GLOBAL PROTECTION OF HUMAN RIGHTS: ASPIRATIONS, CHALLENGES AND REFLECTIONS

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This paper appraised the impact of the International Bill of Rights on the promotion and protection of human rights across the globe. The paper examined the concept of international human rights, its global exchange and attempts to institutionalize its principles for the protection of individuals as a matter of universal validity in contemporary times. The author observed that in spite of arguments to the contrary, international human rights standards as set out in the International Bill of Rights have assumed the status of international customary law. The paper discloses that whatever the aspirations of the drafters however, violations of human rights stills persist in virtually all nations of the world some six decades after the adoption of the international documents for the universal protection of human rights were initiated on the floor of the United Nations.

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INTRODUCTION

Initiatives for the global protection of human rights date back to the origin of the United Nations. Countries of the world had included a general commitment to the respect of human rights in the United Nations Charter, 1945, and in adopting the Universal Declaration of the Human Rights, 1948,¹ the UN General Assembly had provided the basic tenets of what later

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¹ UDHR, General Assembly Resolution 2174 (III) which states in its *Preamble* that the "...recognition of the dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Its *Article 1* thereof states that: "All human beings are born free and equal in dignity and rights".

became widely accepted and commonly referred to as the *International Magna Carta*. Following the adoption of the UDHR and with the coming into force of the twin-treaties,² bold steps had been taken towards a universal recognition of human rights.³ The three human rights documents⁴ not only extended the revolution in international law ushered in by the UN Charter but also raised human rights concerns from merely domestic issues to issues of international concerns. They claim that all rights are interdependent and indivisible, and assert that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. Undoubtedly, one may, in retrospect, observe that post-World War II peace efforts had given impetus to the modern development of basic principles of human rights and to the general acceptance of the idea that the human rights practices of individual countries towards their own citizens are legitimate matters of international concern.

The influence of the UDHR has been substantial. Its principles have been incorporated into the Constitutions of most of the nations now in the UN. Though a mere declaration, its effect had been epochal and has achieved the status of customary international law. Various justifications⁵ have been advanced to validate the infusion of the concept of human rights⁶ into our social consciousness in the last few decades.⁷ There had been some contestations hinging the concept on “natural law theories”,⁸ “biological

² The International Covenant on Civil and Political Rights (ICCPR) with its Optional Protocol and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

³ By 1997, over 130 nations have ratified both the ICCPR and the ICESCR.

⁴ Together with the UDHR they are generally referred to as the International Bill of Human Rights.

⁵ To many writers, the term “human rights” came into wide use after World War II to replace the earlier phrase “natural rights” which had been associated with the Greco-Roman concept of natural law since the end of the Middle-Ages. Today, human rights arguably refer to a wide variety of values and ideas reflecting the diversities of human history, culture and circumstances. They are conceived of not only as universal i.e. applying to all human beings everywhere, but also as fundamental i.e. referring to essential or basic human needs.

⁶ Three generations of human rights are generally recognised. The first generation of civil and political rights e.g. rights to life, liberty, freedom of speech and freedom from torture, restrict what others (including the state may do). The second generation of economic, social and cultural rights require active provision, such as imposing an obligation on government. The third generation of solidarity rights such as rights of peace, development and humanitarian assistance, are associated with the aspirations in newly developing countries for political self-determination and economic development.

⁷ The concept of human rights has evolved over the years, and different countries have emphasised different aspects of human rights principles and policy. While some nations have emphasised traditional civil and political rights (both individual and collective), others especially, socialist regimes have emphasised the concept of economic and social rights. Some governments however, do embrace both set of principles.

⁸ Natural law theories base human rights on the “natural” moral order that derives from religious precepts such as common understandings of justice and the belief that moral behavior is a set of objectively valid prescriptions. See <http://www.answer.com/topic/humanright>.⁷

theory”⁹ or “interest theory”, among others.¹⁰ Today, the concept in spite of virulent denials,¹¹ has expanded to include not only the erstwhile ‘natural rights’ but also civil rights, basic or fundamental rights, individual rights, collective rights, women rights, children rights, rights of persons with disability, refugee rights, prisoners’ rights, among others. More often than not it remains unclear what connotation is to be attached to the concept of human rights though they seem largely to entail the moral and legal rights of all humans as recognised by national and international laws. Human rights are believed to belong justifiably to every person in society. They may be described as a special sort of inalienable moral entitlement attaching to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group. They are said to specify the minimum conditions for human dignity and a tolerable life.¹²

⁹ The biological theory considers the comparative reproductive and advantage of human and social behavior based on empathy and altruism in the context of natural selection. Others hold that human rights codify moral behavior, which is a human, social product developed by a process of biological and social evolution (associated with Hume) or as a sociological pattern of rule setting (as in the sociological theory of law and the work of Weber). This approach includes the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (as in Rawls).

