://euobserver.com/institutional/27413>> accessed November 12, 2018

Terrorism and Counterterrorism:

Due to terrorist attacks unfolding in European countries, certain countries, such as France and Germany, passed laws to order administrative controls, hence restricting movement and association of people considered as a threat to national security.

Similarly, a new EU directive to combat terrorism was approved by governments, requiring states to criminalize 'public provocation to commit a terrorist offence'. These actions have led human rights groups to express concern regarding its impact on freedom of expression and movement.

Apart from this, France continues to use abusive counterterrorism powers following the November 2015 attacks.

These practices are also unacceptable in the light of the principles advocated in the UDHR.

Therefore, it is clear that Europe has come a long way in terms of human rights policy. This can be seen when considering the fact that the European Union developed from a mere monetary union to a union in which its institutions, such as the Council, the ECJ and the EP, uphold human rights as one of their primary functions. Apart from this, through the Charter of Fundamental Rights of the EU, EU member-states are legally obliged to protect fundamental human rights.

Similarly, the Council of Europe, through the European Convention of Human Rights as well as the European Court of Human Rights, display particular efforts made by Europe to improve the environment of human rights.

From these examples one can see how the UDHR, slowly and steadily became embedded in Europe. However, as already mentioned, one cannot assume that the UDHR has reached its fullest potential in Europe. This can be seen through the current issues being experienced in Europe.

Therefore, even though the Europe has thrived in relation to human rights policy, more action needs to take place to achieve the principles mentioned in the UDHR.

BRICS

The BRICS countries represent Brazil, Russia, India, China and South Africa. These five countries form part of some of the major regions of the globe but also enjoy emerging and flourishing economies. Collectively these countries contribute to 40% of the world's population, 25% of the world's landmass, and about 20% of the global GDP. Such countries had for several decades a hunger

to catch up with their fellow wealthier rivals. This motivation led to a climate of cheap labour, higher productivity, and continuous investment in infrastructure and education.⁶³ Therefore, this was less than beneficial to foster respect for human rights and dignity within.

Human Development and Human Rights

The advancement of human rights promotes human development, which entails the realisation of all human rights and vice versa. The global human rights framework, starting with the Universal Declaration of Human Rights (1948), the Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights (1966), regards these rights as essentially 'indivisible, interrelated and interdependent'; a virtuous circle. Consequently, the UNDP's 2000 report Human Development and Human Rights declared that 'poverty eradication is not only a development goal – it is a central challenge for human rights in the 21st century' and that 'an adequate conception of human development cannot ignore the importance of political liberties and democratic freedoms'.

The causal links between human rights render them mutually reinforcing. Ensuring civil and political rights – freedom of expression (which requires access to information), association and participation – thus empowers people to claim their social, economic and cultural rights.

Political and civil rights are necessary to exercise influence and power in a democracy to effect change to structural injustices that prevent human development, whether by social or economic exclusion, marginalisation or discrimination, which undermine dignity and equality. Enjoyment of essential levels of development likewise optimises choices over exercise of power.⁶⁴

In moral philosophy, the basis for human rights, access to information is understood as necessary in order to live a 'minimally good life'. Human beings are creatures with desire and capacity for knowledge. Deprived of adequate information and knowledge, life is seriously impoverished. Knowledge is a primary good – useful to everyone, whatever their conception of the good life – and pragmatically essential so people have the capacity to exercise their other rights.

The right to information is an instrumental right, pivotal to creation of awareness of the existence of rights, to break down barriers of disbelief, to

⁶³ Antoine Van Agtamel, 'Think Again : The Brics' (2012) 196 Foreign Policy <<https://www-jstor-org.ejournals.um.edu.mt/stable/pdf/41726721.pdf?refreqid=excelsior%3A0733ec4fdc8996089eaf4af9e9e03760>> accessed 25 November 2018.

⁶⁴ 'HSRC' (*Hsrc.ac.za*, 2018) <http://www.hsrc.ac.za/en/review/hsrc-review-march-2014/brics-dev-bank?fbclid=IwAR39d_TpSjf8h-qwndkiTrlqygXvBzJSg_6aR-cgzn5olyF2WXDCUIN2H_Q> accessed 2 December 2018.

mobilise for changes in policy and behaviour, and to create a culture of accountability for realising other human rights. Before the adoption of the UDHR, the UN general assembly declared that 'freedom of information is a fundamental human right... and the touchstone of all the freedoms to which the United Nations is consecrated' (1946).

MDBs have progressively developed standards and policies that ever more closely approximate international human rights norms.⁶⁵

Prospects for the BRICS leadership

That the BRICS Development Bank (BDB) should fulfil this commitment to shareholders is hopefully beyond question. Widespread hope has been expressed that BRICS members – the BDB's first shareholders – will provide impetus for greater democratic fairness, voice and accountability in global governance institutions. Internal BRICS arrangements are currently too informal and inchoate to allow many insights into the features of its first formal entity.

Some basic considerations, although not adequately predictive, may permit a preliminary assessment of the prospects for desired BDB leadership. First, BRICS members have mostly supported or ratified the primary components of the international human rights framework.

Second, the internal power distribution (shareholding) in existing MDB boards reflects dominance of the most powerful Western democracies. In the WB, add China and Japan. In the ADB they're joined by India, Australia, Indonesia, Canada and South Korea. The IADB is dominated by the USA (30%), Argentina, Brazil, Mexico, Japan and Canada, while the AfDB enjoys the most egalitarian leadership, spread among Nigeria, Algeria, the USA, Germany, Japan, Libya, Egypt, Canada, South Africa and France.

Hope has been expressed that BRICS members – the BDB's first shareholders – will provide impetus for greater democratic fairness, voice and accountability in global governance institutions.

Third, the quality of national governance, particularly voice and accountability. The twenty-first century will undoubtedly be characterized by the economic, philosophical, and geopolitical trends emanating from the rise of the global South. Accelerated achievements on many fronts have caused these trends to emerge as new issues and actors, permeating the existing international system and global landscape. Countries like Brazil, Russia, India, China, and South Africa – a group that has been coined by analysts as the 'BRICS' – have

⁶⁵ Ibid

been at the forefront of these achievements, with unprecedented levels of growth and increased multilateral interactions.

John Ikenberry takes notice of the greater influences these emerging issues and actors have begun to have on the existing order by exclusively focusing on the rise of China. In his Foreign Affairs piece, "The Rise of China and the Future of the West: Can the Liberal System Survive?" Ikenberry depicts the East Asian giant's extraordinary economic growth as "one of the great dramas of the twenty-first century."¹ Referencing the possible decline of what he refers to as the "American era" in global politics, Ikenberry addresses the conventional belief that the reorientation of the world – from the existing Western-centered order to one focused on the East – is inevitable.

The Universal Declaration of Human Rights (UDHR), adopted in 1945 in response to the atrocities of the Holocaust, established the discourse for the human rights norms that pervade the existing international system. By virtue of the current world order, human rights are granted to all individuals for purposes of protection from the actions of the state. The contemporary human rights regime is a mélange of international treaties, multilateral agreements, strong domestic standards, and scholarly interpretation that has since become the theoretical cornerstone of international law. Given this, Ikenberry's question – will China overthrow the existing order or become a part of it? – still remains unanswered. According to Ikenberry, there are two possible answers to this question: 1) China will overthrow the world order and associated institutions that have been created in recent decades; or 2) China will assimilate into the structures and institutions of the current Western-led order.

Fabiano Mielniczuk does an exceptional job in compiling recent United Nations speeches of representatives from each of the BRICS states to illustrate this common interest – what he refers to as a "developmental-multipolar set of social claims...that position development and multipolarity as the cornerstones of the BRICS initiative."²¹ This paper helps present a portrayal of the BRICS' amalgamation for what they believe to be a fairer world order – a transition from a liberal-unilateral international system to one representative of the demands of developing countries and a stringent focus on the right to development as the most fundamental human right.

The BRICS, through their mutual interests of development and increased multipolarity, view the current world order as unfair and in need of desperate change. In terms of human rights norms, Foreign Minister Qian Qichen offered a particularly interesting and significant statement on behalf of the world's developing states: "In the field of human rights, equal importance should be attached to civil and political rights, as well as to economic, social, cultural and developmental rights. For the vast number of developing countries, the most fundamental human right is the right to subsistence and development". Therefore, concerning human rights standards, China believes that

consideration should first be given to a country's various circumstances or position and then applied appropriately – especially for developing states. But what is most intriguing is the belief advocated for by China that subsistence and development are the most fundamental human rights. While these rights currently exist within the international human rights framework, developed states with a preponderance of global economic and political power often disregard their importance and presence. This new institutionalization and political reality of the BRICS provides a new platform for Chinese interests to be entertained with greater authority and validation than traditional international forums, particularly China's aforementioned interpretations of international human rights standards.

Therefore, we are presented with the following questions: Will the BRICS' institutionalization of power help advocate for an alternative norms regime characterized by the unique interests of developing states? How will the BRICS' increased cooperation promote a stronger emphasis on what they perceive as the fundamental right to development?

Thus, the new institutionalization and political reality of the BRICS provides a new platform for developing states' interests – especially China's – to be entertained with greater authority and validation than traditional international forums. This is especially witnessed through the aforementioned interpretations of the right to development and subsistence as a fundamental international human right.⁶⁶

Brazil

The mistreatment of detainees and unlawful police killings are amongst the disturbing problems that have serious implications on Brazil's criminal justice system. Murders by police are incrementing to record levels in Rio de Janeiro, and in January 2017, more than 120 inmates were killed in gang-related violence. Domestic violence remains a huge concern as well, with thousands of cases each year which are not being adequately investigated.

Indeed, in Brazil, Police officers, including off-duty officers, killed 4,224 people in 2016, about 26 percent more than in 2015, according to the Brazilian Forum on Public Security. After a two-year decline in killings by on-duty police officers in the state of São Paulo, the 494 killings from January to September represented a 19 percent rise from the same period in 2016. On-duty police officers in Rio de Janeiro killed 1,035 people from January to November, a 27 percent rise from the same period in 2016. While some police killings result from legitimate use of force, others do not. Human Rights Watch

⁶⁶ 'The BRICS And The Global Human Rights Regime: Is An Alternative Norms Regime In Our Future?'

(*Ncurproceedings.org*, 2018) <<http://www.ncurproceedings.org/ojs/index.php/NCUR2015/article/viewFile/1453/798>> accessed 2 December 2018.

has documented scores of cases in the past decade where there was credible evidence of an extrajudicial execution or a cover-up that were not properly investigated or prosecuted.

Military police officers face broad restrictions on their own freedom of speech. State disciplinary codes and the military criminal code subject officers to expulsion from the force and prison sentences for offenses such as criticizing a superior officer or a government decision. Some commanders use those norms to impose disproportionate punishments on officers who advocate for police.

In May, Brazil approved a new migration law that grants non-citizen immigrants equal access to public services, including education and health, and the right to join unions. The law allows the government to provide humanitarian visas to people from countries suffering “*serious or imminent institutional instability, armed conflict, great calamity, an environmental disaster, or serious violation of human rights or international humanitarian law.*”

The national Human Rights Ombudsman’s Office received 725 complaints of violence, discrimination, and other abuses against lesbian, gay, bisexual, and transgender (LGBT) people in the first half of 2017.

In October 2017, the ministry issued a resolution that redefined “slave-like” conditions to apply only in circumstances when workers’ freedom of movement is restricted. It also required that police participate in inspections and that the minister approve the publication of the names of companies penalized. A week later, a Supreme Court justice ruled the resolution was unconstitutional and suspended it until the full court decides on the issue.⁶⁷

Russia

In the first six months of 2017 alone, the number of people administratively punished by Russian authorities for supposedly violating the country’s regulations on public gatherings was two-and-a-half times higher than throughout 2016.

In spring and summer, government critics in numerous cities across Russia held peaceful anti-corruption protests that authorities refused to endorse. Officials harassed and intimidated protesters, including schoolchildren, university students, and also the parents of those children who participated. University administrators directly or indirectly threatened students with

⁶⁷ 'World Report 2018: Rights Trends In Brazil' (*Human Rights Watch*, 2018) <<https://www.hrw.org/world-report/2018/country-chapters/brazil>> accessed 2 December 2018.

expulsion for involvement. In July, a university in Kaliningrad expelled a law student, for his active role in the protests.

From spring 2017 onward, authorities systematically interfered with the presidential campaign of a leading opposition politician, Alexei Navalny. Formally disqualified from the race due to an outstanding criminal conviction resulting from a politicised, unfair trial, Navalny opened campaign offices in most of Russia's regions.

Police across Russia searched Navalny's offices and seized campaign materials. Authorities frequently refused to authorize campaign sidewalk displays, and detained campaigners on groundless charges. Police also raided the homes of local campaigners and their relatives.

Navalny campaigners and offices also faced increasing attacks by ultra-nationalist groups and pro-Kremlin activists. Attackers vandalized campaign offices or campaigners' homes, stormed into meetings, stole campaign materials, and damaged office equipment and campaigners' vehicles. They also physically assaulted campaigners, beating and throwing eggs and other objects at them. In some cases, police merely stood by or arrived too late to catch the attackers. Authorities registered complaints filed by campaigners, but typically failed to carry out effective investigations.

Authorities used a 2015 law on "undesirable organizations" to ban four more foreign organizations, bringing the total to 11, and to intimidate protesters and independent groups.

Legislation adopted in July banned anonymous use of online messenger applications and software designed to circumvent internet censorship.

By February 2017, the number of people imprisoned for extremist speech spiked to 94, from the previous 54 in 2015.

In November, the parliament amended Russia's media legislation to enable the government to designate any media organization or information distributor of foreign origin as "foreign media performing the functions of a foreign agent." Those designated must comply with the requirements for nongovernmental organizations (NGOs) set out in the 2012 "foreign agents" law.

In April, the Supreme Court banned as extremist the Jehovah's Witnesses organization, which has more than 100,000 worshippers across Russia.

Since July 2016, when the "Yarovaya Law" entered into force, authorities fined over 100 religious activists, mainly evangelist Christians, for either preaching without special authorisation or distributing religious literature without the religious distributor's name on the cover.

In June, authorities stated that the Interior Ministry for Dagestan, in the south of Russia, was no longer placing “adherents of non-traditional Islam” on police watchlists. However, persecution of Salafi Muslims, including arbitrary detentions and harassment, continued.

Early in 2017, Chechen security officials illegally detained and tortured presumed jihadists. *Novaya Gazeta* reported that in December 2016 and January 2017, Chechen police extrajudicially killed 27 detainees; Human Rights Centre Memorial stated that, based on their investigation, 23 of the people on *Novaya Gazeta*'s list disappeared and two died following abduction-style detentions by local security officials.

The Russian LGBT Network opened a special hotline for those in immediate danger and provided evacuation-related assistance to 79 people. Most of them eventually found safe sanctuary abroad. Chechen police allegedly harassed relatives of those who fled, attempting to pressure them into disclosing the men's whereabouts, and forcing them to sign documents with false statements that the men were traveling outside Chechnya at the time the purge was ongoing.

Authorities continued to enforce discriminatory policies and laws against lesbian, gay, bisexual, and transgender (LGBT) people.

In May, St. Petersburg authorities refused to approve a flash-mob on International Day against Homophobia, Biphobia and Transphobia, citing the “gay propaganda” ban.

