

## HUMAN RIGHTS ARTICLE

### Article 1

#### ***We are all born free and equal***

The 1948 Universal Declaration of Human Rights (UDHR) is – obviously – a document about human rights. So why is dignity listed before rights in Article 1?

Dignity is the foundation of all human rights. Human beings have rights, and should be treated with utmost care, precisely because each one possesses intrinsic worth. Former UN rights chief Zeid Ra'ad Al Hussein called these opening words “perhaps the most resonant and beautiful words of any international agreement.” They underline that “human rights are not a reward for good behavior,” as he put it, but the entitlement of all people at all times and in all places.

Reacting to the horror of the two World Wars, the international community thought it important in 1948 to emphasize the concept of human dignity in the very first words of this groundbreaking document, underlining a term that was already highlighted in the opening line of the UDHR's Preamble, as well as in the Charter that founded the United Nations three years earlier.

Mary Robinson, another former human rights chief, regards dignity as “an inner sense of self-worth,” a concept that “evokes an empathy with the other, connects us one to the other.” It has also provided the springboard for new interpretations of human rights. As Robinson said, “in our inter-connected world, that empathy must expand to tackling the gross inequalities that raise issues of justice.”

Dignity (a word that appears five times in the Declaration) is on the one hand an irrefutable argument, and on the other an ambiguous concept, not always easily translated into legislation. Even so, dignity now is recognized as a right in more than 160 of the world's constitutions (of 193 UN members), compared to only five countries that used the term in their constitutions in 1945.

And it often falls to judges to make sure human dignity is respected. Judges like Albie Sachs, who devoted his life to ensuring, and then protecting, human dignity. As a South African anti-apartheid campaigner, he spent months in solitary confinement and lost an arm and his sight in one eye when his car was blown up by security agents.

Later, he sat for 15 years as a judge in South Africa's highest court. He has written that he found himself in tears after ruling that South African Airways could not discriminate against an air steward with HIV. “The tears had come because of an overwhelming sense of pride at being a member of a court that protected fundamental rights and secured dignity for all,” he said.

Securing dignity for all is at the heart of a UN campaign that draws on the preceding words in Article 1. “Free and Equal” is the slogan for the UN's campaign against homophobia and transphobia that began in 2013 and aims “to build a world where no one has to be afraid

because of their sexual orientation or gender identity,” in the words of UN Secretary-General António Guterres

Gender is a concept that is – possibly subtly – addressed in Article 1, and indeed in almost every clause of the UDHR. For its time, the document is remarkably lacking in sexist language. Aside from the single phrase “himself and his family,” which appears in Articles 23 and 25, the document refers throughout to “everyone,” “all” or “no one.”

This trailblazing usage reflects the fact that women played a prominent role in drafting the UDHR, for the first time in the history of international law-making. The process was steered by Eleanor Roosevelt, the former U.S. First Lady and an outspoken champion of human rights. Women from Denmark, Pakistan, the Communist bloc and other non-western nations also made crucial contributions.

Article 1’s first words echo France’s seminal Déclaration des droits de l’homme et du citoyen, (Declaration of the Rights of Man and of the Citizen), adopted soon after the French Revolution in 1789. Thanks to the tenacious Indian drafter Hansa Mehta, the French phrase “all men are born free and equal” became “all human beings are born free and equal.”

She objected to Roosevelt’s assertion that “men” was understood to include women – a widely-accepted concept at the time. Mehta argued that countries could use this wording to restrict the rights of women, rather than expand them.

The UDHR’s women drafters provided an enduring legacy – even in a world where much work remains to be done. In almost all countries, women continue to earn less than men. Discriminatory practices towards women are often justified by referring to traditional, historical, religious and cultural attitudes. Girls are less likely than boys to go to school or stay in school. Women often find their mobility limited because of expectations that they will be care-givers. They often have limited choices in whom to marry – or whether to marry at all – and little control over their reproductive choices.

Despite all that remains to be achieved, the pioneering women who were part of the drafting process from 1946 to 1948 enshrined equality as a universal goal and provided a foundation in international law for those who still struggle to make equality a reality. Not only women, of course, but also people with disabilities, elderly workers, members of ethnic and religious minorities, indigenous groups, migrants, children and anyone anywhere facing discrimination.