¹⁰ Philosophers like John Finnis argue that human rights are justifiable on the grounds of their instrumental value in creating the necessary conditions for human wellbeing. Some interest – theorists also justify the duty to respect the rights of other individuals on grounds of self-interest (rather than altruism or benevolence). Reciprocal recognition and respect of rights ensures that one’s own will be protected. See <http://www.answer.com/topic/human-rights>.⁷ cat = biz - fin (It may be noted that theories of rights encompass natural rights, civil rights, individual rights, collective rights, legal rights, inalienable rights, children rights, women rights among others). Ultimately, the term “human rights” is often itself an appeal to a transcendent principle, not based on existing legal concepts. The term “humanism” refers to the developing doctrine of such universally applicable values. The term “human rights” has replaced the term “natural rights” in popularity, because the rights are less and less frequently seen as requiring natural law for their existence. See <http://www.answer.com/topic/human-rights>.⁷ cat = biz - fin. Burns H. Weston, Human Rights in Encyclopedia Britannica online, at 2, (last visited December 19, 2007).

¹¹ “It has never been universally accepted that the foundation of human rights is traceable to natural law and natural rights. Indeed those who advocated different conceptions of human rights had violently criticized the notion of natural rights. Some of such opponents were so powerful and destructive that only the inherent potency of the concept could enable it to withstand the onslaught”. Gaius Ezejiofor, *The Development of the Concept of Human Rights: Definition and Philosophical Foundations*, in HUMAN RIGHTS: LAW AND PRACTICE IN NIGERIA (Okpara Okpara ed., Chenglo Ltd. 2005).

¹² Human rights have indeed become the hot button in international law. Every day there are agitations as human beings worldwide confront injustice and inhumanity. ‘Like drops of water on a rock their efforts tear down the forces of oppression and move the world closer to achieving the principles expressed in the UDHR’. The trend is better captured in the words of Malcolm X: ‘When you expand the civil rights struggle to the level of human rights, you can take the case of the Black man in this country before the United Nations. You can take it before the General Assembly. You can take Uncle Sam before the World Court. But the only level you can do it on is the level of human rights. Human rights are something that you are born with. Human rights are your God-given rights. Human rights are the rights recognized by all the nations of this earth’ Malcolm X, speech in Cleveland, Ohio USA, April 3, 1964. Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights (edited by Nancy Flowers) University of Minnesota, Human Rights Resource Centre <http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-1/united-nations.htm> (last visited Dec.19, 2007).

I. UN MECHANISM FOR HUMAN RIGHTS PROTECTION

Having pledged to promote the respect for the human rights of all, member states of the United Nations established the United Nations Commission on Human Rights (UNCHR) and charged it with the task of drafting documents spelling out the meaning of the fundamental rights and freedoms proclaimed in the UN Charter.¹³ Consequent upon the adoption of the UDHR, and with the goal of establishing mechanisms for enforcing the UDHR, the UNCHR proceeded to draft the twin Human Rights Covenants and several subsequent Human Rights Documents.¹⁴ By 2006, the UN has adopted more than 20 principal treaties, further elaborating human rights. These include:

- The Convention on the Elimination of All Forms of Racial Discrimination, 1965.
- The Convention on the Prevention and Punishment of the Crime of Genocide.
- The Convention on the Political Rights of Women.
- The Convention on the Elimination of all Forms of Discrimination against Women, 1979.
- The Convention on the Rights of the Child, 1989.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- The International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, 1990.

Regional documents have also been developed in Europe, the Americas and in Africa for the protection and promotion of human rights, extending the *International Bill of Human Rights*. Countries in Europe have put in place the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1952, (with additional Protocols 1-5). Its counterpart in the Americas is the American Convention on Human Rights. Similarly, African states have developed the African Charter of Human and People's Rights, 1981, and they have, in addition, adopted the African Charter on the Rights and Welfare of the Child, 1990. There is also the

¹³ See Frank Newman and David Weissbrodt, *International Human Rights: Law, Policy and Process*: 9-12. "The United Nations at a Glance," UNA-USA Factsheet University of Minnesota, Human Rights Resource Centre <http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-1/united-nations.htm> (last visited Dec. 19, 2007).

¹⁴ In the words of T. O. Elias, '...the Universal Declaration of Human Rights of 1948 may come to be judged as perhaps the most important document to have emerged from the UN organization as the fountain of its existence and indeed its *raison d'être*'. ELIAS, T. O., *NEW HORIZON IN INTERNATIONAL LAW* 162 (Sijthoff Noordhoff, Netherlands 1979).

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1988, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, 2003. On their own part Muslim States have created the Cairo Declaration on Human Rights in Islam, 1990. Undoubtedly, there have been popular demands for the respect of human right principles not only in Western Europe, Oceania and North America but more particularly in Eastern Europe, Latin America, Africa and Asian countries since the signing of the UN Charter in 1945.

Upholding human rights principles as "the foundation of freedom, justice and peace in the world" is fundamental to every undertaking of the United Nations. The General Assembly oversees and makes recommendations towards upholding the "inherent dignity" and the "equal and inalienable rights of all members of the human family" as set out in the UN Charter.¹⁵ The Office of the United Nations High Commissioner for Human Rights (OHCHR) for the promotion and protection of human rights was established by UN General Assembly on 20 December 1993 in the wake of the World Conference on Human Rights. Furthermore, in 2006, the General Assembly established the United Nations Human Rights Council (UNHRC) as a successor to the United Nations Commission on Human Rights (UNCHR). The UNHRC is a subsidiary body of the UN General

¹⁵ Some notable Resolutions of the UN General Assembly since 1985 include:

Adoption of the Standards Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 29 November 1985.

Adoption of the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985

Adoption of the International Convention against Apartheid in Sports, 10 December 1985.