In June, the European Court of Human Rights (ECtHR) ruled that the “gay propaganda” law violated freedom of expression, was discriminatory, and encouraged homophobia.

Despite persistently high rates of domestic violence, in February the Russian government enacted a law decriminalising acts of domestic violence that do not cause serious harm leading to hospital treatment, or which aren't reported more than once a year. The law naturally, leaves domestic violence victims more vulnerable to abuse. Moscow's mayor denied activists authorisation to protest the law. A comprehensive domestic violence law has been stalled in parliament since 2014.

The government continued to provide political and material support to armed “separatists” in eastern Ukraine but took no measures to reign in their abuses, such as arbitrary detentions and torture. Russian authorities also continued repression against critics, primarily Crimean Tatars, in occupied Crimea.

Between April and August, Russia conducted at least 13,000 air strikes in Syria. While the number of civilian casualties appeared to decrease, partially as a result of local ceasefires, monitoring groups reported hundreds of civilian deaths each month from aerial attacks. Syrian and Russian forces carried out

unlawful attacks, including airstrikes on schools and hospitals, and air-dropped cluster munitions and incendiary weapons in populated areas. Russian ground forces became more active in Syria. Russia also played a role in negotiating local ceasefires and evacuations and participated in the evacuation of fighters and civilians from opposition-controlled areas. Some evacuations could amount to forced displacement, where civilians may have been transferred to other areas without their informed consent and beyond the exceptions of imperative military or protection reasons.

Russia continued to protect Syria from repercussions for violating the laws of war. At the United Nations Security Council, Russia, along with China, vetoed a February 2017 resolution proposing sanctions on those responsible for chemical attacks. Russia was also the only member to veto an April 2017 resolution condemning a chemical attack in northern Syria and calling for an international investigation. Russia continued its efforts to shield the Syrian government from accountability by lobbying against the International, Impartial and Independent Mechanism (IIIM), established by the General Assembly in December 2016 to investigate serious crimes committed in Syria and prepare and preserve evidence.⁶⁸

India

Several parts of India witnessed violent protests in 2017. In August, at least 38 people were killed during protests in Haryana and Punjab led by supporters of a popular spiritual guru, after he was convicted of raping two female followers. In June, the West Bengal state government's decision to make Bengali language mandatory in all schools triggered protests in Darjeeling district over the longstanding demand for a separate Gorkhaland state, killing eight. Five farmers were fatally shot in June in Madhya Pradesh state, allegedly by police, during protests demanding debt relief and better prices.

Mob attacks by extremist Hindu groups affiliated with the ruling BJP against minority communities, especially Muslims, continued throughout the year amid rumours that they sold, bought, or killed cows for beef. Instead of taking prompt legal action against the attackers, police frequently filed complaints against the victims under laws banning cow slaughter. As of November, there had been 38 such attacks, and 10 people killed during the year.

In November, following a two-week official visit to India, the United Nations special rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, called on the government to incorporate a human rights perspective into its national programs on water and sanitation, including the flagship Swachh Bharat Mission. As part of his preliminary findings, he said

⁶⁸ 'World Report 2018: Rights Trends In Russia' (*Human Rights Watch*, 2018) <<https://www.hrw.org/world-report/2018/country-chapters/russia>> accessed 2 December 2018.

the government's emphasis on constructing toilets to end open defecation should not "involuntarily contribute to violating fundamental rights of others," including specific castes engaged in manual scavenging, or marginalised people, including ethnic minorities and those living in remote rural areas.

Tribal communities remained vulnerable to displacement because of mining, dams, and other large infrastructure projects.

Authorities in India continued to use sedition and criminal defamation laws against government critics. In June, police in Madhya Pradesh state arrested 15 Muslims on sedition charges for allegedly celebrating Pakistan's victory over India in a cricket match, despite Supreme Court directions that sedition allegations must involve actual violence or incitement to violence. After a public outcry, the police dropped the sedition case but charged them with disturbing communal harmony. Also, in June, the Karnataka state assembly punished two editors for articles that allegedly defamed two of its members.

Journalists faced increasing pressure to self-censor due to threat of legal action, smear campaigns and threats on social media, and even threats of physical attacks. In September 2017, unidentified gunmen shot dead publisher and editor Gauri Lankesh, a vocal critic of militant Hindu nationalism, outside her home in Bengaluru city.

Multiple high-profile cases of rape across the country during the year once again exposed the failures of the criminal justice system. Nearly five years after the government amended laws and put in place new guidelines and policies aimed at justice for survivors of rape and sexual violence, girls and women continue to face barriers to reporting such crimes, including humiliation at police stations and hospitals; lack of protection; and degrading "two-finger" tests by medical professionals to make characterisations about whether the victim was "habituated to sex."

In August, the Supreme Court, in its ruling that privacy is a fundamental right, gave hope to lesbian, gay, bisexual, and transgender (LGBT) people in India by stating that section 377 of India's penal code, which effectively criminalises same-sex relationships between consenting adults, had a chilling effect on "the unhindered fulfilment of one's sexual orientation, as an element of privacy and dignity."

In July, a parliamentary committee submitted a report examining the draft [Transgender Persons \(Protection of Rights\) Bill](#), introduced in parliament in August 2016. The report recommended that the bill adopt a 2014 Supreme Court ruling, guaranteeing transgender people the right to self-determine their gender identity. The committee also recommended that the bill recognise transgender people's right to marriage, partnership, divorce, and adoption.

In April, India enacted a new mental health law that provides for mental health care and services for everyone and decriminalises suicide. However, disability rights groups say much remains to be done to ensure that the law is properly enforced.

There were no executions in 2017 but nearly 400 prisoners remained on death row. The number of people sentenced to death nearly doubled from 2015 to 2016, from 70 to 136. Most crimes for which capital punishment was handed down included murder, and murder involving sexual violence.⁶⁹

China

Authorities adopted new measures to limit access to circumvention tools that allow netizens to scale the Great Firewall to access the uncensored global internet. In January 2017, the Ministry of Industry and Information Technology issued regulations making it unlawful to provide circumvention tools without the ministry's pre-approval.

The Chinese government has long conflated peaceful activism with violence in Xinjiang, and has treated many expressions of Uyghur identity, including language and religion, as threatening. Uyghur opposition to government policies has been expressed in peaceful protests but also through violent attacks. However, details about protests and violence are scant, as authorities severely curtail independent reporting in the region.

Authorities in Tibetan areas continue to severely restrict religious freedom, speech, movement, and assembly, and fail to redress popular concerns about mining and land grabs by local officials, which often involve intimidation and arbitrary violence by security forces. In 2017, officials intensified surveillance of online and phone communications.

The government restricts religious practice to five officially recognized religions in officially approved religious premises. Authorities retain control over religious bodies' personnel appointments, publications, finances, and seminary applications. The government classifies many religious groups outside its control as "evil cults," and subjects members to police harassment, torture, arbitrary detention, and imprisonment.

In February 2017, Beijing police detained Sun Qian, a businesswoman and Canadian citizen, on suspicion of "using cults to sabotage law enforcement." Sun is a follower of the Falun Gong, a meditation-focused spiritual group banned since 1999. Sun was reportedly pepper-sprayed, put in handcuffs attached to foot shackles, and deprived of sleep.

⁶⁹ 'World Report 2018: Rights Trends In India' (*Human Rights Watch*, 2018) <<https://www.hrw.org/world-report/2018/country-chapters/india>> accessed 2 December 2018.

Authorities in Yunnan province charged more than a dozen Christians in 2017 with “using cults to sabotage law enforcement.” In October, at least three of the charged were given prison sentences of four years. One of their lawyers said the arrests were due to the group not gathering at officially designated churches.

According to a report by World Economic Forum, China ranked 100th out of 144 countries for gender parity in 2017. . The Party Congress, concluded in October, was marked by a striking absence of women in top political posts. Women and girls in China continue to confront sexual abuse and harassment, employment discrimination, and domestic violence. The Chinese government remains hostile to women’s rights activism.

China ratified the Convention on the Rights of Persons with Disabilities in 2008. However, persons with disabilities continue to face discrimination in areas including education and employment.

While China decriminalised homosexuality in 1997, it lacks laws protecting people from discrimination on the basis of sexual orientation or gender identity, and same-sex partnership is not legal.

In May, Chinese authorities shut down a popular dating app for lesbians. In June, the government banned “abnormal sexual lifestyles,” including homosexuality, from online video programs. In July, authorities forced the LGBT group Speak Out to cancel a conference in Chengdu. An earlier Speak Out event scheduled for May in Xi’an was also cancelled after police briefly detained the organizers and told them that LGBT events were “not welcome” in the city.

Beijing also appeared to step up its campaign to forcibly return North Korean refugees and asylum seekers in 2017: between July and August, 41 people were detained; 51 had been detained in all of 2016.⁷⁰

South Africa

In October, the South African Human Rights Commission (SAHRC) estimates that half-a-million children with disabilities still do not have access to education, with 11,461 children with disabilities on waiting lists for school placements (up from over 5,500 in 2015). The SAHRC expressed concern that children with disabilities constantly experience barriers to the enjoyment of basic human rights, including the right to education, healthcare, and family care.

Despite the government’s international and domestic obligations, many children with disabilities do not have equal access to primary or secondary

⁷⁰ 'Human Rights Watch' (*Human Rights Watch*, 2018) <<https://www.hrw.org/world-report/2018/country-chapters/china>> accessed 2 December 2018.

education, and face multiple forms of discrimination and barriers when they do access schools. They are turned away from mainstream schools, denied access to inclusive education, and referred instead to special schools by school officials or medical staff simply because they have a disability. The referrals system needlessly forces children to wait up to four years at care centres or at home for placement in a special school.

While education in public schools is free, children with disabilities who attend government special schools are required to pay school fees, and many who attend mainstream schools are asked to pay for their own class assistants as a condition for admission. In mainstream schools, many children with disabilities do not have access to the same curriculum as children without disabilities. In addition, many children with disabilities are exposed to high levels of violence and abuse by teachers and students.

In 2017, the government did not complete its efforts to publish accurate data on how many children and young people with disabilities are out of school across the country. It also failed to implement key aspects of the 2001 national policy, which calls for the provision of inclusive education for all children with disabilities, and is yet to adopt legislation that guarantees the right of children with disabilities to inclusive education.

However, the government continued to implement the Screening, Identification, Assessment, and Support (SIAS) policy designed to ensure that children with disabilities are provided full support when accessing education. The majority of the government's limited budget for students with disabilities continued to be allocated to special schools rather than to inclusive education.

In October 2017, an arbitration process, presided over by retired deputy chief justice Dikgang Moseneke, began between the state and families of former hospital patients who died following the Gauteng provincial government shut down of the Life Esidimeni psychiatric hospice complex in Johannesburg, where more than 2,000 people with psychosocial disabilities lived.

Between March 2016 and October 2017, 141 former patients of the hospice died after about 1,700 patients were transferred to smaller institutions while others were discharged, sometimes without their families being notified. The Gauteng government, which terminated its contract with Life Esidimeni in October 2015 citing financial reasons, had a responsibility to ensure the hospice had adequate resources to support the patients.

Despite recurring waves of xenophobic attacks on businesses and the homes of refugees, asylum-seekers, and migrants, authorities appeared reluctant to even publicly acknowledge xenophobia and take decisive action to combat it, including ensuring proper police investigations. Virtually no one has been convicted over past outbreaks of xenophobic violence, including for the Durban violence of April 2015 that displaced thousands of foreign nationals,

or the 2008 attacks, which resulted in the deaths of more than 60 people across the country.

In February, a group calling itself “The Mamelodi Concerned Residents” marched in Pretoria to protest against African immigrants in South Africa, blaming them for crime and stealing jobs meant for South Africans. The march triggered a wave of violent clashes and looting of shops owned by foreign nationals. In December 2016, Johannesburg Mayor Herman Mashaba made reckless public statements blaming illegal immigrants for crime and calling on them to leave the city.

In July 2017, the SAHRC condemned Deputy Minister of Police Bongani Mkongi’s July 14, 2017 statement saying of Johannesburg: “How can a city in South Africa be 80 % foreign national? That is dangerous. South Africans have surrendered their own city to the foreigners.” The commission said the statement was inaccurate and could fuel xenophobia. The government took no action against Mkongi.

The government has yet to finalise the draft national action plan to combat racism, racial discrimination, xenophobia and related intolerance, or provide a mechanism for justice and accountability for xenophobic crimes.

Violence against women, including rape and domestic violence, remain widespread and underreported. According to research findings published in August 2017 by the Centre for the Study of Violence and Reconciliation and Oxfam South Africa, one in five women older than 18 have experienced physical violence, and three women die at the hands of their partner every day. The government has yet to introduce a national strategy to combat violence against women.

In September, the Western Cape High Court ruled that individuals have the right to amend their gender description even if they were married as heterosexuals. Three women and their spouses had taken the Department of Home Affairs to court after it refused to change their gender description. Local rights group, the Legal Resources Centre (LRC), filed the case on behalf of a client who had their marriage deleted from the National Population Register, and two others whom the department advised to get a divorce in order to give effect to their gender rights.

South Africa has a progressive constitution that prohibits discrimination on the basis of sexual orientation and protects the human rights of lesbian, gay, bisexual, and transgender (LGBT) people. The Department of Justice and Constitutional Development has taken significant steps to improve

coordination between government and civil society in combatting violence (including rape and murder) against lesbians and transgender men.⁷¹

Warsaw Pact – the UDHR in post communist states

The Warsaw Pact was a defence treaty against the NATO which consisted of the Soviet Union and 7 satellite states: Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland and Romania. Albania withdrew in 1968 and East Germany in 1990.

It was established on the 14th of May 1955 as a response to the threat of the Western Germany joining the NATO. The Warsaw Pact embodied what was referred to as the Eastern bloc, while NATO and its member countries represented the Western bloc⁷². It consisted of unified military command which would call member states in case of attacks by outside forces⁷³. It ended with the end of the Cold War in 1991, after the collapse of the Soviet Union. The pact has been criticised by the Western bloc as a de facto tool of the Soviet Union to gain control and have military interventions over the countries that gained their freedom after the Second World War, especially the ones that tried to disconnect from the communist political ideology.

Human Rights in the Soviet Union

The focus of Eastern Europe regarding human rights has been social and economic rights in contrast to the West where the focus has been civil and political rights. The difference is one of approach. The Soviet Union centralises the fusion of rights and duties. As the Article 59 of the 1977 USSR Constitution states: *"the exercise of rights and liberties is inseparable from the performance by citizens of their duties."*

The rights of *"Soviet citizens are treated as grants of the state which are held only contingently. Consequently, although there are many rights held by the people of the USSR, amongst these are not the rights of man."* Even though there are major substantive parallels between the rights of Soviet citizens and internationally recognized human rights, Soviet citizens did not enjoy these rights as human rights, with important practical consequences for the way in which they work".⁷⁴

⁷¹ 'World Report 2018: Rights Trends In South Africa' (*Human Rights Watch*, 2018) <<https://www.hrw.org/world-report/2018/country-chapters/south-africa>> accessed 2 December 2018.

⁷² 'What Was The Warsaw Pact?' (*NATO*, 2018) <https://www.nato.int/cps/us/natohq/declassified_138294.htm> accessed 2 December 2018.

⁷³ History.com Editors, 'The Warsaw Pact Is Formed' (*HISTORY*, 2018) <<https://www.history.com/this-day-in-history/the-warsaw-pact-is-formed>> accessed 2 December 2018.