## **Article 2**

### ***Freedom from Discrimination***

Article 2 states that everyone is entitled to all the freedoms listed in the UDHR, “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.” The last words of this sentence – “other status” – have frequently been cited to expand the list of people specifically protected. This language is reflected in regional instruments, such as the African Charter on Human and Peoples’ Rights, the American Convention on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The UN has elaborated rights in

a number of treaties that build on Article 2 – including most recently the Convention on the Rights of Persons with Disabilities, which was adopted in 2006. It is also key to current efforts to protect all groups that face persecution, even those not specifically covered by a particular international Convention.

In socially conservative Indian society, IT engineer Akhilesh Godi felt he barely existed. Depressed and wrestling with questions about his sexuality, he was afraid to seek help because he thought even a therapist would label him a criminal under India's laws against homosexuality. Other homosexuals and transgender people in India said they faced severe discrimination or blackmail because of a 157-year-old ban on gay sex.

Godi decided to push back. He was one of 20 openly gay students and alumni of various technology schools – including two women and a transgender woman – who won a ruling from India's Supreme Court in September 2018 striking down the colonial-era law. The justices did not simply decriminalize gay sex. They ruled that from now on gay Indians are to be accorded all the protections of the Constitution. The decision was welcomed by the UN, which said "sexual orientation and gender expression form an integral part of an individual's identity the world over."

When the Universal Declaration of Human Rights (UDHR) was drafted 70 years ago, there may not have been many who agreed. But Article 2's prohibition on discrimination – and its more positive assertion that human rights belong to everyone – has been the foundation for spelling out rights on age, disability and other subjects that were not issues in 1948.

At that time, Chilean delegate Hernan Santa Cruz reminded his colleagues that Article 2 importantly amplified the basic provisions of the UN Charter, and commented that "the United Nations had been founded principally to combat discrimination in the world." The Communist bloc pushed heavily from the start for clear language against discrimination.

The Declaration's first three articles are closely intertwined. Peng-chung Chang, a Chinese drafter with a remarkable knowledge of Eastern and Western philosophy, proposed that the first three Articles should reflect the main ideas of 18th century political philosophy on rights: "fraternity" (Article 1), "equality" (Article 2) and "liberty" (Article 3). Articles 1 and 2 set the tone for the entire Declaration with their prohibitions on discrimination.

Both Articles continue to impact on new and evolving international standards. In 2006, former UN High Commissioner for Human Rights Louise Arbour noted how the Convention on the Rights of Persons with Disabilities emphasized that "the celebration of diversity and empowerment of the individual are essential human rights messages," adding that it envisages "a fully active role in society for persons with disabilities."

This Convention was drafted with the participation of people with disabilities, moving away from an older model of having internal law made for people or about them.

Although protection grounded in the UDHR and guaranteed in other human rights treaties should apply to all, people with disabilities still can be invisible – unable to enjoy the full range of human rights.

A disproportionate number of persons with disabilities live in developing countries, often marginalized and in extreme poverty, a fact this Convention aims to change, to ensure that people with disabilities de-facto enjoy the same rights and dignity as everyone else.

This rights-based approach has also been taken up by indigenous peoples and those trying to end discrimination based on sexual orientation and gender identity. The UN itself is promoting respect for rights of lesbian, gay, bisexual and transgender (LGBT) people of all ages and in all regions of the world.

It is not necessary to create a new set of LGBT-specific rights, or set new international human rights standards. All that is required to protect LGBT people from violence and discrimination is respect for existing rights.

There are 71 countries and territories, mainly in Africa, the Middle East and parts of south Asia, where consensual same-sex relationships are still criminalized, including eight where homosexuality could result in the death penalty.

Former UN Secretary-General Ban Ki-moon has admitted that sexual orientation and gender identity are understandably sensitive issues to some. “Like many of my generation, I did not grow up talking about these issues,” he told the Human Rights Council in 2012. “But I learned to speak out because lives are at stake, and because it is our duty under the United Nations Charter and the Universal Declaration of Human Rights to protect the rights of everyone, everywhere.”

### **Article 3**

#### ***Right to Life***

The first six words of this short article are at the heart of global attempts to end the death penalty. If it enshrines the right to life, abolitionists argue, how can state-sponsored killing be justified? As South African Anglican Bishop Desmond Tutu said, “to take a life when a life has been lost is revenge, not justice.”

Drafters of the 1948 Universal Declaration of Human Rights (UDHR) had fresh in their minds Nazi concentration camps and state-organized slaughter of millions simply because they were not the “correct” sort of person. Article 3 – and closely related Articles 5 and 9 against torture and arbitrary arrest – were a firm renunciation of Hitler’s belief in the supremacy of the state to control the lives of individuals.