Adoption of the Declaration on the Right to Development, 4 December 1986.

Adoption of the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment, 9 December 1988.

Adoption of the Convention on the Rights of the Child, 20 November 1989.

Adoption of the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules); Basic Principles for the Treatment of Prisoners; the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 14 December 1990.

Adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990.

Adoption of the Declaration on the Protection of All Persons from Enforced Disappearance, 18 December 1992.

Adoption of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 December 1992.

Adoption of Resolution 48/163, proclaiming the International Decade of the World's Indigenous People, 20 December 1993.

Adoption of Resolution 48/141, establishing the post of United Nations High Commissioner for Human Rights, 20 December 1993.

Assembly and now works closely with the Office of the High Commissioner for Human Rights (OHCHR) in promoting and protecting human rights around the world. Although human rights are fundamental to all functions and organs of the UN, human rights issues mainly fall under the mandate of the UNHRC which particularly is the body directly involved with the investigation into violations of human rights around the world.

Members are elected to occupy the 47 seats of the UNHRC by the UN General Assembly, taking into consideration the candidate States' contribution to the promotion and protection of human rights. Its *modus operandi* includes the Universal Periodic Review which assesses the human rights situations in each UN-member country; its Advisory Committee which provides it with expertise and advice on human rights issues; and its Complaint procedure which allows individuals and organisations to bring complaints about human rights violations to the attention of the Council. The Office of the UN High Commissioner for Human Rights coordinates the UN human rights programme and promotes universal respect for human rights.

There are six committees within the UN system that try and check to see whether countries comply with the human rights treaties they have signed. These are called 'treaty monitoring bodies'. These are:

- The Committee on the Elimination of Racial Discrimination.
- The Human Rights Committee.
- The Committee on Economic, Social and Cultural Rights.
- The Committee against Torture.
- The Committee on the Elimination of Discrimination against Women.
- The Committee on the Rights of the Child.

The committees may call upon governments to respond to allegations and may adopt decisions and publish them along with criticisms or recommendations.

Over the years the United Nations has developed different methods to investigate human rights abuses and to press for remedial action. Experts known as special rapporteurs or representatives gather facts, visit prisons, interview victims, and make recommendations on how to increase respect for human rights. They investigate situations in specific countries and conduct thematic studies on such issues as torture, religious intolerance, racism, human trafficking and violence against women. Each year they send thousands of urgent cables to Governments requesting the release of prisoners, the commutation of death sentences or other vital action. Working groups have been established to investigate such issues as involuntary

disappearances and arbitrary detention. Their reports highlighting human rights violations help to mobilize international attention.

The champions of human rights globally have however not been states or government officials but most often citizens and in particular non-governmental organisations.¹⁶ NGOs have played significant roles in focusing the international community on human rights issues. For example, NGOs such as Amnesty International, the Antislavery Society, the International Commission of Jurists, the International Working Group on Indigenous Affairs, Human Rights Watch, Minnesota Advocates for Human Rights, and Survivors International, all monitor the actions of governments and pressure them to act according to human rights principles. One of such NGOs, HURIDOCS, for example, has developed extensive methodologies for monitoring and documenting human rights violations.

II. VIOLATIONS OF HUMAN RIGHTS

Records as documented by non-governmental organisations show that human rights violations are going on all over the world.¹⁷ Human rights violation can be described as an abuse of people in a way that offends any of the recognisable human rights. There is a human right violation for example when a government violates national or international law related to the protection of human rights. According to the Universal Declaration of Human Rights, fundamental human rights are violated when, among other things:

- A certain race, creed or group is denied recognition as a “person” (Articles 1 & 6).
- Men and women are not treated as equal (Article 2).
- Different racial or religious groups are not treated as equal (Article 2).
- Life, liberty or security of person is threatened (Article 3).
- A person is sold as or used as a slave (Article 4).
- Cruel, inhuman or degrading punishment is used on a person (such as torture or execution) (Article 5).
- Victims of abuse are denied an effective judicial remedy (Article 8).
- Punishments are dealt arbitrarily or unilaterally, without a proper and fair trial. (Article 11).
- Arbitrary interference into personal or private lives by agents of the

¹⁶ DAVID SHIMAN, *TEACHING HUMAN RIGHTS 6-7* (Denver: Centre for Teaching International Relations Publications, University of Denver 1993). University of Minnesota Human Rights Resource Centre <http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-1/united-nations.htm> (last visited Dec. 19, 2007).

¹⁷ See Nations in Transit, 2014. The 18th Edition of Freedom House’s Comprehensive Report. <http://freedomhouse.org/report/nations-transit/nations-transit-2014> (last visited Dec. 22, 2014).

state (Article 12).

- Citizens are forbidden to leave or return to their country (Article 13).
- Freedom of speech or religion is denied (Articles 18 & 19).
- The right to join a trade union is denied (Article 23).
- Education is denied (Article 26).