⁷⁴ Jack Donnelly, 'Human Rights And Human Dignity: An Analytic Critique Of Non-Western Conceptions Of Human Rights' (1982) 76 *American Political Science Review*.

Many analysts take the view that great powers tend to oppose strong human rights regimes. One might conjecture that large states have a commitment to sovereignty, independent of the substantive issue at stake, or one might assume that great powers believe they can impose human rights on others unilaterally. This view is widely espoused as an explanation for the combined opposition during the 1950s of the United States, the United Kingdom, the USSR, and China to strong UN enforcement. Yet this consensus lacks theoretical underpinnings or empirical support beyond the casual impressions of a few participants. We shall see that the generalization is disconfirmed by the case of the ECHR negotiations.⁷⁵

Regarding human rights violations, Amnesty International was concerned that Soviet citizens were imprisoned or confined in mental hospitals solely for the non-violent exercise of their human rights. It received reports of ill-treatment from prisons, corrective labour colonies and psychiatric institutions. In 1984 it learned of 53 death sentences and 16 executions. Amnesty International was investigating the cases of more than 560 individuals, but believed the total number of prisoners of conscience to be much higher. Official sources rarely reported on cases of concern to Amnesty International, while individuals who tried to gather such information independently themselves risked imprisonment. At least 132 Soviet citizens were imprisoned under laws specifically restricting freedom of religion and expression. Some individuals, previously persecuted for their exercise of human rights, were imprisoned on criminal charges which Amnesty International believed to be false. Some of those imprisoned for exercising their freedom of expression were convicted, often in closed trials of anti-Soviet agitation and propaganda" and given sentences of up to 15 years' imprisonment and internal exile. However, imprisonment of up to three years for "circulating anti-Soviet slander" was more common".⁷⁶

Human Rights in Hungary

The Hungarian asylum system was under fire in recent years. This was brought about through the amendments that the government made to its law, which resulted in a number of asylum seekers unable to apply for the procedure. A number of asylum seekers were also denied access at the border and left in inhumane conditions.

The government was highly criticized by the UN high Commissioner for refugees but still eventually promulgated a law that hindered civil society organisations ability to properly carry out their functions in light of the refugee

⁷⁵ Andrew Moravcsik, 'The Origins Of Human Rights Regimes: Democratic Delegation In Postwar Europe' (2000) 54 International Organization.

⁷⁶ 'Document' (*Amnesty International Annual Reports*)

<<https://www.amnesty.org/en/documents/pol10/0002/1985/en/>> accessed 2 December 2018.

situation in this country. Furthermore, the European Parliament declared this behaviour to be in breach of the fundamental values of the EU.

Furthermore article 19 of the UDHR can also be deemed to be infringed by this country, due to the fact a most mediums of media are if not state-owned, controlled by individuals in the governments favour.⁷⁷

Human Rights in Poland

In 2017, the polish government enacted a number of laws which directly threatened the rule of law and the independence of the judiciary, two essential pillars of a stable democratic country.

These laws changed the way that judicial appointments would be made and thus make them more nepotistic. The Polish government received substantial criticism and international opposition. In fact, infringements proceedings were initiated against the Polish Government by the EU Commission and a number of recommendations were made to improve the national polish legal framework in this respect.

The polish government also adopted certain legislation that hindered civil organisations from functioning effectively. The government became more stringent with the provision of state funds for these NGOs, therefore a number of them reported that they were not allotted sufficient funds from the government to continue operating.⁷⁸

⁷⁷ 'World Report 2018: Rights Trends In European Union' (*Human Rights Watch*, 2018) <<https://www.hrw.org/world-report/2018/country-chapters/european-union#fa79c3>> accessed 2 December 2018.

⁷⁸ Ibid

Implementation of the UDHR

Article 1:

*"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."*⁷⁹

The objective is clear and not negotiable: to guarantee everyone the right for freedom from fear and a life free from want. On the 70th anniversary of the Universal Declaration of Human Rights the UN is celebrating the progress that has been achieved worldwide on human rights. At the same time, it is clear that the promise of the Declaration is yet to be realised fully, and more importantly people are still facing violations, even complete denial of their human rights. They are being robbed of their freedom to stand for what they believe in at an expense for having to seek refuge as their last resort from oppressive and forceful acts.

The seeking of protection in the face of persecution especially when violating the right to freedom is a clear example that can be seen in the incident of South Sudan 2014, the youngest nation to ever be torn apart by conflict as a foreshadowed effect from the incident of Sri Lanka's decade-long civil war.

Civilians were naturally caught in the middle of all the devastating conflicts, where villages¹ were brought to dust, women and girls were raped, and men were arrested. Consecutively, hundreds of thousands of people are fleeing or trying to flee the violence for the sake of their own life. There was a UN compound shelter in Bor, a strategic city in the North of the capital sheltering approximately 12,000 people from the horrendous government oppressions that were seeking to terminate all those in favour of the rebels. It was clear, that anyone not pro-Government was enlisted to "rebel" and be subjected to be arrested or worse killed.

Ken Payumo, in charge of the compound, was faced with a life-threatening situation when in front of the building a senior government official around 80 armed soldiers approached him, wanting to know whether the people inside are pro-government or supporters of the rebels. They wanted to enter the compound, however it was all up to Ken to try and resolve this matter without anyone being at risk of their life, therefore he claimed that they are welcome to enter as long as they remove their arms. This offer did not satisfy the men and thus they pushed past him whilst the gates of the compound simultaneously closed, leaving him on the outside to fend for himself.

⁷⁹ '70 Years Of Progress On Human Rights' (Humanrights70.org, 2018) <<https://www.humanrights70.org/#02>> accessed 11 November 2018

In the fall of 2008, Sri Lanka was entering its final stages of its decade-long war whereby the government had launched an offensive against the rebel Tamil Tigers in the north of the country where authorities warned that they could not guarantee the safety of the UN staff in the war zone. UN leaders had an extremely difficult decision to make as they knew the danger was imminent.

In November 2007, UN offices in the safe zone suffered severe damages due to government initiated air-strikes, which were at the time growing in intensity. To ensure the safety of the staff, the UN chose to evacuate the rebel-controlled area. However, this decision, as others, came under scrutiny in the aftermath of the conflict. Critics claim that the withdrawal of the UN has cleared the way for the merciless military onslaught which resulted in the death of thousands of civilians, with no one to bear witness.

The latter is a clear contradiction of what the UN actually strives to promote which is the protection of all human rights. One can easily argue that although the circumstances of the situation were devastating and life-threatening, the staff of the UN should be well aware of the upcoming compromises that should be made in effort of the loyalty that should be owed to the Sri Lankan civilians seeking refuge. In fact critics claimed that Sri Lankan civilians were completely denied the right to refuge from these air-strikes, hence denied a human right.⁸⁰

Nevertheless, an internal inquiry recognised the commitment of the UN employees, international staff, and Sri Lankan nationals, who determinedly worked under the suppressive circumstances. Under the forceful pressure from the government, facing the threat of disbarment, the UN staff were hesitant to tell the world about the ongoing civilian casualties, and in order to safeguard their position to continue humanitarian work, they refrained from speaking out more forcefully on the act. While acknowledging the tough trade-offs in such circumstances, between wanting to safeguard their position to protect humanitarian work as well as to protect the civilians and to safeguard their own life, the UN promised that the mistakes made in Sri Lanka should never be repeated.

Out of this undertaking, the 'Human Rights up' initiative was born. Secretary-General Ban Ki-moon launched the 'Human Rights up' in 2013 to ensure that the protection of human rights is at the centre of all UN action and understood to be the responsibility of all UN personnel without any compromises. 'Human Rights up' sets an imperative that UN staff effectively take action to prevent the breach of human rights or humanitarian law in response to serious violations.

⁸⁰ 'Putting Human Rights Up Front By United Nations Development Programme On Exposure' (Exposure, 2018) <<https://stories.undp.org/putting-human-rights-up-front>> accessed 11 November 2018

The 'Human Rights up' introduces three types of changes to ensure the timely actions taken by the UN staff aid to prevent and respond to violations ; Cultural change to instil the idea that protecting human rights is part of all UN staff's job, operational changes to bring peace and security in alignment, and more importantly altering the way the UN works and communicates with its Member States, to make sure that they are fully aware of the emerging problems and engaged from early on. In spirit of the Human Rights up, Ban Ki-moon's successor has continued to build on this commitment.⁸¹

Article 2:

*"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*⁸²

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."⁸³

The Universal Declaration of Human Rights, revolves around a central motif which strongly claims that all human rights are entitled to everyone within the human family, and should not be infringed under any circumstances as set forth in the Declaration. Evidently, these rights are not yet fully realised globally, as can be seen clearly, Rohingya Refugees flee on foot to Cox's Bazar in Bangladesh to escape from the violent military fear in Rakhine State, Myanmar. The political or 'opinionative' distinction between the civilians and the government led to serious chaos, not only robbing the vulnerable civilians from their right to freedom from fear, but also their right to practice or promote any political preference they desire. Nonetheless, the Rohingya Refugees are entitled as clearly stated in Article 2 within the Universal Declaration of Human Rights, to a life whereby no discrimination shall be allowed, however having said that the Refugee camp in Bangladesh has more than 51% of the population of women, being put into devastating fear by military forces concerning rape and serious beating.

⁸¹ 'Putting Human Rights Up Front By United Nations Development Programme On Exposure' (Exposure, 2018) <<https://stories.undp.org/putting-human-rights-up-front>> accessed 11 November 2018

⁸² (Ohchr.org, 2018) <https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 25 November 2018

⁸³ '70 Years Of Progress On Human Rights' (Humanrights70.org, 2018) <<https://www.humanrights70.org/#02>> accessed 11 November 2018

Senu Ara, a 17-year old girl, arrived in Cox's Bazar on foot, as many other Rohingya Refugees did so too. After a week walking barefoot, hungry, tired, and fearful, they had to escape the escalating ferocities in Myanmar. Senu's distressed description of her situation portrays the loss of hope in human-kind.

Commonly at the camp, civilians tend to share their stories of burned homes and missing children with each other. Similarly, the Rohingya women share their stories of their murdered husbands, rape, and their futile wish that their humanity will once again return. In like manner, 22 year old Noor Nahar, shares her unbearable story of how the military kidnapped her brother and most of her relatives and beat her husband.

Bangladesh has been a host to the Rohingya Refugees for nearly 30 years, some 693,000 Rohingya's have made their way to Cox's Bazar in desperate conditions. The Bangladeshi settlements have more than doubled, hence becoming severely overcrowded, with basic necessities becoming highly scarce. Humanitarian agencies have been trying their utmost to supply "dignity kits" including essential relief items such as soaps, clothes, scarves, menstrual hygiene products, and flashlights to women. However, demand has been clearly reported as being unmet due to increasing population.

Ayesha Khatun, an outreach worker for the Multi-Purpose Women's Centre, visits to encourage women and girls to practice and share their stories, as a means to overcome their distresses by utilising the services productively. Similarly, 22-year old Minara Begum, another outreach worker also strives to help other women, mainly those pregnant at the compound, to reach relief distribution points and relief items.

Both outreach workers make great efforts to encourage women to learn how to speak up and present issues within the camp itself to promote better day-to-day management, and learn how to support each other despite the brutal, unjust, reality that led to their violation of human rights, freedom from fear and infringement of freedom to practice any desired preference.

Article 3:

"Everyone has the right to life, liberty and security of person."⁸⁴

Unquestionably, the objective desire envisaged in the 2005 World Summit between all Heads of State and Government remains far from the current crude reality. The responsibility to protect, known as RtoP, stands equally on three significant pillars consisting of *"the responsibility of each State to protect its populations, the responsibility of the international community to assist States*

⁸⁴ (Ohchr.org, 2018)

<https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 25 November 2018

in protecting their populations and also the responsibility of international communities to protect when a State is manifestly failing to protect its populations.”⁸⁵

The RtoP set up in the World Summit is the embodiment of the progress made in effort to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Given the current range and intensity of the crimes and downfalls nowadays one would seem to think that the RtoP has failed, however crucial advances in the evolvement of the principle and design for practical and realistic measure to protect provide a more optimistic picture.

Ivan Simonovic, special Adviser to the Secretary General on the Responsibility to Protect, clearly states and explains that “there is a range of situations today where populations are at risk of the RtoP crimes, or where such crimes are ongoing. These crises are taking place against a backdrop of retreating internationalism, diminishing respect for international humanitarian and human rights law, political disunity in key decision-making bodies such as the Security Council, and a level of defeatism about promoting ambitious agendas like protection.”⁸⁶

Several of the armed conflicts that have occurred in the past years such as the besieging of civilian communities in Syria is a clear disregard and violation of International humanitarian law, not only robbing the civilians of their rights but diminishing the concept of RtoP, ridiculing it and stripping it from its objective visage to a safer population and community.

Article 4:

“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁸⁷

Sexual Slavery was only convicted as a war crime until recently. Before that, widows were deprived of their belongings and subjected to sexual and psychological abuse and forced to become a servant domestically during the internal armed conflict in Guatemala that ran between 1960 to 1996.

The struggle for land rights in eastern Guatemala where land dispossession and mining interests have prevailed served only as a foreshadowing effect to the ongoing suffering of the women in Sepur Zarco. The military base establishment in 1982 until 1986 operated as a ‘recreational centre’ however local women were repeatedly raped by members of the army. Carmen, a rape

⁸⁵ 'The Responsibility To Protect | UN Chronicle' (Unchronicle.un.org, 2018)
<<https://unchronicle.un.org/article/responsibility-protect>> accessed 2 December 2018.

⁸⁶ Ibid

⁸⁷ (Ohchr.org, 2018)
<https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 25 November 2018

victim, was forced to work 12-hour shifts and admitted her horrendous experience.⁸⁸

UNDP supported organisations provide psycho-social and legal support to the women in Sepur Zarco, to promote strength within the women themselves to learn how to stand up for themselves and admit fearlessly that these are all crimes and should be subject to prosecution. During the internal conflict, 88.7% of the rape victims consisted of Mayan indigenous groups, whereby 62% of the rape victims were women ages between 18–60, 35% were young girls, and 3% were elderly women. The UNDP, since 2010 has supported the work of civil society organisations that provide key counselling to victims in criminal proceedings. Through the UNDP the Programme to Accompany Transitional Justice (PAJUST), promoted the victims right to justice, right to truth and reparations, as well as measures to prevent the repetition of violations of human rights in the future.⁸⁹

Article 5:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁹⁰

Anima, a 42-year old strong mother of two, was a refugee seeking asylum among thousands across Africa. She is a survived torture victim, being held against her own will to help save her children and niece against the Libyan traffickers. After more than a year of relentless beatings and electric shocks Anima is partially paralysed. She is a clear example of all those people who set out on desperate journey in search of safety from the internal conflict resulting from war crimes.