Chilean drafter Hernan Santa Cruz explained that many of the UDHR’s Articles, are based on the belief that “the interests of the individual [come] before those of the state and that the state should not be allowed to deprive the individual of his dignity and his basic rights.”

The right to life has gone on to be one of the core rights accepted by countries; 77 percent of the world’s constitutions include this right, compared to 27 percent of constitutions in effect in 1945, when the UN was founded.

Article 3 is about much more than the death penalty. It is fundamental to enjoyment of all other rights: after all, you have to be alive to exercise free speech, get married, or hold nationality.

This was emphasized in a quasi-legal “general comment” document published in October 2018 by the Human Rights Committee, a body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights, one of the two covenants that expand on the UDHR.

It noted that the obligation to protect, respect and ensure the right to life covers many other issues including modern technologies such as the use of drones in armed conflict. Looking to the future, it said environmental degradation, climate change and unsustainable development represent serious threats to the ability of present and future generations to enjoy the right to life.

Others have argued that Article 3 embraces many other issues – deprivation of health care that leads to death, extra-judicial killings, even the use of live ammunition by police forces against unarmed protestors.

Antônio Cançado Trindade, then President of the Inter-American Court of Human Rights wrote that “the arbitrary deprivation of life is not limited to the illicit act of homicide; it extends itself to the deprivation of the right to live with dignity.”

The right to life is amplified in four UN treaties whose stated purpose is to abolish the death penalty, and since 2007 the UN General Assembly has adopted five non-binding resolutions calling for a global moratorium on executions as a step to eventual abolition. “There is no place for the death penalty in the 21st century,” said former UN Secretary-General Ban Ki-moon.

At least 39 executions have been carried out in the United States in face of compelling evidence of innocence or serious doubt about guilt.

- Center on Wrongful Convictions Northwestern University School of Law

When the UDHR was adopted on 10 December 1948, only 14 countries had abolished the death penalty. Seventy years on, more than two-thirds of UN member states have either abolished it or no longer actually apply it. Even in countries that have a mandatory death penalty, it is not always enforced by executions. At the end of March 2016, for example, the deputy prime minister of Malaysia announced that 829 persons had been sentenced to death between 2010 and March 2016 but only 12 executions had taken place during this time.

Most nations that have abolished the use of the death penalty have cited human rights as a main motivator, while the steadily dwindling number of nations that retain the death penalty (88) or actually execute people (39), avoid framing capital punishment as a human rights issue.

Threats to life, however, come not only from state executioners, but sometimes from your neighbor or your partner, from criminal gangs and armed groups, and States have an obligation to protect their citizens.

Killings of women and girls – by their partners, by strangers, by parents who prefer boys – also constitute a particular grave and all-too-common abuse of this fundamental right, and females of all ages still often suffer inadequate legal and physical protection by state authorities and institutions. As Rashida Manjoo, former UN Special Rapporteur on Violence Against Women put it: “Women subjected to continuous violence are always on ‘death row,’ always in fear of execution.”

#### **Article 4**

##### ***Freedom from Slavery***

Men bought and sold like commodities, held for years against their will on fishing boats off Thailand. Yazidi women sold into sex slavery, raped daily and passed from owner to owner. Human beings offered as birthday gifts to children.

Article 4 is clear: no one has the right to make us a slave and we cannot make anyone our slave. But if you thought slavery disappeared with the end of the Transatlantic slave trade in the 1800s, it may be a shock to learn of the abuse of fisherfolk who supply seafood to some of the world’s top supermarkets, the fate of women under so-called Islamic State or of migrant women in brothels in Europe and elsewhere; or current reality in Mauritania, the last country in the world to officially ban slavery.

Enormous progress has been made in the 70 years since adoption of the Universal Declaration of Human Rights (UDHR) and indeed in the 150 years since entire economies were based on ownership of our fellow human beings, and religious leaders found divine inspiration for the oppressive system. Yet, slavery-like practices and trafficking in human beings continue to remain a reality of our time.

In the words of British investigative journalist Ross Kemp, “There are more slaves today than there were at the height of the slave trade.”

Nadia Murad, a Yazidi woman awarded the Nobel Peace Prize in 2018 (jointly with Congolese gynaecologist Denis Mukwege) for publicizing rape as a weapon of war, called her autobiography ‘The Last Girl’ because “I want to be the last girl in the world with a story like mine.” She was captured by ISIS in Iraq at the age of 21 and sold into sexual slavery, targeted because her family belonged to the minority Yazidi religion.