According to Amnesty International, only a very few countries do not commit significant human rights violations.¹⁸ In its 2004 human rights reports (covering 2003) the Netherlands, Norway, Denmark, Iceland and Costa Rica are the only (mappable) countries that did not violate at least some human rights significantly. Its 2014 report shows details of persistence and growth of torture in countries around the world over the past 30 years. Human Rights Factsheet¹⁹ show that violence against women and girls is the most pervasive violation of human rights in the world today. More than 1 million children, mostly girls are forced into prostitution every year.²⁰ At least 500,000 children a year are left motherless by death in childbirth. 2 million girls each year are at the risk of genital mutilation – approximately 6,000 per day.²¹ Some 160 million children are moderately or severely malnourished. Some 11 million children are out of school. Some 250 million children between the ages of 5 and 14 are currently working according to International Labour Office (ILO). Of this number, some 120 million children are working full-time. Some 61% of child workers (153 million) are found in Asia; 32% in Africa and 7% in Latin America. Over 1.3 billion people in developing countries try to make ends meet with less than 1 dollar per day. Many of these people live in extreme poverty. Women comprise 70% of the world's poor.²² Discrimination against women and girls is an important basic cause of malnutrition. The very high rates of child malnutrition and low birth weight are linked to such factors as women's poor access to education and their low levels of participation in paid employment.²³

It is the belief of some people that human right abuses are more common in dictatorships or theocracies than in democracies. This may be

¹⁸ *Amnesty International Report 2004*, Amnesty International (2004), ISBN 0862103541.

<http://www.amnesty.org> See also Human rights: Definition and Much More from Answers.com <http://www.answers.com/topic/human-rights?cat=biz=fin> (last visited Dec. 19, 2007). See 2014 Report at <http://www.amnesty.org> (last visited Jan. 27, 2015).

¹⁹ <http://www.un.org/cyberschoolbus/humanrights/resources/factsheet.asp> (last visited Dec. 19, 2007).

²⁰ The Progress of Nations 1997, UNICEF.

²¹ UNDP Human Development Report 1997; The Progress of Nations 1997, UNICEF.

²² Information Kit, Decade for the Eradication of Poverty 1997-2006, UNDP.

²³ The State of the World's Children 1998, UNICEF. Some 250 million children between the ages of 5 and 14 are currently working according to the International Labour Office (ILO). Of this total, some 120 million children are working fulltime. Some 61% of child workers (153 million) are found in Asia; 32% in Africa and 7% in Latin America. (Source: Dossier on Child Labour, UNESCO Education International quarterly magazine, September 1997).

because freedom of speech and freedom of the press tend to uncover state orchestrated abuse and expose it. Nonetheless, human right abuses do occur in democracies.²⁴ Disparities that exist between nations of the world are not necessarily in terms of their system of government but by whether they believe human rights are largely a legal or moral duty and whether they are of more cosmopolitan or nationalistic persuasion. The 1995 United Nations Fourth World Conference on Women in Beijing, China, drew unprecedented attention to serious violations of the human rights of women. Virtually all countries of the world are now under close surveillance for human rights violations. Numerous NGOs such as Human Rights Watch or Survivors International now monitor the actions of governments and pressure them to act according to human rights principles. Government officials who understand the human rights framework can also effect far reaching changes for freedom. The point is that human rights are an idea whose time has come. The Universal Declaration of Human Rights has become a valid universal call to freedom and justice for people throughout the entire world. Every day governments that violate the rights of their citizens are challenged and called to task. Every day individuals worldwide mobilize and confront injustice and inhumanity. Progressively, these efforts have proved instrumental in wearing down the forces of oppression as they move the world closer to achieving the principles expressed in the Universal Declaration of Human Rights. No region of the world is spared in respect of human rights violation, though the picture varies from one region to another.

III. HUMAN RIGHTS PROTECTION IN EUROPE

In Europe, there has been long-standing assimilation of the values embedded in the concept of human rights. After the horrendous barbarism of the holocaust, Europe moved to reaffirm the worth and dignity of the human person. The establishment of the Council of Europe was seen as a particular device for preventing the future recurrence of similar tragedies. The newly established organs of the Council of Europe immediately designed a conventional instrument to provide for the effective protection of human rights which culminated in the signing of the European Convention on Human rights (ECHR). Many years thereafter, the Council of Europe having felt that the protection of civil and political rights should be

²⁴ For example, in a democratic society as in the UK, the Macpherson Report found that the British police had been institutionally racist in the handling of the death of Stephen Lawrence. Also Amnesty International has called the running of Guantanamo Bay detainment camp by the United States “a human rights scandal” in a series of reports. The recent Ferguson killing of Michael Brown accentuates the fears of institutional trampling of human rights even in the so called ‘free world’.

accompanied by a parallel instrument for the protection of economic, social and cultural rights, adopted the European Social Charter in October, 1961. It was a successful establishment of a regime that placed economic and social rights (at par with civil and political rights) under European supervision.

Unfortunately and quite remarkably, the Freedom House's comprehensive report on post-communist democratic governance in its 18th edition highlighted recent setbacks to democracy across Eastern Europe, Asia and the Balkans with Russia serving as a model for a retreat from free institutions. The year 2013 for example brought new and alarming levels of repression with the civil society responding to repressive governance in Ukraine, Kyrgyzstan, Russia and several other countries.²⁵