Anima was held captive for 15 months and was released with her other two sons onto an inflatable boat headed towards Europe. It was then when the boat started to sink, but fortunately Libyan coast guards came to rescue and brought them back to the coast where at the harbour the UN Refugee Agency was waiting for them. Anima at this point was in a critical condition, and as soon as they arrived at the coast was rushed to the hospital, whilst her sons were informed that they would be flown to Niger. Although delighted with the news, Anima's sons feared leaving their mother alone, as the last time they came across this difficult situation was when the traffickers asked for US\$10,000 for each of the family member, including Anima, her two sons, and

⁸⁸ 'A Historic Milestone Against Sexual Slavery As An Act Of War' (Medium, 2018) <https://medium.com/@UNDP_/a-historic-milestone-against-sexual-slavery-as-an-act-of-war-f4a604c547c9> accessed 12 November 2018

⁸⁹ Ibid

⁹⁰ (Ohchr.org, 2018)

<https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 25 November 2018

her niece, which none of them obviously had and Anima therefore was ready to take all the abuse to save her sons and niece.⁹¹

Thankfully, Anima flew to Niger the following week. More importantly the UNHCR is appealing for additional resettlement places to enable evacuees to begin to plan a future.

Article 6:

“Everyone has the right to recognition everywhere as a person before the law.”⁹²

Across Latin America and the Caribbean, the birth of roughly 4 million children under the age of 5 years old have never been documented as of 2013. In the Dominican Republic, only 41% children born within public maternity hospitals are registered before leaving the facility, whereby 39.2% are then left unregistered under the age of five in the poorer quantiles contrasting with 6.6% remaining unregistered within the regions of families with higher resources. UNICEF research evidently shows that the child population without birth certificates is mainly from families marginalised in other areas of life.

In San José De Los Llanos, Dominican Republic, Jorge Luis Herrera, 34, husband to Isabel Santana, 26, and father to Brandon who is 3 years old. Jorge is the only source of income within the family, whereby Isabel has recently resumed her studies to become a teacher. This family is a clear embodiment of the ongoing crisis when it comes to child “invisibility”, whereby Brandon is an unregistered child. UNICEF estimates that 186,000 children are unrecorded stripping them away of basic human rights, such as receiving medical care, vaccinations, or even the opportunity to attend school. Moreover, children who remain unregistered will be denied of benefits such as those of getting married, opening a bank account, vote, own property, or have a passport.⁹³

Since then, just like thousands of other low income families, the urgent desire to register their son was left unmet. To register they need to travel to Santo Domingo, about 50 miles away, which would take more than 4 hours by public transportation given they own no private vehicles. Consequences of unrecorded children are so serious that the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the

⁹¹ '70 Years Of Progress On Human Rights' (Humanrights70.org, 2018)
<<https://www.humanrights70.org/#/05/torture-survivor-reunited-with-sons>> accessed 12 November 2018

⁹² (Ohchr.org, 2018)
<https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 25 November 2018

⁹³ 'The Dominican Republic'S Invisible Children' (Unicef.org, 2018)
<<https://www.unicef.org/stories/dominican-republics-invisible-children>> accessed 13 November 2018

Convention on the Rights of the Child compel States, all provide the immediate and free guarantee of this right. It is certainly clear as stated by Article 6 of the Declaration that recognition is not subject to neglect and certainly not a choice, it is a right before the law which everyone is entitled to regardless of income, background, religion, status or any other discriminative force.

To guarantee this right to identity, UNICEF is working with the Central Electoral Board, the institution responsible for civil registry of persons, to ensure that universal birth registration in hospitals is achieved and late enrolment campaigns are promoted. The objective here is to make sure that no child is left out and that each and every child is provided with rights that allow him/her to be recognised.

Article 7:

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."⁹⁴

The UN Human Rights office in Kyrgyzstan conducts training workshops which allows litigators as well as lawyers seeking to get licensed, to not only stress the importance of human rights and the critical act towards violation but also is an extraordinary opportunity to share knowledge, practice and envision points of views from one another. Meerim Asanova, now a practicing human rights lawyer in Kyrgyzstan, is one of the participants that benefitted from these training workshops. She clearly explains that the knowledge from the trainings relate directly to the protection of human rights and the skills acquired from these workshops are utilised to expand the scope and effectiveness of this protection. Asanova is now an advocate for the rights of migrant workers, refugees and asylum seekers based in south Kyrgyzstan. She was a participant in the series of legal training workshops provided by the UN Human Rights Office in Kyrgyzstan. The aim of the workshops is to increase the professional knowledge and capacities of 68 chosen young counsellors and litigators from multi-ethnic regions in southern Kyrgyzstan.⁹⁵

These training workshops were indeed utilised when in June 2010 southern Kyrgyzstan suffered from an inter-ethnic conflict resulting into more than 5000 criminal cases. Most of these victims were ethnic Uzbeks, where the majority lacked information about access to rectification. As a result , the UN

⁹⁴ (Ohchr.org, 2018)

<https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 25 November 2018

⁹⁵ 'OHCHR | Empowering Young Lawyers In Kyrgyzstan Through Human Rights Training' (Ohchr.org, 2018)

<<https://www.ohchr.org/EN/NewsEvents/Pages/EmpoweringyounglawyersinKyrgyzstan.aspx>> accessed 13 November 2018

Human Rights Office developed legal training which would help in the matter. It served two objective goals; to address this lack of legal resources and confront culture injustice and discrimination, as well as to train these participants to promote and fight for the rights of these humans in the face of injustices. Recently trained lawyers have now started to take up pending cases to restore justice.⁹⁶

The Lawyers Training Centre of the Bar Association of Kyrgyz Republic cooperated to conduct the workshops, which were then further supported by the Ministry of Justice of the Kyrgyz Republic. Topics such as effective protection of human rights, advocacy skills, and conflict resolution were covered. Asanova admits that she used the knowledge she gained from these workshops to broaden her knowledge on equality, discrimination, human rights, justice and democracy.⁹⁷

Article 8:

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”⁹⁸

Access to justice is integral when considering whether a national legal system is in effective. Therefore, the Declaration is not the only one that recognizes that access to justice is both a basic human rights and a means to protect an individual’s other human rights.⁹⁹

The Organisation for Economic Co-operations and Development (OECD) aims to create policies that will further improve the economic and social well-being around the world. Thus, it essentially opens up the possibility of a government forum where common problems are discussed, and viable solutions are sought.¹⁰⁰

The United Nations’ sustainable development goals envisage the promotion of the “rule of law at the national and international levels and ensure equal

⁹⁶ Ibid

⁹⁷ 'OHCHR | Empowering Young Lawyers In Kyrgyzstan Through Human Rights Training' (Ohchr.org, 2018) <<https://www.ohchr.org/EN/NewsEvents/Pages/EmpoweringyounglawyersinKyrgyzstan.aspx>> accessed 13 November 2018

⁹⁸ (Ohchr.org, 2018) <https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 25 November 2018

⁹⁹ 'Human Rights And Access To Justice' (Americanbar.org, 2018) <https://www.americanbar.org/advocacy/rule_of_law/what-we-do/human-rights-access-to-justice/> accessed 2 December 2018.

¹⁰⁰ 'About The OECD - OECD' (Oecd.org, 2018) <<http://www.oecd.org/about/>> accessed 2 December 2018.

access to justice for all". Therefore, such a forum released a publication to delve further into this important goal set by the UN. ¹⁰¹

Access to justice is also closely linked with gender equality due to the fact that such legal guarantees could be beneficial when protecting gender rights. For example, In Bangladesh, through the provision of access to justice the illegal practice of dowry payment and thus women became more economically independent. ¹⁰²

Article 9

*"No one shall be subjected to arbitrary arrest, detention or exile."*¹⁰³

Everyday thousands of people travel to flee the hinterlands of Africa and the Middle East, across the Sahara to Libya, as a gateway to the Mediterranean Sea to free themselves from oppressions such as, war conflict, poverty, and violence. However, these refugees are then sent to detention centres in Libya where they are confined with around 160 other men/women sharing 6 bathrooms, detained from escaping, stripping them of all their bare dignity. Over 4500 people have drowned in 2016 during Mediterranean Sea Crossings marking it as the worst year of all crossings from Libya to Italy. It estimates to approximately 13 deaths everyday, where it is most likely to be higher as there are several unrecorded victims of shipwrecks lost at sea.

Thousands of migrants enter Libya with hope to start their journey in Europe for an opportunity to hide from atrocities when all of which are trapped in limbo in detention centres. Not only is Libya's economy in deep crises and short in cash supply but also human trafficking seems to have had a booming lucrative, fought over business. Instability overpowers the country as militias fight with each other usually with government forces. Conflicting Militias even control part of Libya. There are 24 detention centres run by the government housing migrants from all over the country. ¹⁰⁴

The official exchange rate between US dollar and dinar is 1 US dollar – 1.4 dinars, however on the black market it can be worth up to 5–6 dinars. Corruption is the key factor in everyday economic life of the city of Tripoli, and those who hold the money, hold the power. In Tripoli there are

¹⁰¹ (2018) <<https://sustainabledevelopment.un.org/?menu=1300>> accessed 2 December 2018.

¹⁰² Organisation for Economic Co-operations and Development, 'Leveraging The Sdgs For Inclusive Growth : Access To Justice For All' (2016) <<https://www.oecd.org/gov/delivering-access-to-justice-for-all.pdf>> accessed 2 December 2018.

¹⁰³ (Ohchr.org, 2018) <https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 25 November 2018

¹⁰⁴ Mannocchi F, A GhandourC Tidey, 'Trapped: Inside Libya'S Detention Centres – UNICEF Connect' (UNICEF Connect, 2018) <<https://blogs.unicef.org/blog/libyan-detention-centres/>> accessed 14 November 2

approximately 13 illegal detention centres, managed by the militias, however the Interior Ministry's Official cannot get too close as they claim their lives would be put at risk.¹⁰⁵

These migrants are deprived of what they ought to have; freedom. They have a right to live and freedom from fear and should not be subjected to any forms of violation.

Article 10

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."¹⁰⁶

The United Nations University Centre for Policy Research leads "The Limits of Punishment" research in partnership with the Institute for Integrated Transitions, and further supported by the UK Department for International Development. Its main objective is to understand, if when and how transitional justice, combined with other conflict resolution factors, can contribute to transitions away from conflict in settings affected by major jihadist groups. The project aims to explore the current approaches towards punishment and leniency for individuals accused of association with jihadist groups. Moreover, it on factors that policy makers consider when creating and planning alternative strategies leveraging transitional justice.

"The Limits of Punishment" project undertook case studies which led to the assessment of nationally led approaches to handling individuals accused of being associated with: al Shabaab in Somalia, Boko Haram in Nigeria, and the Islamic State (IS) in Iraq. The studies included a broad range of formal and informal mechanisms such as; amnesties, prosecutions, traditional justice, disarmament, demobilisation, reintegration (DDR), and rehabilitation as an alternative to criminal justice.

After analysing the empirical evidence, the Institute for Integrated Transitions' Law and Peace Practice Group developed a structure to help national policy makers and practitioners, including international partners, in applying transitional justice as a mean to resolve conflict with groups involving extremism and deemed violence.

The Project is relevant for national policymakers and development conflict resolution practitioners, international financial and technical assistance providers including donor countries, and is also helpful to the growing

¹⁰⁵ Ibid

¹⁰⁶ (Ohchr.org, 2018)

<https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 25 November 2018

community of experts and academics working on CT, counter terrorism, and CVE, Countering Violent Extremism.¹⁰⁷

Article 11

1. *Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*
2. *No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*¹⁰⁸

Article 11 of the UDHR covers a fundamental principle in all legal systems, that of the presumption of innocence. Such a right implies that in a criminal trial, the burden of proof lies on the prosecution. This is in line with the Latin maxim, '*ei incumbit probatio qui dicit, non qui negat*' which means that the burden of proof is on the one who declares, not on the one who denies. Therefore, the prosecution must prove that the accused is guilty beyond a reasonable doubt and the accused will be acquitted if reasonable doubt pertains.

This right has been enshrined in several legal systems. If one looks at the Maltese system, the presumption of innocence principle is found in Chapter 4 of the Constitution of Malta under Article 39, particularly sub-section 5, which reads; '*Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty*'. It is worth mentioning that all of Chapter 4 is entrenched and can only be altered with a 2/3 majority of Parliament. This further proves the importance of the human right in consideration.

By way of comparison, the presumption of innocence is not articulated in the Constitution of the United States (US). However, it is a basic component of a fair trial, and the right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. The presumption of innocence of persons accused of crimes was established in 1895 by the *Coffin v United States* case¹⁰⁹. It concluded that when one is brought to trial upon a criminal charge, one must be acquitted if not proven guilty. In *Bezell v. Ohio*, the US Court said that the

¹⁰⁷ 70 Years Of Progress On Human Rights'(Humanrights70.org,2018)<<https://www.humanrights70.org/#10>> accessed 14 November 2018

¹⁰⁸ 'Universal Declaration Of Human Rights' (*Un.org*, 2018) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹⁰⁹ 'Coffin V. United States, 156 U.S. 432 (1895)' (Justia Law, 2018) <<https://supreme.justia.com/cases/federal/us/156/432>> accessed 1 December 2018.

presumption of innocence may be deemed as a principle of justice "*so rooted in the traditions and conscience of our people as to be ranked as fundamental.*"¹¹⁰

Article 11 of the UDHR inspired the drafting of Article 6(2) of the European Convention on Human Rights (ECHR) which in turn inspired Article 48 of the Charter of Fundamental Rights of the European Union (EU Charter). This right is reflected in various constitutions of Member States and protected by national courts. For example, in *O'Leary v. Attorney General*¹¹¹, the Irish High Court acknowledged the presumption of innocence as a fundamental element 'of the criminal law which is constitutionally protected as part of the right to fair trial'.

Article 11 also prohibits the retroactive application of criminal offences and the application of more severe penalties than those existing at the time the offence was committed.

Article 12

*"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".*¹¹²

Article 12 of the UDHR emphasizes the right to privacy. It states that no one has the right to enter our home, tamper with our belongings or intervene with our family for no reason. If one tries to unjustly harm our reputation, we have the right to the protection of the law. This article is different to others as it is drafted using a negative mode of expression: '*No one shall be subjected to arbitrary interference with his privacy, home or correspondence, nor to attacks upon his honour and reputation*'.

The Fourth Amendment of the US Constitution states that '*The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated*'. '*The right... to be secure in*' is parallel to the second sentence of Article 12: '*right to the protection... against*'. This shows that the US took into consideration their own constitution when drafting Article 12 of the UDHR. However, when proposing

¹¹⁰ US Legal I, 'Presumption Of Innocence Law And Legal Definition | Uslegal, Inc.' (*Definitions.uslegal.com*, 2018) <<https://definitions.uslegal.com/p/presumption-of-innocence/>> accessed 15 November 2018

¹¹¹ 'Protections For The Accused | Oxbridge Notes Ireland' (*En-ie.oxbridgenotes.com*, 2018) <https://en-ie.oxbridgenotes.com/revision_notes/irish-bcl-trinity-college-dublin-irish-criminal-law/samples/protections-for-the-accused> accessed 1 December 2018.

¹¹² 'Universal Declaration Of Human Rights' (*Un.org*, 2018) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

said article, the US proposal went far beyond its own Fourth Amendment due to the fact that it took into account a Chilean draft proposal that emphasized the importance on the '*right to freedom of family relations*' as well as a Panamanian proposal which contained a right '*to freedom from wrongful interference*'.

Section 14 of the Constitution of South Africa also echoes what is said in Article 12 of the UDHR. It protects the citizen from any unlawful searches or seized possessions. It also puts emphasis on the importance of the *actio iniuriarum* which is an action for delict which seeks the protection of one's honour, reputation and integrity.

Article 12 of the UDHR served as an inspiration for Article 8 of the ECHR which corresponds to Article 7 of the EU Charter. In order to protect public interest considerations, more recent human rights instruments, provide an exception to this right. Thus, for example, Article 8(2) of the ECHR allows interference where it is '*in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*'.

Article 13

1. *Everyone has the right to freedom of movement and residence within the borders of each State.*
2. *Everyone has the right to leave any country, including his own, and to return to his country.*¹¹³

Article 13 of the UDHR focuses on the right to freedom of movement. It declares travel as a human right. This right is also enshrined in Article 12 of the International Covenant on Civil and Political Rights (ICCPR). It gives importance to the right to liberty of movement and freedom to choose residence without being deprived of entering one's own country.

The freedom of movement of American citizens within the US is traditional and supported by Supreme Court decisions. In *Kent v. Dulles*,¹¹⁴ the Court said that, as written under the Fifth Amendment, the right to travel is a right which the citizen cannot be deprived of. It is not only seen as a right but also as a value. The basic rule regarding leaving and returning to one's country as indicated in *Kent v. Dulles* is repeated in *United States v. Laub*¹¹⁵: "*the right to travel is a part of the 'liberty' of which the citizen cannot be deprived without*

¹¹³ 'Universal Declaration Of Human Rights' (*Un.org*, 2018)

<<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹¹⁴ 'Kent V. Dulles, 357 U.S. 116 (1958)' (*Justia Law*, 2018)

<<https://supreme.justia.com/cases/federal/us/357/116/>> accessed 1 December 2018.

¹¹⁵ 'United States V. Laub, 385 U.S. 475 (1967)' (*Justia Law*, 2018)

<<https://supreme.justia.com/cases/federal/us/385/475/>> accessed 1 December 2018.

due process of law." The right to residence is also given importance, as stated by Justice Jackson in *Edwards v. California*¹¹⁶. However, some procedural steps may be required when establishing new residency.

However, this is not the case in all countries. The right to freedom of movement has often been violated in developing countries. Thus, for instance, it has been reported that in Algeria, refugees and asylum-seekers have often been mistreated, so that individuals with official refugee status from the United Nations High Commissioner for Refugees (UNHCR) were deported to Mali without food, water or medical aid after being tried without a fair hearing on charges of entering Algeria illegally. Ill-treatment was also seen in Kenya, where authorities blocked the border to people fleeing armed conflict in Somalia.

Article 14

1. *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*
2. *This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*¹¹⁷

Article 14 of the UDHR focuses on the right to asylum. Everyone has the right to seek asylum from persecution in other countries. However, in the case of prosecutions resulting from non-political crimes or crimes against the principles of the United Nations, this right may not be relied upon.

This right is also embodied in the Refugees Act, Cap. 420 of the Laws of Malta, 2001. Article 8(1) claims that '*A person may apply to the Commissioner, in the prescribed form, and shall be granted refugee protection, where it is established that he faces a well-founded fear of persecution in his country of origin or habitual residence in terms of the Convention*'. This is also echoed in the Asylum Law of Latvia. Section 2 states that '*the purpose of this Law is to ensure the rights of persons in the Republic of Latvia to receive asylum, acquire refugee or alternative status or receive temporary protection*'.

In the EU, asylum and migration has been a predominant topic over the past few years, with many persons losing their lives, particularly at sea, in the process. Notwithstanding, that asylum is recognized as a fundamental right by the EU Member States, refugees and asylum seekers continued to be

¹¹⁶ 'Edwards V. California, 314 U.S. 160 (1941)' (*Justia Law*, 2018)
<<https://supreme.justia.com/cases/federal/us/314/160/>> accessed 1 December 2018.

¹¹⁷ 'Universal Declaration Of Human Rights' (*Un.org*, 2018)
<<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

violently attacked and harassed across the EU in 2017¹¹⁸. Clearly in times like this Article 14 UDHR deserves more emphasis. Recently the UN Refugee Agency (UNHCR) in response to the US President's approach denying political asylum to migrants crossing illegally into the US, has called upon the US to comply and abide by international refugee protection agreements by offering refugee protection and humanitarian assistance.

Article 15

- 1. Everyone has the right to a nationality.*
- 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.¹¹⁹*

Article 15 establishes the relationship between individuals and states by protecting citizenship and the right to be free from the deprivation of citizenship. All states are required to respect the human rights of all individuals equally while the individual is legally bound to a particular state through citizenship.

This right is also enshrined in Article 24 of the International Covenant on Civil and Political Rights:

'1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.'

The denial of citizenship poses precarious threats to human security. It creates social exclusion, causing stress between citizens and non-citizens of certain communities. As Filippo Grandi, UNHCR chief has said, *'Every person on this planet has the right to nationality and the right to say I belong'*. Statelessness is a reality today which leads to loss of empowerment, making one feel helpless and unable to participate as an active member in society. Recently, the UN refugee agency (UNHCR) reported that an estimated 12 million people may be victims of statelessness the impact of which is "immediate and can be

¹¹⁸ European Union Agency for Fundamental Rights, 'Fundamental Rights Report' (European Union Agency for Fundamental Rights 2018)
<<http://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018>> accessed 1 December 2018.

¹¹⁹ 'Universal Declaration Of Human Rights' (*Un.org*, 2018)
<<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

dire".¹²⁰ In the Dominican Republic, for instance, several revisions to migration policies threatened the civil status of many Dominicans of Haitian descent, as a result of which many were unable to access education, employment and healthcare. In response to this, the UN Trust Fund for Human Security (UNTFHS) supported an inclusive and integrated program in the bateyes of San Pedro de Macoris and Barahona. The program, implemented by UNHCR, UNDP and UNICEF in partnership with the communities, addressed the lack of documentation and its consequences for the rights of those most vulnerable. It also tackled the political, social and economic conditions of the broader communities living in the *bateyes*, the settlements that have developed around the country's sugar mills.

This shows that society is slowly becoming more aware of the importance of the implementation of Article 15 of the UDHR. However, more needs to be done to reach the aspirations of said article. Efforts to combat statelessness and discrimination while enforcing nationality rights would truly help in the development and aspiration for the right to nationality.

Article 16

- 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
- 2. Marriage shall be entered into only with the free and full consent of the intending spouses.*
- 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*¹²¹

Article 16 of the UDHR establishes the right for men and women to marry freely and to form a family. It recognizes the family as the 'natural and fundamental group unit' within society. This right is also enshrined in Article 23 of the ICCPR and the Convention on the Elimination of all Forms of Discrimination Against Women. Article 16 has provided a basis for recent international consensus-building on the importance of sexual and reproductive health and rights. Article 16 also entitles men and women to equal rights during marriage and its dissolution. This guarantee highlights the aspirational character of the UDHR.

Unfortunately, in some societies, there are still situations where women are trapped into unhappy marriages and are considered as inferior to men. Article 16 also states that *'[m]arriage shall be entered into only with the free and full*

¹²⁰ "12 Million' Stateless People Globally, Warns UNHCR Chief In Call To States For Decisive Action' (*UN News*, 2018) <<https://news.un.org/en/story/2018/11/1025561>> accessed 1 December 2018.

¹²¹ 'Universal Declaration Of Human Rights' (*Un.org*, 2018) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

consent', further emphasizing the right to equal marital rights. Article 16 enshrines the family as "*the natural and fundamental group unit of society.*" During World War II, the totalitarian regime in Germany had used the family as a convenient structure through which the State imposed its domination through enforced group conformity with totalitarian ideas. The UDHR's emphasis on the family as a separate independent entity, appears to provide some counterweight to the power of the State to control the lives of its citizens.

In 1967, the US ratified the United Nations Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery. In Article 1, the US aimed to complete the abolition of certain practices, including institutions or practices where women do not have the right to choose their husband. For example, in the case *Loving v. Virginia*¹²², miscegenation was dealt with. This case is a milestone civil rights decision of the United States Supreme Court which nullified all state laws which banned interracial marriages.

Article 17

1. *Everyone has the right to own property alone as well as in association with others.*
2. *No one shall be arbitrarily deprived of his property.*¹²³

Article 17 UDHR provides for the right of property ownership and for the right not to be deprived arbitrarily of one's own property. This has served the basis for the right of peaceful enjoyment of one's own property protected by various human rights instruments both at a national¹²⁴, regional¹²⁵ and international¹²⁶ level. These instruments, however, provide that sometimes the private interest has to yield to the wider public interest in certain circumstances. Thus, we find various cases where private owners were deprived of their property by the State for a legitimate purpose, such as for the construction of roads or social housing. The Courts, however, have always insisted that in order for the owner not to suffer a disproportionate burden adequate compensation must be paid by the State to the owner and that any

¹²² 'Loving V. Virginia' (LII / Legal Information Institute, 2018)

<<https://www.law.cornell.edu/supremecourt/text/388/1>> accessed 1 December 2018.

¹²³ 'Universal Declaration Of Human Rights' (Un.org, 2018)

<<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹²⁴ Constitution of Malta 1964.

¹²⁵ (Echr.coe.int, 2018) <https://www.echr.coe.int/Documents/Convention_ENG.pdf> accessed 1 December 2018.

¹²⁶ 'OHCHR | International Convention On The Protection Of The Rights Of All Migrant Workers' (Ohchr.org, 2018)

<<https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>> accessed 1 December 2018.

interference with property must satisfy the requirement of proportionality. Thus, for instance, the European Court of Human Rights in held:

*'As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden.'*¹²⁷

This right to the enjoyment of one's own property may also be invoked by indigenous peoples over their ancestral lands. The Inter-American Court of Human Rights (the IACtHR) was the first human rights body to hold that the right to property included the right of indigenous people to communal property and not merely the right to private property.¹²⁸ Following this judgment, the African Commission on Human and Peoples' Rights (the ACHPR) found that Nigeria had violated the right to property of the Ogoni people by allowing violent attacks on and destruction of Ogoni villages by oil corporations in Ogoniland.¹²⁹

In a subsequent case, the ACHPR also found that the Kenyan government's dispossession of the Endorois people's ancestral land amounted to a violation of the right to property as enshrined in Article 14 of the African Charter on Human and Peoples' Rights¹³⁰. The UN Declaration on the Rights of Indigenous People obliges governments to ensure that there is no action taken over the traditional land of the indigenous people without their free, prior and informed consent.

The Office of the High Commissioner for Human Rights and UN Human Settlements Programme in a joint report considered that

'[t]he dispossession of indigenous peoples' from their lands has robbed them of the ability and opportunity to use their own resources to control and determine their economic, social and cultural development. If they had access

¹²⁷ (Humanrightsmalta.org, 2018)

<http://www.humanrightsmalta.org/uploads/1/2/3/3/12339284/2006_amatogauci47045.pdf> accessed 1 December 2018.

¹²⁸ 'The Mayagna (Sumo) Awas Tingni Community V. Nicaragua, Judgment Of August 31, 2001, Inter-Am. Ct. H.R.' (Hrlibrary.umn.edu, 2018)

<<http://hrlibrary.umn.edu/iachr/AwasTingnicase.html>> accessed 1 December 2018.

¹²⁹ (Achpr.org, 2018)

<http://www.achpr.org/files/sessions/30th/comunications/155.96/achpr30_155_96_eng.pdf> accessed 1 December 2018.

¹³⁰ '276 / 2003 - Centre For Minority Rights Development (Kenya) And Minority Rights Group International On Behalf Of Endorois Welfare Council V Kenya' (Hrw.org, 2018)

<https://www.hrw.org/sites/default/files/related_material/2010_africa_commission_ruling_0.pdf> accessed 1 December 2018.

*to their own land and control over their own and public resources, they would be in a better position to solve their housing problems themselves.*¹³¹

Article 18

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*¹³²

Article 18 of the UDHR provides for the right to freedom of thought, conscience and religion. This article influenced and was reaffirmed in 1966 in Article 18 of the ICCPR. Article 18 of the ICCPR builds upon the principles of Article 18 of the UDHR while also considering protections from coercion, the possibility of limitations where other rights may overlap and a provision on the liberty of parents to educate their children on religious matters. Article 18 of the UDHR does not only protect religious beliefs but also protects a wide range of beliefs including belief in civil society and the public sphere. This automatically links said rights to the related rights of freedom of speech, expression, association and education. In the United Nation's General Assembly's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, these rights were given more attention. Article 18 reflects not only a right of physical persons, but also a collective right of religious communities and religious groups, particularly since the General Assembly's 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which is considered as a strong statement of rights on the basis of group identity, together with individual human rights in international law.¹³³

Article 18 of the UDHR inspired Article 9 of the ECHR. Said rights are also embodied in national constitutional traditions and are implemented by national legislation. Thus, for instance, Article 11 of the Constitution of Finland reads:

'Everyone has the freedom of religion and conscience. Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a

¹³¹ 'Indigenous Peoples' Right To Adequate Housing A Global Overview' (*Ohchr.org*, 2018) <<https://www.ohchr.org/Documents/Publications/IndigenousPeoplesHousingen.pdf>> accessed 1 December 2018.

¹³² 'Universal Declaration Of Human Rights' (*Un.org*, 2018) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹³³ 'Article 18: The Importance Of Forb In International Law' (*Birmingham.ac.uk*, 2018) <<https://www.birmingham.ac.uk/schools/ptr/departments/theologyandreligion/research/ciforb/news/2017/forb-in-international-law.aspx>> accessed 1 December 2018.

*member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.*¹³⁴

Article 19

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*¹³⁵

Article 19 of the UDHR provides for freedom of expression, opinion and information. Such a right enables the citizen to voice his opinion on any matter without being in danger of retaliation or censorship. It also allows the citizen to access and impart information or ideas. These freedoms are not only recognized in the UDHR but also in International Human Rights Law and in Articles 19 and 20 of the ICCPR. Article 19 of the UDHR states that '[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'. The ICCPR adds that the exercise of these rights carries certain responsibilities and therefore may be subject to restrictions.

The protection of freedom of expression and opinion is vital to guarantee the proper functioning of a healthy civil society.¹³⁶ Yet, even in today's modern world, we find several instances where freedom of expression is under attack. In Brazil, for instance, criticism and exposure of abusive practices is not tolerated, even though it is not officially censored by the State. Very often, the victims are people associated with a communication platform such as bloggers, journalists and news broadcasters. The spate of recent murders of three journalists over the past year of Maltese, Slovakian and Saudi nationalities, all three being harsh critics of their country's government and its abuses, sends a strong signal that freedom of expression is under severe attack. The situation is even more shocking considering that Malta and Slovakia are part of the EU and supposedly embrace the rule of law.

¹³⁴ 'The Constitution Of Finland' (*Finlex.fi*, 2018)
<<https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>> accessed 1 December 2018.

¹³⁵ 'Universal Declaration Of Human Rights' (*Un.org*, 2018)
<<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹³⁶ 'VIOLATIONS OF FREEDOM OF EXPRESSION 2016 ANNUAL REPORT – BRAZIL' (*Article19.org*, 2018)
<https://www.article19.org/data/files/medialibrary/38735/violacoes_WEB_EN_LOW_2.pdf> accessed 1 December 2018.

Article 20

1. *Everyone has the right to freedom of peaceful assembly and association.*
2. *No one may be compelled to belong to an association.*¹³⁷

Article 20 of the UDHR emphasises freedom of assembly as a fundamental freedom. Freedom of assembly was first recognized in the First Amendments on the US Constitution. Today, it is a globally accepted principle.

The Guidelines on Freedom of Peaceful Assembly of the Organization for Security and Co-operation in Europe (OSCE) describe assembly as 'the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose'.