²⁵ Russia particularly has a long history of authoritarian rule and human rights abuses even though its Constitution guarantees the rights and liberties of citizens and Russia is a signatory to the UDHR and a number of other international human rights instruments Nikolai Berdyayev went so far as to connect the depth and longevity of Russian communism, a system inimical to human rights, to this persistent culture of despotism (*The Origin of Russian Communism*, 1960, Ann Arbor: University of Michigan Press). In the vivid phrasing of Alexander Radishchev, an eighteenth-century dissident, in his *Journey from Saint Petersburg to Moscow* (which landed him in Siberia), the rigid censorship under Catherine the Great resembled a restrictive nursemaid who stunts children growth towards self-reliant maturity. Mikhail Gorbachev, Soviet leader from March 1985 to December 1991, introduced *Glasnost* openness or Free expression, and sometimes later, *Perestroika* - attempts at economic and political reform. Gorbachev freed political prisoners and exiles between 1986 and 1989. His UN speech of December 7, 1988, praised the once spurned Universal Declaration of Human Rights and revised the 1977 Constitution accordingly. Four months after his near-overthrow in the August 1991 coup by his own reactionary appointees, the Soviet Union split into three once again independent Baltic republics and twelve newly independent states, including the Russian Federation. Boris Yeltsin, Russian President from 1991 until his resignation in 1999, forced on Russia the 1993 Constitution increasing presidential power but also containing Article 2: "The individual and his rights and freedom are the highest value. The recognition, observance and defense of the human rights and freedoms of the individual and the citizen are the obligation of the state." The Constitution proclaims a broad range of civil, political, social, and economic rights. Contrasting realities under overbearing and corrupt state administrations infringed on freedom of expression, religion, fair and humane justice, freedom of movement, and freedom from racial, ethnic, and homophobic bigotry, and hate crimes. Moreover, during the wars to retain Chechnya just about every human right was violated. Inequality, poverty, and homelessness haunted the land while the new rich lived high. Women experienced inequality and exploitation in employment, widespread divorce, abandonment, and domestic violence, and trafficking into prostitution. Life expectancy fell to third-world levels, especially among men, owing to stress, accidents, alcoholism, and the pervasive inadequacy of health care. Such political and social human rights violations prompted the formation of numerous free but under-funded human rights advocacy groups – non-governmental organizations. They ranged from Russian Soldiers Mothers, who were against the wide abuses of military recruits, to the anti-Stalinist and pro rights Memorial Society, to Muslim cultural and aid societies. Seventy years of Communist social and legal cleansing are not overcome in a decade or two. In Ken Jowitt's words, "We must think of a 'long march' rather than a simple transition to democracy" (Jowitt, 1997, 189), with all sorts of human rights to redeem. Now, as a member of the Council of Europe, Russia has international obligations related to the issue of human rights. However, in recent years, Vladimir Lukin (current Ombudsman of the Russian Federation), has invariably characterised the human rights situation in Russia as unsatisfactory. The European Court of Human Rights has become overwhelmed with cases from Russia. As of June 1, 2007, 22.5% of its pending cases were directed against the Russian Federation. (*Peter Juviler, 2000; Human Rights Watch*). Russian History Encyclopaedia. <http://www.answers.com/topic/human-rights?cat=biz-fin> (last visited Dec. 19, 2007).

IV. MIDEAST/ASIAN STATES AND INTERNATIONAL HUMAN RIGHTS CONVENTIONS

No regional document has particularly been developed for the protection of human rights in the countries of the Asian continent. This may not be unconnected with the dichotomy of the culture and religious dogma prevalent in the region.²⁶ For example, the poor (indeed, often critical) state of the protection of human rights is one of the major features of the human rights debate in the Middle East sub-region, which continues to challenge the regional human rights movement, despite recent progress towards reform in certain states. The contestation of the universality of certain of these rights is another feature.²⁷

²⁶ Buddhism culture for instance, had in recent times, faced a range of human rights problems in different parts of the world, notably in Tibet, Sri Lanka, and Burma. In common with most Asian traditions, however, Buddhism has never formulated an explicit doctrine of human rights. The concept of human rights is Western in nature and has its intellectual origins in the Enlightenment, and it is unclear to what extent the concept is compatible with traditional Buddhist teachings. Some Buddhists feel that a strong emphasis on individual rights runs counter to the doctrine of no self (anātman), and that rather than mimic the West Buddhism should evolve a distinctive approach grounded in compassion (karunā) and interrelatedness rather than in a belief in the inviolable status of the individual. Others, such as the present Dalai Lama, seem to feel that the discourse of human rights is in harmony with the moral values of traditional Buddhism and provides a useful vocabulary for expressing Buddhist views on contemporary political and social issues. (*Buddhism Dictionary, Oxford University Press*). <http://www.answers.com/topic/human-rights?cat=biz-fin> (last visited Dec. 19, 2007).

²⁷ All states in the region are party to two or more of the United Nations human rights treaties. A number are not yet parties (as of 2004) to either the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social, and Cultural Rights which, together with the Universal Declaration of Human Rights (UDHR), make up the International Bill of Human Rights; these include Bahrain, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (U.A.E.). All are parties to the Convention on the Rights of the Child (CRC), but Iran, Iraq, Oman, Syria, and the U.A.E. have yet to sign the Convention against Torture. A similar number of states (Iran, Oman, Qatar, Somalia, Sudan, and the U.A.E.) have not yet become parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Many Middle Eastern states that have signed CEDAW, along with many states elsewhere in the world, have attached reservations to their ratification of this treaty. Certain of these reservations have attracted attention because of their broad nature; they purport to subject compliance with the Convention to the principles of Islamic shari'a. Arguments continue at the UN over the compatibility of such reservations with the intentions of CEDAW, and arguments continue in the region as to the universality of the norms provided in this particular treaty. There have been a few ratifications of the Optional Protocols to the ICCPR, CEDAW, and the CRC, enabling the appropriate monitoring committee to hear complaints from individual citizens against the state party. Domestically, it is rare that individuals realize human rights protections through directly invoking international human rights instruments in the national courts, even though there may be constitutional provision for the incorporation in national legislation of international instruments to which the state is party. Furthermore, in many states in the region, weak and unempowered national judiciaries are unable to assert their independent will against the executive to secure effective judicial protection of human rights, even though the rights enshrined in the international instruments are also guaranteed in the texts of most of the constitutions of the region. A number of states in the region are also party to the African Charter on Human and Peoples Rights, and Turkey has ratified the European Convention on Human Rights. There is also the Arab Charter on

A set of standards proclaimed by all states in the Middle-East sub-region (except for Israel) is contained in the Cairo Declaration of Human Rights in Islam. The Declaration was adopted in 1990 by member states of the Organization of the Islamic Conference (OIC) to serve “as a general guidance for member states in the field of human rights.” The rights elucidated in the Declaration differ in certain significant respects from those set out in the international human rights treaties to which many of the states in the sub-region are parties, and Resolutions from OIC summits have consistently asserted the significance of cultural relativity in response to the demands of the international human rights norm of universality. Thus, a 2003 Resolution from the OIC foreign ministers recognizes “the obligations and endeavours of the member states to promote and protect the internationally recognized human rights while taking into account the significance of their religious, national, and regional specificities and various historical and cultural backgrounds, and with due regard to the Cairo Declaration on Human Rights in Islam.” In reality, the arguments over universality versus cultural relativity of human rights norms revolve particularly around the rights of women and minorities, and freedom of religion.

Interestingly, concern is articulated by many states and citizens in the region over the exploitation of the international human rights discourse for political ends. There are evocations of a larger context of colonial and neo-colonial agendas, cultural imperialism, and hostility to Islam. Although it is believed elsewhere that these states have perceived political interests in seeking to divert and undermine criticism of their human rights records in international fora (as, in a different discourse, does Israel). Yet in these states and among civil society these evocations have a popular resonance, and there is widespread criticism of selectivity in the application of human rights discourse and principles by powerful Western states. This criticism has traditionally centred on the question of Palestine in light of the absence of enforcement action against Israel for its violations of the human rights of Palestinians. It has expanded to include a perception of a lack of attention to the human rights of all Muslims by the major Western powers. These issues have been heightened in the aftermath of the September 11, 2001 attacks in

Human Rights, which was adopted in 1994 by the members of the League of Arab States. The original text has been criticized by the Geneva-based International Commission of Jurists as “a fatally flawed instrument, containing significant gaps and elements which run contrary to fundamental human rights principles.” In the years following its adoption, no member state ratified the charter, and in 2003 a process of review for the modernization of its contents was initiated. Paul Martin (updated by Lynn Welchman). *Mideast & N. Africa Encyclopaedia*. <http://www.answers.com/topic/human-rights?cat=biz-fin> (last visited Dec. 19, 2007).

the United States and the anti-terrorism war which followed it, a backlash of which is the unprecedented level of terrorism the world is witnessing today.

The real political issues thereby generated have had immediate impact on the work of non-governmental domestic, regional, and diasporic human rights organizations (NGOs) established since the late 1970s to challenge widespread, egregious, and systemic human rights violations. These organizations have had critical influence in establishing and maintaining the human rights debate and discourse in the region. Regional networking has increased significantly over the last ten years, with a number of formal regional programmes and less formal networks established. The NGOs in the region are also critical of selectivity in the approach of powerful Western states and of undue Western influence over the agenda of the international human rights movements. Human rights activists are likely to find themselves caught between hostility at home and indifference to regional concerns in the international arena. Overall, there is regionally, a general consensus on the need to increase the popular resonance of universal human rights norms and discourse in order to increase the prospects for implementation of international human rights.

V. REGIONAL PROTECTION OF HUMAN RIGHTS IN AFRICA

Africa states have not lagged behind in adapting national laws to international standards in the respect for and the protection of human rights. A bold step has also been taken to further streamline the standards to their practical application by setting up a judicial structure for their enforcement. The African Charter of Human and Peoples' Rights (ACHPR or Banjul Charter) was adopted by African states in 1981. It deals with both individual and collective rights of the people. It sets forth not only classical liberal rights but also economic and social rights such as the right to work, the right to health, and to shelter. Moreover, at the Grand Bay Declaration (a Resolution adopted at a summit meeting of the AU in April, 1999), the African Commission on Human and Peoples' Rights (ACHPR) came into existence. It is a quasi-judicial body tasked with promoting and protecting human rights throughout the African Continent and has successfully resolved some human rights violation issues.²⁸ Thus, policy and law have

²⁸ In *Civil Liberties Organisation v. Nigeria*, the ACHPR received communication against the government of Nigeria. The Communication was filed by the Civil Liberties Organisation, a Nigerian NGO. The Communication alleged that the military government of Nigeria had enacted various decrees in violation of the African Charter, specifically the Constitution (Suspension and Modification) Decree No. 107 of 1993, which not only suspended the Constitution but also specified that no Decree promulgated after December, 1983 can be examined in any Nigerian court; and the

evolved and are conterminously entrenched in the region, even though significant human rights violations occur every year.²⁹