In the 21st century, exercising this right to free assembly is becoming more and more popular. Public demonstrations offer a voice to the people. However, the practice of assembly is commonly looked down upon by some States and the right of individuals to peacefully come together in a public space to promote an idea is sometimes endangered. Thus, there have been instances where people taking part in such events have been subject to rubber bullets, pepper spray or mass arrests.

Freedom of assembly is recognized as a basic human right by the ECHR, the ICCPR, the American Convention on Human Rights, African Charter on Human and Peoples' Rights, and many other human rights instruments. The universality of this right is also reflected in the constitutions of countless sovereign nations around the world. Nevertheless, this right has often been violated in countries all around the world. In *Primov and Others v. Russia*¹³⁸, Article 11 ECHR (corresponding to Article 20 UDHR) was violated for refusal by the authorities to allow the applicants to hold assembly. In this case, the applicants complained that the authorities refused to allow the demonstration to take place, violently dispersed the event and unjustly arrested three people. Authorities should not have the power to ban a demonstration simply because they do not agree with its message, especially when that authority is the target of the criticism. Such behaviour is in breach of freedom to assemble.

Article 21

1. *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
2. *Everyone has the right to equal access to public service in his country.*

¹³⁷ 'Universal Declaration Of Human Rights' (*Un.org*, 2018)
<<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹³⁸ 'Index To The Information Notes On The Court'S Case-Law 2014' (*Echr.coe.int*, 2018)
<https://www.echr.coe.int/Documents/CLIN_INDEX_2014_ENG.pdf> accessed 1 December 2018.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.¹³⁹

This article protects the right of the people to take part in government through fair representation stemming from free and periodic elections whereby the vote of the individual is cast through a secret ballot. This right is also enshrined in Article 25 of the International Covenant on Civil and Political Rights which states that:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors*
- c) To have access, on general terms of equality, to public service in his country.”*

In cases of violations of this human right, all persons may turn to the Human Rights Committee, so long as the optional protocol is ratified in the State in which they are citizens. This Committee consists of 18 independent experts elected by the States who are party to the Treaty. These observe and ensure that the provisions of the International Covenant on Civil and Political Rights (CCPR), as well as its two optional protocols are adhered to by the various states. This committee may consider individuals' complaints against State parties which is held in a closed session. This communication is submitted by the alleged victim or someone acting on behalf of the alleged victim, however, the Committee is not allowed to examine a case which is already analysed through another procedure of international investigation. Also, certain conditions must be adhered to, namely: that the communication is not anonymous; there must exist an abuse of a right; and the alleged victim must have exhausted all possible national remedies before attempting to submit an application to the Committee.¹⁴⁰

The continent of Africa has been specifically targeted in recent years as this region is notorious for authoritarianism and other forms of tyrannical government. The right is protected in Article 13 of the African Charter on Human and Peoples' Rights (ACHPR). The creation of the Africa Union (AU) in

¹³⁹ 'The Universal Declaration Of Human Rights' (*Ccnmtl.columbia.edu*, 2018)
<http://ccnmtl.columbia.edu/projects/mmt/udhr/article_22.html> accessed 1 December 2018.

¹⁴⁰ 'Government – Definition' (*Claiminghumanrights.org*, 2018)
<http://www.claiminghumanrights.org/government_definition.html> accessed 1 December 2018.

2002 has further encouraged inter-governmental cooperation in order to promote to political and socio-economic integration of the continent whilst attempting to ensure peace and stability in the region. African nationals who feel aggrieved or begrudged of their rights under Article 13 ACHPR may petition the African Court on Human and Peoples' Rights who claims jurisdiction over the 50 African states who are party to this Charter.

One inspiring example of UNDP support aiding African democracy is manifested through recent election held in Sierra Leone. UNDP, together with support from Canada, the EU, Ireland and the UK, trained up to 19 election assistants working with the National Electoral Commission in the country to ensure that persons with disabilities were able to vote. This proved to be a resounding success in one of Africa's landmark elections of 2018.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.¹⁴¹

This right is enshrined in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee on Economic, Social and Cultural Rights (CESCR) is a team composed of 18 independent experts who are elected for a four-year term by State parties. The duty of this Committee is to monitor the implementation of the provisions of the ICESCR. It is important to note that as of yet, such a Committee does not hear individual complaints.

According to Priti Darooka, the founder and executive director of the Programme of Women's Economic, Social and Cultural Rights, only a proper human rights policy which provides a normative framework within the country can lead to proper social security enjoyed by all. Without such human rights policy, there will be no framework which will enforce the right of social security.¹⁴²

Although social security does exist in many parts of the world, where it does exist, it tends to be citizen-based and state-enforced. On the backdrop of the highest levels of migration post Second World War, one criticism is that refugees are often excluded from the discussion. Welfare rights are enjoyed

¹⁴¹ 'Universal Declaration Of Human Rights' (*Un.org*, 2018)

<<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹⁴² 'Social Protection And Human Rights - A Resource Platform For Researchers, Policy Makers And Practitioners.' (*Social Protection and Human Rights*, 2018)

<<http://socialprotection-humanrights.org/>> accessed 1 December 2018.

by refugees under Articles 22 and 23 of the Declaration and is also incorporated in the Convention relating to the Status of Refugees. This Convention also clearly states that welfare rights should be extended to refugees without discrimination. Unfortunately, this is yet to be achieved.¹⁴³

Article 23

- 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
- 2. Everyone, without any discrimination, has the right to equal pay for equal work.*
- 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
- 4. Everyone has the right to form and to join trade unions for the protection of his interests.¹⁴⁴*

Like the previous article, this Article is also enshrined in the International Convention on Economic, Social and Cultural Rights; Article 6 to be exact. This states that:

- 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
- 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*

Since the same Convention protects such a right as the previous Article, the Committee on Economic, Social and Cultural Rights is the institution responsible for the observation of the compliance by State parties to this Convention. Individual complaints are not yet heard by the Committee.¹⁴⁵

¹⁴³ 'The Universal Declaration Of Human Rights' (*Ccnmtl.columbia.edu*, 2018)
<http://cnmtl.columbia.edu/projects/mmt/udhr/article_22.html> accessed 1 December 2018.

¹⁴⁴ 'Universal Declaration Of Human Rights' (*Un.org*, 2018)
<<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹⁴⁵ 'Government - Definition' (*Claiminghumanrights.org*, 2018)
<http://www.claiminghumanrights.org/government_definition.html> accessed 1 December 2018.

Article 23 brings up four principles: the right to work, the right to equal pay, the right to just remuneration and the right of freedom of association. The right is established for all residents to enter the labour market without interference and not just for citizens. Forced work, slavery or any other such forms of labour are expressly prohibited. Mere access to the labour market without acceptable working conditions is worthless. Salaries and the working environment must be at a certain level in order to be given any real meaning. At the same time, salaries must be equal for the same work. It is interesting to note that the right to work may be considered as a prerequisite for freedom of association, the protection against discrimination as well as creating the necessary economic and social benefits for all workers.¹⁴⁶

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.¹⁴⁷

This Article relates to the just condition of work and should be read together with Article 22's obligation of the state to guarantee the social security as well as cultural rights of the individual. These rights mentioned in Article 24 form of part of the basic international labour law and in some states, this is considered to be a fundamental right, sometimes forming part of the national constitution.¹⁴⁸

Article 25

1. *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*
2. *Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.¹⁴⁹*

¹⁴⁶ 'The Universal Declaration Of Human Rights' (Ccnmtl.columbia.edu, 2018) <http://ccnmtl.columbia.edu/projects/mmt/udhr/article_22.html> accessed 1 December 2018.

¹⁴⁷ 'Universal Declaration Of Human Rights' (Un.org, 2018) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹⁴⁸ 'The Universal Declaration Of Human Rights' (Ccnmtl.columbia.edu, 2018) <http://ccnmtl.columbia.edu/projects/mmt/udhr/article_22.html> accessed 1 December 2018.

¹⁴⁹ 'Universal Declaration Of Human Rights' (Un.org, 2018) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

This article is at the heart of the human rights movement. It includes the right to survive and live free of preventable suffering. This article recognises the need for sufficient food, clothing, housing, health and social services as the essential components in the right for adequate standard of living of the individual.

It is difficult to define the adequate standards of living as different states possess different economic and social capacities and have different understandings of what constitutes an adequate standard of living. However, Article 12 of the ICESR defines this right to adequate health as:

“... the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”

In fact, it is in Article 11 of the ICESR in which this right is enshrined.¹⁵⁰

There is however, a stark contrast between the standard of living enjoyed in developing nations whilst that enjoyed by developed nations. This is because governments in developing nations may be unable to provide the necessary health care or essential items for its citizens, and as a result, the people in these countries suffer disproportionately from diseases which are routinely curable in developed nations. The WHO estimates that 1.7 million people die from diseases related to unclean water and improper sanitation every year, over 3 million children annually die from malnutrition, whilst 170 million children suffer from undernutrition.

The figures are at their most shocking when comparing the infant mortality rate between developed countries and those of under-developed and developing countries.

International efforts over the last quarter-century have proven that the health crises in the developing world may be dealt with efficiently. These examples include the introduction of smallpox and polio vaccines given through aid payments to developing countries under a UN-backed scheme have virtually eradicated the disease worldwide. Another good example is in Uganda, whereby the rate of mother-child transmission of HIV was vastly reduced on a budget of less than 4 dollars a patient through the provision of Nevirapine – a low-cost retroviral alternative to AZT.

¹⁵⁰ Government – Definition' (*Claiminghumanrights.org*, 2018)
<http://www.claiminghumanrights.org/government_definition.html> accessed 1 December 2018.

Article 26

- 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*
- 2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*
- 3. Parents have a prior right to choose the kind of education that shall be given to their children.¹⁵¹*

This is one of the most important rights protected by the Declaration. After the end of the Second World War, the world's leaders felt that one of the reasons why the atrocity took place was the abuse of education by ultra-nationalistic governments at the time. This abuse took the form of indoctrination in order to foster hatred among students against others and other nations, ultimately leading to the murder of 17 million people during the Holocaust.

This is why this Declaration reveals three specific goals of education: *“the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”*; *“the promotion of understanding, tolerance and friendship among all nations, racial or religious groups”*; and *“the furthering of the activities of the United Nations for the maintenance of peace”*.

The first goal is reinforced through Article 22 which talks about the right to social, economic and cultural rights as well as through Article 29 which sets about the holistic development of the individual through the duties which must be performed towards the community. This ‘full development’ goal was meant to cater for children to fulfil their potential faculties and also to ensure human dignity.

The second goal is a clear reaction to what happened during the War in a bid to prevent hatred and anger towards people from different nations or belonging to different religious or ethnic groups.

¹⁵¹ 'Universal Declaration Of Human Rights' (*Un.org*, 2018)
<<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

If the right to education is violated, there exists a Special Rapporteur on the Right to Education, appointed in 1998 which covers the right to education laid down in Article 26 of the Declaration. Every child has a right to go to school but according to UNICEF, over 264 million children and adolescents do not have the opportunity to attend or complete the basic primary and secondary education. In countries where children are unable to enter education, especially in war-torn areas, UNICEF collaborates with partners to create systems to allow these disadvantaged students to engage in learning opportunities which could ultimately shape the future of the nations they live in.¹⁵²

Article 27

1. *Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.*
2. *Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*¹⁵³

This Article prescribes the enjoyment of cultural rights, insisting that everyone has the right to enjoy all aspects of cultural rights, except the right of education which is covered by Article 26. The two paragraphs of Article 27 cover two different aspects of cultural rights. The first paragraph deals with a combined group and individual right, whilst the second deals with purely individual rights.

In fact, the second paragraph seems to declare that the right to intellectual property is indeed a human right.¹⁵⁴

Article 28

*Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.*¹⁵⁵

¹⁵² 'Join NESRI In Supporting People's Movements For Human Rights' (*Nesri.org*, 2018) <<https://www.nesri.org/programs/what-is-the-human-right-to-education>> accessed 1 December 2018.

¹⁵³ 'Universal Declaration Of Human Rights' (*Un.org*, 2018) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹⁵⁴ 'The Universal Declaration Of Human Rights' (*Ccnmtl.columbia.edu*, 2018) <http://ccnmtl.columbia.edu/projects/mmt/udhr/article_27.html> accessed 1 December 2018.

¹⁵⁵ 'Universal Declaration Of Human Rights' (*Un.org*, 2018) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

This article essentially is one which declares that the 'social order' that is needed for all these rights to be implemented must be respected. Although we strive to live in a free world, there must exist proper order in order for all these rights to be enjoyed by the majority of persons all over the world. The governments therefore, must actively work for these rights to be observed and implemented.

Article 28 is not enshrined or complemented by any international treaties and therefore the procedure for violations against such an article is unclear.

Article 29

- 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.*
- 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*
- 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.¹⁵⁶*

Article 29 serves as a reminder that the individual does not only possess rights but also has duties and that there must be a limitation on the rights listed in the Declaration. It is however, interesting to note that the Declaration does not expressly list these duties and therefore, there is no concept of fundamental duties. As a result, duties of the community are left to domestic laws and national governments.¹⁵⁷

The third sub-paragraph is in order to balance the exercise of rights with the interests of the world community which the UN sometimes claim to represent. This last part overlaps with Article 30 of the Declaration.

This article sometimes has drawn controversy as governments who violated certain fundamental human rights listed in the Declaration have used this Article as an excuse for the arbitrary limitation of human rights.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.¹⁵⁸

Article 30 is the Salvatory Clause in the Declaration and is a means of sufficiently completing the list of human rights. In different countries around the world, leaders may attempt to ignore or violate the individual's human rights or pretend they don't exist. However, Article 30 clearly declares that no person, group or state may deny the human rights of the individual listed in this document.¹⁵⁹

The Enduring Relevance of the UDHR ?

Migration – An Overview

The word *migrant*, to a certain extent, achieves a certain standard in the terms of a definition. The International Organisation for Migration¹ (IMO) defines a migrant as *any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is*. The issue migration poses is not relative to its definition, unlike the perception and connotation that lay in the minds of society.

Annually, the United Nations Refugee Agency announced record numbers of displaced migrants namely from the Middle East and Africa. Naturally, migration has always been a prevalent issue for a variety of reasons, be it economic or political. In 1992, European Union Member States alone received 672,000 asylum seekers, keeping in mind that at that point in time, the European Union was made up of 15 member states as opposed to the current 28. Yet 2010 marked the start of a constant moving dynamic. Antonio Guterres in 2011, when serving as the United Nations High Commissioner for Refugees (now serving as the ninth Secretary General of UN) acknowledged the changing patterns of migration over the years citing reasons such as

¹⁵⁸ 'Universal Declaration Of Human Rights' (*Un.org*, 2018) <<http://www.un.org/en/universal-declaration-human-rights/>> accessed 1 December 2018.

¹⁵⁹ 'Article #30, No One Can Take Away Your Human Rights : Youth For Human Rights Video' (*Youth for Human Rights*, 2018) <<https://www.youthforhumanrights.org/what-are-human-rights/videos/no-one-can-take-your-rights.html>> accessed 1 December 2018.

*population growth, urbanisation, climate change, resource insecurity and most obviously, triggering conflicts.*¹⁶⁰

The 2009 United Nations International Migration Report, estimated that by 2010, *the estimated number of international migrants was 214 million, an increase of 58 million since 1990*, 60% of which resided in developed countries, namely European, American and Asian, with the United States projected to take in the highest number of international migrants. The next report in 2011 sees a relatively similar figure to the one in the 2009 report, with 214.2 million migrants, globally, with 59.6% living in developed countries. Once again, the United States of America was reported to have taken in the highest number of immigrants.¹⁶¹

Though statistically similar, the 2011 Report¹⁶² has a specific, focalised pronouncement on the comparison between migration patterns in 1990 and 2010. In this 10 year time frame, the number of immigrants had skyrocketed, with Europe and North America seeing the highest proportion of influx. The 2 areas combined accounted for nearly three in every four of the 59.0 million international migrants added worldwide. The 2015 report estimated that there were 244 million international migrants in 2015, 58% of which lived in developed countries. At this point, from 1990, the number of migrants had risen by 60%, primarily incurred between 2000–2010.¹⁶³

The reports also make clear the demographic aspect of global immigration, in a way, putting a human face behind the prodigious numbers of immigrants amassed. Interestingly, in developed countries, female migrants tend to outnumber males consistently throughout 2010 to 2015, whilst less developed areas have a higher male migrant population. By 2015, 12.7% of international migrants were children with 1 in every 70 living outside their country of birth. Another consistency throughout the five year period was the age demographic. In 2010, more than half of the international migrants were over the age of 38 & in 2015, 75% of migrants fell between 20 to 64 years old with 117 million being of working age. Typically, international migrants living in developed countries are older than those living in developing countries. The median age for migrants in developed areas was 42.1 years in 2010, however, due the fact that, in most cases, children of migrants are not considered migrants, the validity of the calculated median age is not completely clear.

¹⁶⁰ Alexander Betts, 'Human Migration Will Be A Defining Issue Of This Century. How Best To Cope? | Alexander Betts' (*the Guardian*, 2018) <<https://www.theguardian.com/commentisfree/2015/sep/20/migrants-refugees-asylum-seekers-21st-century-trend>> accessed 6 November 2018.

¹⁶¹ (*Un.org*, 2018) <<http://www.un.org/esa/population/publications/migration/WorldMigrationReport2009.pdf>> accessed 5 November 2018.

¹⁶³(*Un.org*,2018<<http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2011.pdf>> accessed 5 November 2018.

Adversely, less developed areas, like Africa and Asia saw a younger influx of migrants with the median age to be around 29.5 years old in 2010.¹⁶⁴

That being said, it is important to highlight the relevance of the Arab Spring in relation to the displacement of people in the 21st Century. The Arab Spring saw a number of Middle Eastern governments being overthrown through a number of protests in the name of democracy and cultural freedom. Yet, for many of these countries, a move for liberty and freedom has been concealed by political instability and oppression. With a particular lens on Libya, despite the infamous Colonel Muammar Gaddafi being successfully overthrown in October 2011, the civil war has not been resolved, with two opposing political parties ruling over separate parts of the country, putting Libyan civilians & societal wellbeing in serious jeopardy with little to no access to basic resources and healthcare services. Comparably, the civil war in Syria inspired by the political movement in fellow Arab states, though, again, triggered in the name of legitimate democracy against long-time dictator Bashar al Assad, has forced the displacement of millions (5.6 million as of March 2018 UNHCR) of Syrians seeking refuge in Western Europe, Turkey and Greece. Syria today, remains a breeding ground for, undemocratic, authoritarian and theocratic political abuse & war crimes.

Yet, behind these numbers and statistics, lay human beings with rights & deserved protection. All 30 articles of the Universal Declaration of Human Rights work towards guaranteeing each and every single individual protection and safety through human rights. Yet, how are these rights being enforced? Whilst there are numerous non-governmental organisations, committees & activists who dedicate their time and use their voices to guarantee such rights, society cannot shy away from the cyclical habit of succumbing to the fear-fuelled rhetoric of far right politics. How can a society who claims to be progressive and tolerant forget those same values when transposed into the topic of migration? Moreover, how relevant is the Universal Declaration of Human Rights in relation to immigration and migrants?

Migrant Rights

In the span of 31 years, the world had seen the mass destruction of societies, governments, cultures & economies alike after the two world wars. Following the end of the Second World War, the then recently founded United Nations was very concerned by the number of refugees. Subsequently, in 1951, the UN adopted the Convention Relating to the Status of Refugees. The aforementioned convention only applied to individuals who were granted refugee status as a result of any event occurring in Europe before January 1st of 1951. It was a key legal instrument with the intention of offering aid to

¹⁶⁴ (Un.org, 2018)

<http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf> accessed 5 November 2018

displaced persons at the time. That being said, not all refugees are migrants and the Convention did not apply to everyone. Yet the essence of the convention does not merely lie in its functions, but also, in its implications. For the first time, displaced people had a sphere of legal protection, with a clear pronouncement on migration, over them which was guaranteed by other than their country of birth.¹⁶⁵

The creation and promulgation of such conventions sparks an important debate. Is the Universal Declaration of Human Rights enough to ensure the protection of migrant rights? The First Article¹⁶⁶ clearly makes no distinction or discrimination between race, gender, sex, ethnicity or any other defining factor. Every single human being is endowed, through the declaration, a sense of freedom, equality, *dignity and rights*, with this point furthermore sustained in Article 2.

Yet why does one, still hear of numerous atrocities, committed or allowed to be committed against migrants and civilians, numerous political rallies against their entrance or push-back policies from governments?

Today, the Office of the United Nations High Commissioner for Human Rights *strives to promote, protect and fulfil the human rights of all migrants, regardless of their status, with a particular focus on those women, men and children who are most marginalized and at risk of human rights violations.* Daily, migrants rights are violated both on a civil and political level. The Universal Declaration of Human Rights, despite its grandeur and influence, is not legally binding and is often superseded by local laws of a discriminatory nature rooted from xenophobia and racial prejudice. Though the Declaration itself is not legally binding, the United Nations have adopted a number of conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, The International Convention for the Protection of All persons from Enforced Disappearance are a few of the conventions which grant rights & degrees of humanity and dignity to migrants on a legally binding level. The UN has also adopted treaties throughout the years through international public law granting rights to migrants such as; The International Convention for the Safety of Life at Seas & the Convention Relating to the Status of Stateless Persons.

Though legalities and agreements aside, it is easy to draw up declarations and conventions from the comfort of our developed societies, simultaneously, failing to see the dire reality of the state of living of civilians in war-torn countries. On the 7th November 2018, UNICEF told Sky News that in Yemen alone 400,000 children are suffering from *severe acute malnutrition*. On the

¹⁶⁵ Rhona K. M Smith, *Textbook On International Human Rights* (Oxford University Press 2012).

contrary, civilians who flee the country with the hope of finding a better life, are hit with another grim reality, that in the Mediterranean alone, as of November 2018, 2,019 migrants have died (1,432 in the central region alone).¹⁶⁷

Giving particular attention to the Central Mediterranean Route, migrants are, almost one by one, stripped off their dignity and humanity. Typically, the migrants using the route come from all over Sub-Saharan Africa and Asia or else through the Bangladesh-Egypt-Libya-Europe route. This implies that they travel from their country to Libya with the intention of crossing to Italy. Naturally, however, it's not always that simple. The journey through Africa crosses some of the world's most dangerous terrain. Many people find themselves bound to entrusting smugglers in exchange for an ensured arrival to Europe exposing migrants to captivity, human trafficking and torture. The frustration lies in the constant need for people to move through such routes, creating an inevitability of smuggling. However, their problems do not stop upon arrival to Europe.

In 2010, the Italian Government adopted the infamous *Push Back Policy* which was scrutinised by several NGO's and the European Court of Human rights on the grounds that these migrants were being sent back to a state, usually Libya where their rights were in no way guaranteed and protected. Eventually, the same court found Italy responsible for breaching Article 3 of the European Declaration of Human Rights.¹⁶⁸ That being said, Italy is not the only country responsible for taking advantage of the fear of mass migration to take in less asylum seekers. Governments like Poland's & Hungary's both have clear, staunch anti-immigration sentiments in their laws and policies, completely disregarding migrants' rights as human beings. More often than not, migrants coming into Europe from the Middle East, namely Syria, are refused entry into Eastern European countries, crushing any hopes of getting through to Western Europe.

In 2017, Italian Journalist Francesca Mannocchi, together with UNICEF documented the predicaments faced by migrant children in Libyan Detention Centres. The previous year saw a record number of deaths in the Mediterranean Sea with 4,500 reported to have drowned on the way to Italy. The country itself is troubled by political instability yet can seemingly agree on the running of 24 detention centres packed to the brim with African migrants.¹⁶⁹

¹⁶⁷ Yemen: 10-Year-Old Boy Who Weighed Just 10Kg Dies With Country On Brink Of Famine' (Sky News, 2018) <<https://news.sky.com/story/yemen-10-year-old-boy-who-weighed-just-10kg-dies-in-country-on-brink-of-famine-11547450?fbclid=IwAR3Lfit34keEumnou9f9YVr15MvNMWG39kF4LD6Ku3llPlykff3ONI9aoF4>> accessed 6 November 2018.

¹⁶⁹ Francesca Mannocchi, Sanjeev Singh and Malene Kamp, 'Trapped: Inside Libya'S Detention Centres - UNICEF Connect' (UNICEF Connect, 2018)

One of the detainees is Will, an 8 year old orphan who lost his parents on the way to Italy. Will, has all 30 rights endowed to him by the Universal Declaration of Human Rights disregarded, violated and completely disrespected. To many migrants, Libya is a stepping stone to a better life, yet the grim reality lays in the fact that to many, Libya is merely a pitfall into a dehumanised cycle of abuse.¹⁷⁰

The million dollar question remains: How relevant is the Universal Declaration of Human Rights for international migration? Can society reflect on migration since the Declaration points out clear, distinct improvements in their rights and subsequent protection? Realistically, the Declaration can do no miracles. Despite the awareness it has generated, its inability to be a key legal instrument due to its declarative nature poses an issue in the sense that, it can do little to impose its endowments. Seventy years on, can society analyse migration in liaison to the Declaration with a spirit of improvement and progress?

Syrian War Crimes

Bashar al-Assad has been ruling over Syria as a supposed president since 2000. In reality, Assad has taken full, authoritarian control and is a paradigm of a modern-day dictator, taking a number of well-thought out political steps in order to strengthen his control and power of the state. In 2011, the Middle East found itself entering a spring, fuelled and galvanised by calls for a more democratic way of governance. Egyptians, Libyans, Tunisians, Yemeni; all took to the streets, waving the flag of democracy, yet in Syria, things couldn't be more different. Al-Assad clamped down on protestors, murdered his opponents & ensured that any scrap of criticism was brushed away. However, these tactics of censorship and impunity brought out thousands of Syrians adamant to end his government. Rebel groups started to take control of different parts of the country, eventually dividing the state into parts which wanted Assad gone, and his own army.

Constitutionally, power is granted to the executive branch of government which cannot be challenged by the legislature and judiciary. Like this, Assad may select/dismiss ministers, prime ministers, supreme court justices, civil servants as he wishes. He may also, dissolve parliament at his will and enjoys parallel legislative privileges allowing him to completely bypass parliament & holds tight control over schools, universities, health services, student and trade unions, professional organisations, and of course, the media. For the past 40 years, human right violations have taken place concealed by 'emergency legislation'. Since 1963, Syrians have suffered arbitrary arrests,

executions, illegal and prolonged detentions with inadequately fair trials, or no trial at all.¹⁷¹

Bashar succeeded his father as President in 2000, and many saw a ray of hope in his inaugural speech. For the first time since the Ba'ath Party took over, Syrians hoped that Assad would bring forward political freedoms and civil rights. Nevertheless, these promises were never brought into practice. Many parts of Syria were economically and politically neglected, namely due to ethnic and religious discrimination, as was the case in many north-eastern parts of the state. Groups like the Kurds and Sunnis often found themselves marginalised by the Syrian Government (who were mostly Alawite). Initially, protests in Dar'a were responses to abuse of power simply on a local level, mostly due to economic and political discontent, yet the shockingly repressive nature of the government made any form of protest, remotely impossible. Government oppression did not stop there— in a world of social media, people took to their accounts to vent their grievances, and even there, the Syrian Government decided to exercise their autocratic practises to shut down any form of protest. People's demands grew; they wanted dignity, respect and rights despite the harsh oppression they faced.

The ongoing war has now, obliterated cities such as Aleppo, come into conflict with neighbouring, Middle Eastern countries like Iran, Saudi Arabia & Turkey, murdered hundreds of thousands and led millions to flee. Moreover, both parties are supported by a number of governments, namely, the United States of America on behalf of Rebel Groups, and the Russian Federation on the Government's behalf. Politically, this makes any step towards international resolution immensely problematic. Being that Russia sits on the United Nations Security Council, any sanction, resolution or legal action decided by the other members of the council, is immediately vetoed by Russia. To make matters worse, Syria has also been infiltrated by the infamous Islamic State of Iraq and AlSham (ISIS), further crippling any hope for a degree of democracy on Syrian territory.

Beneath the atrocity and destruction that spring from war, are civilians whose lives are placed in immeasurable amounts of jeopardy on a daily basis. On the 4th of April, 2017, over 80 people were killed by a suspected chemical attack on a rebel-held town of Khan Sheikhoun. Aside from the 80 dead, hundreds suffered symptoms relative to a reaction from a nerve agent. Opposition and Western forces claim this attack to be an orchestrated Syrian Government chemical air strike. Al Bassad's rebuttal was based on a fabrication, whilst his closest, and strongest ally, Russia said that an air strike *hit a rebel depot full of chemical munitions*.¹⁷²

¹⁷¹ (Ohchr.org, 2018) <https://www.ohchr.org/Documents/countries/SY/Syria_Report_2011-08-17.pdf> accessed 7 November 2018.

¹⁷² 'Syria Chemical 'Attack': What We Know' (BBC News, 2018) <<https://www.bbc.com/news/world-middle-east-39500947>> accessed 7 November 2018.

Amnesty International has criticised the Syrian Government for *subjecting cities to unlawful sieges* forcing Syrians to flee from their homes, otherwise facing food deprivation, medical attention, basic necessities, *in violation of international humanitarian law*. The war has reached a dire state where government strikes and artillery fires are being carried out on displacement camps. Innocent civilians forced to make-do with such dire conditions in such camps, not only face the fear of starvation & lack of necessary resources, but of being wiped out by their own government.¹⁷³

The Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic found that human rights were systematically being violated through a number of co-ordinated attacks on civilians, *which may amount to crimes against humanity as provided for in article 7 of the Rome Statute of the International Criminal Court*.

Article 3 of the Declaration of Human Rights. Yet the same government who signed the declaration, has maliciously violated the basic right to live for more than half a million of its own civilians through air strikes, artillery fires, torture and chemical attacks, to name a few.