VI. HUMAN RIGHTS DEVELOPMENTS IN THE USA

Since its inception as an independent nation, the United States has claimed a special relationship with the issue of human rights. The United States has long regarded international human rights standards as universal. It has rejected the arguments of nations such as China, which claim that such standards can be discounted as mere “Western” concepts and argue that human rights should be viewed through the prism of each nation’s history and culture. Unlike many governments, the United States acknowledges that some human rights problems persist within its territory despite its generally good record. American efforts to encourage respect for human rights increased significantly during the 1990s. The United States ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992 (however, after more than a decade into the twenty-first century it had not yet ratified the International Covenant on Economic, Social, and Cultural Rights, or a number of other key international conventions).³⁰

The United States has worked to build new institutions to advance the protection of human rights. It supported the creation of the office of the UN High Commissioner for Human Rights in 1993. In the wake of abuses and atrocities in Europe and Africa in the 1990s including genocide in Rwanda and ethnic cleansing in Bosnia which led to sustained efforts to further accountability and justice, the United States in response to these crises,

Political Parties (Dissolution Decree) No. 114 of 1993, which in addition to dissolving political parties, ousts domestic effects of the African Charter. The Communication further complained that the ousting of the jurisdiction of the courts in Nigeria to adjudicate the legality of any Decree threatened the independence of the judiciary and violated Article 26 of the African Charter. It also deprived Nigerians of their right to seek redress in the courts for government acts that violate their fundamental rights, in violation of article 7.1(a) of the African Charter. It was held that the Decrees in question constituted a breach of Article 7 of the African Charter and the right to be heard. Held further that the ouster of the court’s jurisdiction constituted a breach of Article 26, the obligation to establish and protect the courts. It was found that the act of the Nigerian government to nullify the domestic effects of the Charter constituted a serious irregularity.

²⁹ In its 18th edition of *Nations in Transit* 2014, Freedom House reported that sub-Saharan Africa experienced a decade and a half of growing democracy through 2005. Since then the region has experienced 8 years of democratic backsliding leaving sub-Saharan Africa with the same levels of freedom as in 2001. In 2014, President Obama hosted the first US-Africa Leaders Summit in Washington. Sudan, Eritrea and Zimbabwe were so poorly rated in democratic governance, their leaders were not invited.

³⁰ During the 1990s, the United States placed increasing emphasis on encouraging democratization, promoting justice and accountability, and assisting the development of civil society through both direct assistance and the work of the National Endowment for Democracy.

played a key role in the establishment of the International Criminal Tribunals for the Former Yugoslavia and Rwanda.³¹ It also played a major role in developing the Convention against Torture, which it signed in 1992 and ratified in 1994.

However, at times, the United States has not fully supported some international institutions. Although it signed the treaty to establish an International Criminal Court, concern in Congress in particular that the court might be able to prosecute U.S. service personnel abroad has prevented ratification. In 2001, the U.S. government renounced the accord. The long history of America's relationship with human rights in fact displays a series of domestic and international contradictions between the policies pursued and the rhetoric espoused by administration after administration. Considered in total, these contradictions raise serious questions about the nation's commitment to the very idea of human rights. The gap between ideal and practice has been substantial, and upon closer scrutiny, the American record on human rights has been "far more ambiguous", "less consistent", and "marked by more blemishes than jingoistic boosters of national honour would like to admit".³²

VII. BROADENING HUMAN RIGHTS CONCERNS

The global exchange of human rights took an explosive turn at the World Conference on Human Rights, Vienna, 1993. The key result of the conference³³ was the Vienna Declaration and Programme of Action which was adopted by 171 countries on the 25th June, 1993. Attended by representatives of 171 nations and 800 NGOs, with some 7,000 participants overall, it was the largest gathering ever on human rights. Some of its landmark achievements include the creation of the office of the United Nations High Commissioner for Human Rights, the establishment of the

³¹ The United States has focused increasingly on issues of worker rights and, particularly in the late 1990s, on problems such as forced labour (including forced child labour) and support for organizations that promote justice in the workplace. Furthermore, the United States had increasingly sought to promote corporate social responsibility in the global struggle for human rights. However, in spite of its efforts, the United States failed to retain its seat on the United Nations Human Rights Commission in 2001. Coming in fourth in the voting behind France, Austria, and Sweden, the United States missed out because only three spots were available, leaving the United States off the Commission for the first time since its creation in 1947, while ironically Sudan, Libya, and China kept their seats because of the geographical division of placings.

³² THE DIPLOMACY OF HUMAN RIGHTS (Newsom, David D., ed., Lanham, Md. 1986). US Foreign Policy Encyclopaedia. (Good collection of articles that covers a wide range of topics relating to the subject). Compiled by T. Christopher Jespersen. <http://www.answers.com/topic/human-rights?cat=biz-fin> (last visited Dec. 19, 2007).

³³ www.un.org/en/development/devagenda/humanrights.shtml.

indivisibility, inter-relatedness, interdependence of human rights and their connectedness with democracy and economic development. It called for the creation of instruments to publicise and protect the rights of women, children and indigenous peoples.