From the 180 witnesses taken by the mission, 98 of them admitted to being tortured or victims to human right violations by military and security forces. It is clear in Syrian policy that through systematic targeting, civilians suspected of demonstration are quickly dealt with as a way to squash down further protests. This is done through breaking into homes and mass arrests where detainees are sent to *secret detention centres* where they are tortured and *inhumanely treated*. The witnesses said that many a time, detainees would be transferred to other centres where they, even children, were subjected to coordinated torture. It was a known custom for security guards to force family members of deceased victims, who had died as a result of such torture, to sign death certificates stating that the deceased was killed by gangs in the centre. It was documented that the most common forms of torture used by the Syrian Arab Republic included *beatings, electric shocks, suspension for long periods by the limbs, psychological torture and routine humiliation*. Whilst detained, males were often forced to remain unclothed for hours at a time, or during interrogation and torture, and women and girls were often subject to rape and sexual assault during home raids.¹⁷⁴

Any right to liberty remains to be completely shunned by the government with arbitrary arrests and detention, with the intention of intimidating protestors taking place on a daily basis. Most of these arrests are justified on a two-fold

¹⁷³ Deutsche (www.dw.com), 'Amnesty Slams Syrian Regime For Crimes Against Humanity | DW | 11.2017' (DW.COM, 2018) <<https://www.dw.com/en/amnesty-slams-syrian-regime-for-crimesagainst-humanity/a-41352848>> accessed 7 November 2018.

basis; either of being government opponents or those who were thought to be from hubs of democratic activism, making arrests seem very spontaneous. Medical and Human Rights experts and activists have also been reported to be victims of the government's arbitrary arrest spree. Detainees were, at no point, granted a free trial or due process rights. If detainees were to have a form of a trial, it would be in front of an influenced and partial judge or through an *ad hoc* hearing in front of military personnel, oblivious to the charges against them, and had no right to appeal the charge.

Blindfolded, detainees would be made to sign documents or pledges promising they would abstain from any form of demonstration against the government. Throughout, it remains clear that ethnic and religious discrimination has opened the gates for an increased degree of abuse remarks and treatment during detention. Children, too, are targeted by security forces who take no consideration for their vulnerability and consider them to be subject to the same human right and criminal violations faced by adults. Syrian forces have tortured and killed, attacked by snipers, thousands of children on multiple occasions. Syrian children, instead of being phased by their piles of schoolwork and studies, are victims to the grossly autocratic, oppressive and murderous ways of their government, who instead of investing funds into their wellbeing and development as the future generation, are ending their lives, one by one.

Political institutions, namely the European Union, have taken immense initiative against the Syrian Government by imposing embargoes on any Syrian-European Trade Deal, whilst offering both humanitarian and non-humanitarian support not only to displaced civilians but also to neighbouring countries taking Syrians in. The conflict has become a top priority for Brussels and aims to combat not only the Syrian Government, but the subsequent infiltration of the Da'esh threat posed not just in the Middle East, but also, in Europe. That being said, though Brussels opens its political arms to combatting the situation and addressing the humanitarian needs of Syrians, not all Europeans share the same sentiments. Many Europeans will attribute the outbreak of terrorism on European soil to the influx of migrants.

Moreover, local governments often intentionally aim for low asylum seeker applicants and solidify their intentions by implementing tough anti-immigration laws to discourage migrants entering their territories. Right wing political parties are taking advantage of coordinated terrorist attacks to exonerate a rhetoric of fear against the entry of migrants, in the name of safeguarding European societies. Instead of using their political influence to combat terrorism and to remind Europeans that the overwhelming majority of migrants entering Europe, are not entering with malicious intent, but with one to better the lives of their families, and most importantly, their children's.

The complexity of the Syrian Civil War is not just within the political disarray of the state, but the inhumane and undignified state civilians have had to

succumb to. What difference has the Universal Declaration of Human Rights made for these people, if the reality is that all 30 articles are being obscenely deprived? This resonates a reprimand, not just for Syrian migrants, but for migrants all over the globe.

Saudi Arabia and its relation with UN–founding members

The Kingdom of Saudi Arabia with the House of Saud as its ruling family as we know it today came about in the mid–19th century, a desolate and deserted expanse of land led by a tribal sheikh. Contrastingly, in today's world Saudi Arabia is one of the world's foremost producers and exporters of oil, as well as being the world's second largest arms importer. Both of these 'achievements' in global rankings are critical to understanding the kingdom and its conduct with regards to human rights. It is widely perceived to be a gross abuser of human rights and was ranked "worst of the worst" by Freedom House, with even rudderless, war–torn and hopelessly lost Libya faring marginally better than the autocratic monarchy which is Saudi Arabia.¹⁷⁵

One might also be inclined to ask, why did NATO member countries involve themselves in aiding the rebels in Libya, without having an end–goal or clear targeted end to the crisis, and why the very same NATO members choose to not only close their eyes and ears to the atrocities and human rights abuses blatantly committed by the Saudis both within their country and the surrounding region, but also continually seek to befriend and charm the kingdom in return for their oil and arms purchases?

To understand the situation that Saudi Arabia is currently in, it would be beneficial to have a look at its legal and political systems, as well as the importance given to religion. Its legal system and primary source of is based on Islamic Sharia law, which is subject to the religious teachings of the Qur'an, and is unique among Arab countries in that its law is unwritten, resulting in various lacunae in interpreting Sharia. Such lacunae are left to the judge's will and temperament to fill. It is therefore almost needless to state that religious tolerance, both towards other societal or individual beliefs and against Islam, and the proportionality to one's purported offence are concepts existing in parallel to the Saudi legal system and are rarely found in its judgements and consequent punishments. The right to a fair trial as laid down in Article 10 of the UDHR is an alien concept, save some vain attempts at reform which were quickly side-lined in the early aughties, while the freedoms stated in Articles 18, 19 and 20 are relevant and applicable if and only if the religion in question is Islamic, and the thoughts and ideas expressed do not run counter to the ideology propagated by the House of Saud and its ancillary entities. The capital punishment is reserved for many a crime, and is most of the time executed publicly, to drive the point home of how certain actions have consequences.

¹⁷⁵ "Freedom in the World 2018" (*Freedom House* May 8, 2018) <<https://freedomhouse.org/report/freedom-world/freedom-world-2018>> accessed November 12, 2018.

It is therefore no wonder that the kingdom abstained from voting on the UDHR at the Palais de Chaillot on 10 December 1948, presumably the only country to abstain on religious grounds, and remains one of the few countries which does not accept it to this very day.

Regardless, Saudi Arabia still finds itself among the G20 group of most powerful global players. This is not to say that no other G20 members are strangers to violating the basic principles set by the UDHR, countries such as Russia and China, yet Saudi Arabia is unique in how blatantly it commits such acts, and how equally blatant the other powers disregard it or at best issue void statements of vague criticism, then proceed to carry on business as usual.

A prime example of this can be seen in the very recent case of dissident Saudi journalist Jamal Khashoggi, who was presumably killed at the Saudi consulate in Istanbul, Turkey on 02 October 2018, on orders from the highest levels of government and carried out by persons who knew very well that the kingdom would steadfastly protect them.¹⁷⁶

This case is particularly shocking due to the level of confidence needed to carry out such an act on foreign soil, fully aware of the diplomatic immunities laid out in the Vienna Convention on Diplomatic Relations 1961, and the execution of it. CCTV footage caught more than a dozen Saudis equipped with a bone saw arriving in Istanbul in the dead of night and leaving on that very same day with a private jet, while supposedly being on a sightseeing holiday. The plan was so intricate as to have a stunt double leave the consulate wearing Khashoggi's clothes in order to throw anyone looking into the murder off the scent. The Saudis were clearly not prepared for such a spotlight being careened on to the murder, having to change its version of events and level of involvement and complicity at best, multiple times. The media made sure to focus the spotlight on the atrocity committed against one of their own, and consequently, the Western governments issued statements of condemnation.

The United States, United Kingdom and France all stated that the arms deals with the kingdom shall stand due to the economic benefits of such lucrative deals, while it was only Canada which froze the pending sale of armoured vehicles to Saudi Arabia, and Germany and Norway suspending all and any future arms exports. While U.S. Secretary of State Mike Pompeo carried on with his visit to the Saudis, several CEOs and media moguls pulled out of the Future Investment Initiative conference due to concerns about human rights in Saudi Arabia following the murder.

¹⁷⁶ Chulov M, "Jamal Khashoggi: Murder in the Consulate" (*The Guardian* October 21, 2018) <<https://www.theguardian.com/world/2018/oct/21/death-of-dissident-jamal-khashoggimohammed-bin-salman>> accessed November 12, 2018

Another example of overt and indiscriminate human rights violations is the case of Saudi writer Raif Badawi. After expressing his opinion about senior clerics online, Badawi was arrested on 17 June 2012 on charges of insulting Islam through electronic channels and of renouncing his Islamic beliefs, and was first sentenced to 7 years in prison and 600 lashes, which were increased to 10 and 1000 respectively on account of undermining general security by publishing writings offensive towards Islam and propagating liberal thought and idea. His wife and children sought asylum in Canada after receiving several death threats. An outpour of international condemnation combined with Badawi's deteriorating health following the administering of the first 50 lashes led to the rest of the lashes being suspended. Sweden cancelled its arms agreement with Saudi Arabia, and when the German government criticised the Saudi government about it, the Saudis condemned it as foreign interference in its internal affairs. Raif Badawi's case continued to feature in the headlines even in 2018, when his human rights activist sister Samar Badawi was arrested. Canada's Foreign Minister called for the release of both siblings through a tweet, and Saudi Arabia swiftly declared the Canadian Ambassador as a persona non grata and halted all trade with the North American country.

The dire treatment of migrant workers on the peninsula is yet another example of the kingdom's violations of basic human rights. Given the exponential rise of Saudi wealth due to oil over the last half a century, of which the House of Saud made sure to distribute parts of it to keep the population content and complacent, with free education at all levels, free healthcare and monetary handouts amounting to around €12 billion this year alone.

However, some 80% of the private sector is made up of non-Saudis, mostly South-East Asian and African nationals. To cater for this ever-growing demand for foreign workers to do the either undesired or too demanding work in the construction and domestic sectors, Saudi Arabia is one of several Arab countries which makes use of the kafala system, whereby a Saudi employer sponsors unskilled labourers, who in turn becomes responsible for the visa and legal status of the previously mentioned labourers; blasting the doors of exploitation and modern-day slavery wide open, with several cases reported over the years. Employers can easily force foreign workers to work against their will and prohibit them from returning home, with some even feeling entitled to trade and barter such workers between themselves as if they are a commodity on the market. On 29 October 2018, Tuti Tursilawati, an Indonesian housekeeper, was executed for having killed her employer, whom she said had tried to rape her. Despite protests from the Indonesian government, both in person and through legal means, the kingdom did not even notify the Indonesian consulate prior to the carrying out of the execution.

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On a positive note, Saudi Arabia's Crown Prince Mohammed Bin Salman Al Saud has initiated several noteworthy reforms since taking on such an important role. He has taken on royal corruption and cronyism, gave women the right and ability to sit behind a steering wheel and drive on their own accord and even open businesses without their male guardian's presence, allowed music festivals and movie theatres to open, and even limited the reach and powers of the religious police.¹⁷⁸

That being said, this young, up and coming hope for reform and a shift towards a more liberal Saudi Arabia might just be a useful ploy, in that it is not necessarily altruistic. The kingdom is largely dependant on petroleum, which has a limited role to play in the future, and must diversify its economy one way or another. It was under this very same prince that Saudi Arabia orchestrated a blockade of neighbouring Qatar and instigated the ongoing Yemeni Civil War, which has turned into one of the world's worst humanitarian crises, with over 10,000 dead. A UN report published in August 2018 revealed how there were 22.2 million people in need of humanitarian assistance, with the Saudi government partly responsible to war crimes including "rape, torture, arbitrary detention and use of child soldiers". The Saudis have also been accused of haphazardly targeting civilians through airstrikes affecting schools, hospitals and wedding parties.¹⁷⁹

It is important to note that the United States has been providing logistical, military and diplomatic support to the Saudi-led coalition's efforts in the perpetuating quagmire that Yemen has become. The kingdom also continues to receive backing from the United Kingdom and Egypt on the world stage.

Saudi Arabia and its reckless actions internally and externally, are to a certain extent a result of the action, or lack thereof, taken by other countries, namely founding members of the UN and the global superpowers with regards to the country's many human rights violations. Since documents such as the UDHR are not technically legally binding in their own right, it is difficult to make a legal case against countries such as Saudi Arabia, more so when it does not recognise the UDHR, or even pursue such a case given that the question of sovereignty and the freedom from foreign interference in one's domestic affairs is most certainly to be raised, an issue not lost on President Donald Trump who mentioned the concept 12 times in his debut speech addressing the United Nations General Assembly, and this year took aim the United

asia/article/2171121/fury-saudi-arabia-executes-indonesian-maid-tuti-tursilawati> accessed November 12, 2018.

¹⁷⁸ Vick K, "The Autocrat's Ascent" (2018) 191 *TIME* 24.

¹⁷⁹ Keaten J, "UN Experts: Possible War Crimes by All Parties in Yemen" (*AP News* August 28, 2018) <<https://apnews.com/358660bf2da344cfb1c5b24136b4c029>> accessed November 12, 2018

Nations Human Rights Council and justifying his withdrawal from the aforementioned council for “bashing America and its many friends”.¹⁸⁰

The morality and justification of Saudi Arabia's actions and record on the other hand are a whole other issue entirely. To make matters worse, when economic and political calculations are made and taken into consideration, the murder of a journalist or a foreign housekeeper pale in comparison and even though they are easily featured prominently in the media, are forgotten and moved on from with equal ease in the non-stop fast-track 24 hour news cycle that has engulfed and radically altered our news consumption. The UDHR and the principles it enshrines are most certainly relevant and should under no terms be taken for granted. Yet without the proper people and outlook in power, countries such as the US are able to prop up Saudi Arabia and whilst simultaneously and indirectly, giving their blessing and closing an eye or two to such heinous crimes.

Concluding Remarks

Throughout this paper, the development of the UDHR and its development within various states, blocs, and international organisations were outlined and discussed. It was highlighted in several instances that due to the fact that this declaration is not legally binding, it has been violated a number of times, sometimes even by the UN's founding members.

However, this declaration can clearly be deemed to have laid the foundations for a number of important charters or conventions pertaining to Human Rights, most of which did become legally enforceable. Thus, these fundamental principles are being enforced within a number of states, even if not necessarily through the power of the declaration itself.

In fact, sentiments of this declaration can be seen to be present within a number of democratic states constitutions.

The Migration situation, not only in Europe but also beyond, is one of the major contributing factors to oversight violations, and also results in significant criticism, from various international organizations. Such a situation has yet to be effectively resolved in terms of the provision of a corresponding asylum system across all affected states.

The Saudi government, even though having made a few strides forward with regards to the rights granted to women, still has a long way to go, if it is ever to be considered as being respectful of fundamental human rights.

¹⁸⁰ Nelson L and others, “Full Text: Trump's 2018 UN Speech Transcript” (*POLITICO* September 25, 2018) <<https://www.politico.com/story/2018/09/25/trump-un-speech-2018-full-text-transcript-840043>> accessed November 12, 2018

Human Rights are not values that should be adopted, but are legal obligations that should be imposed on every functioning state. However, due to the rapid way in which the world is developing, certain mechanisms for maintaining the rule of law and international agreements may be undermined. The UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein believes that the protection of the international rule of law is of the utmost importance. The state must remain accountable and its citizens must be protected and granted their fundamental human rights.¹⁸¹

This declaration may also have to be examined in light of recent scientific and technological developments. Situations such as the introduction of artificial intelligence, do not fit within the confines of traditional human rights provisions and therefore have to be contemplated carefully.

¹⁸¹ 'Team Human: Making The New Case For The UDHR' (*Ohchr.org*, 2018)
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