VIII. POST MILLENNIUM HUMAN RIGHTS CONCERNS

The broadening of human rights concerns also resonated at the UN Millennium Conference, 2000. Organizers had called the event the largest gathering of world leaders in history. Records show that more than 150 heads of state converged on New York City for the United Nations' Millennium Summit.³⁴ Attempts were made by the world leaders in attendance to address the most pressing problems of the new century. The summit was remarkable in that conflict and war did not dominate centre stage. Instead, the heads of state focused their rhetoric on the problems of widespread poverty, the AIDS epidemic, environmental destruction, and the lack of education for millions of the world's children.

In the post Cold War world, the emphasis has rightly shifted to social and wealth divisions among nations instead of geopolitical ones. War and conflict, while still posing great threats to human rights, have been surpassed by increasing wealth inequalities within and among nations. The absence of democratic principles in socio-economic settings has compounded problems of poverty and insecurity bringing about increasing

³⁴ Talk of "globalization" dominated the discussion throughout the Summit. The heads of state in New York were nearly unanimous in challenging the shape and direction globalization has taken until now. Not surprisingly, the most pointed attacks came from leaders of the Global South. But even representatives from the world's wealthier countries sharply questioned the global economy's benefits. One speaker painted a gloomy picture of death from preventable and treatable diseases – "10 people will die of malaria in the five minutes I take to address you." As each speaker came before the UN General Assembly, one speaker after the other noted that the increasing interconnectedness of the world means that- questions of morality aside – the wealthy nations cannot afford to ignore the world's deepening social injustice. "The wishes of the developing world are simple," Nigerian President Olusegun Obasanjo, Chairman of the Group of 77, a forum for developing nations, said. "We are all living in the same house, whether you are developed or not developed. What we are saying is that some of us in this house are living in super luxurious rooms; others are living in something not better than an unkempt kitchen where pipes are leaking and there is no toilet. We are saying, 'look, in the interest of all of us, let us living in the superluxurious rooms pay a bit of attention to those who are living where the pipes are leaking, or we'll all be badly affected.'" The statistics of poverty and inequality in the world as relayed are shocking and shameful. Prime Minister Bertie Ahern of Ireland said: "Half the world's population struggling on less than \$2 a day, over half a billion on less than \$1. A quarter of a billion children of 14 and under working, sometimes in terrible conditions". Jason Mark, At the Millennium, a Broader Definition of Human Rights: Justice Democracy and Dignity, <https://freedomhouse.org/report/nations-transit> (last visited Jan. 27, 2015). Arguably, terrorism now represent the more immediate attack on human dignity as collapsing economies signify more failed states.

number of failed states. For example the UDHR declares that the right to work, the right to just and favourable conditions of work and the right of protection against unemployment are basic human rights.

In its 2000/2001 survey, Freedom House³⁵ reported that there were 86 free countries, 58 partly free countries, and 48 countries rated not free (in which basic political rights and civil liberties were denied). This represented an improvement compared with the figures of 65, 50, and 50, respectively, in its 1990-1991 survey, but perhaps also exposes the undue attention on civil and political rights. The economic articles of the UDHR really signify that political rights can be enjoyed only when basic human needs have been satisfied. Without economic security, political rights are of little worth. The call for democratic principles in socio-economic formations and respect for human rights will continue to progress in the 21st century. Nonetheless, violations of basic human rights, severe persecution, and outrageous abuses, still form a systematic pattern in much of the world. In a world where many nations fail to meet set MDGs, and where malnutrition and preventable diseases kill more people than wars, it is clear that the concept of human rights is long overdue for a redefinition.

CONCLUSION

For close to seventy years the UDHR has served as a vibrant moral conscience to the entire world and its principles a global phenomenon. It provides international norms and standards to which the world community is expected to adhere. It has greatly promoted and enhanced democratic principles around the world. For example, the Declaration has been used to condemn state-sponsored repression and the actions of states that suppress and violate the rights of their own citizens. One debating point revolves around the question of who has the duty to uphold human rights. Human rights have historically arisen from the need to protect citizens from abuse by the state and this might suggest that all mankind has a duty to intervene and protect people wherever they are. As such, divisive national loyalties, which emphasise differences between people rather than their similarities, can thus be seen as a destructive influence on the human rights movements because they deny people's innately similar human qualities. Nevertheless, some still argue that state sovereignty is paramount, perhaps because it is often the state that has signed up to human rights treaties in the first place. Broadly, commentators' positions in the argument for and against intervention and the use of force by states are influenced by whether they

³⁵ <https://www.freedomhouse.org/report/freedom-world/freedom-world>.

believe human rights are largely a legal or moral duty and whether they are of more cosmopolitan or nationalistic persuasion.

In the decades since the end of World War II, the concept of human rights has gained universal acceptance. Advocacy and research by organizations such as Amnesty International and Human Rights Watch have been invaluable for popularizing the idea that each individual has certain inalienable rights. Although most of these organizations, along with some multilateral institutions like the UN and the Organization of American States, have for the most part limited their focus to certain kinds of abuse, particularly those involving civil and political rights. These groups have looked mostly at repression directed by nation-states, leaving aside the sorts of abuses committed by multinational corporations. Until recently, the roles of companies have generally been sidelined and little attention given them. It is submitted that issues involving economic and social rights and basic questions of equality directly affecting human dignity are also human rights and their abuses or denial are to be treated as grave violations.