Fully wiping out slavery – some two centuries after Denmark and France led efforts to outlaw it – is still a struggle. As recently as 2016, an estimated 40.3 million people were living in modern slavery, and 70 percent of them were women and girls. Persecution and migration have propelled many desperate people, unwittingly, into the hands of human traffickers. According to the International Labour Organization (ILO), in the past five years 89 million people experienced some contemporary form of slavery for periods ranging from a few days to five years.

“For us, slavery was really a natural state. When one is born into a certain environment, it is considered the right one – just and fair.”

- Abdel Nasser Ould Ethmane, Mauritanian who received a slave for his 7th birthday and later became an anti-slavery campaigner.

The trafficking of people is truly global in nature, with victims of some 160 different citizenships detected in or repatriated from some 140 different countries, according to a report produced by the UN Office on Drugs and Crime (UNODC), which described this data as “only the tip of the iceberg.” However, while many victims from sub-Saharan Africa and East Asia in particular end up on different continents, the majority of people who are trafficked remain in their home countries or regions.

The West African country of Mauritania – where certain people of sub-Saharan African origin have often been enslaved as domestic workers by groups with different racial and ethnic origins – became the last country in the world to abolish slavery in 1981. However, it was not until 2007 that criminal laws were passed to enforce the ban. Campaigners say the country has jailed more anti-slavery activists than slave owners.

Elsewhere, cold hard cash is generally the reason slavery flourishes. Investigations by journalists, non-governmental organizations and the UN in 2014 and 2015 found that much of Thailand’s \$7-billion fishing industry was based on kidnapping, violence and imprisonment. Poor men from southeast Asia were lured with promises of good jobs, but found instead 20-hour-shifts fuelled by methamphetamines, regular beatings, torture and execution-style killings. Many were freed thanks to the investigations.

According to the ILO, the 60-75 million people working in the garment industry around the world – some 75 percent of whom are women and girls -- are particularly prone to exploitation and abuse. Research into the industry in various countries has revealed widespread deception over wages and working conditions, restrictions on workers’ movement, intimidation and threats, withholding of wages, and abusive working and living conditions.

An estimated 92 percent of those engaged in forced labour in the accommodation and food services sector are women and girls, and the ILO estimates that 24 percent of all domestic workers – of whom the great majority are also women – are subjected to forced labour.

“Whenever I hear anyone arguing for slavery, I feel a strong impulse to see it tried on him personally.”

- President Abraham Lincoln, who freed slaves in the United States.

Domestic workers are one of the groups most vulnerable to what is perhaps the least known form of modern-day slavery, known as ‘debt bondage’, where a person is forced to work to pay off a debt – which grows steadily, and which they can never actually discharge. It still flourishes in the brick kilns, mills, mines and factories of South Asia, as well as in other parts of the globe. It is also rampant in the agricultural sector, where a number of cases involving migrant workers have recently come to light in various European countries where it is also

frequently used by traffickers to ensnare women and girls into prostitution. Many argue that the 'kafala' system operating in a number of Gulf States – where employers have complete control over their domestic workers – is also a form of slavery. Social media in Saudi Arabia, for example, has featured posts by people offering domestic workers “for sale.”

Armed with Article 4 of the UDHR (and the legally binding International Covenant on Civil and Political Rights, which flows from it), abolitionists continue the fight. Contemporary forms of slavery – whether bonded labour, involuntary servitude, or sexual slavery – are crimes and should no longer be tolerated anywhere in any form, and UN Secretary-General António Guterres has urged everyone to “come together around the key issues of prevention, protection and prosecution to build a future where this crime cannot exist.”

## **Article 5**

### ***Freedom from Torture***

There is one absolute prohibition in the Universal Declaration of Human Rights (UDHR) that is universally accepted as unequivocal: Article 5's ban on torture. At times, states may have disputed the definition of what constitutes torture, but virtually none now openly defend the practice, even if some still carry it out in what the UN High Commissioner for Human Rights described as “some of the darkest corners of our planet.”

The ban on torture is another reflection of the revulsion against Nazi concentration camps and Nazi medical experiments on living people that so motivated the drafters of the UDHR in the late 1940s. It is further elaborated in the 1984 UN Convention Against Torture, which makes the absolute nature of the prohibition of torture crystal clear: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture.”

Given this universal abhorrence, why would any contemporary democratic society condone the use of torture? The case most often made for torture is that – particularly in the fight against terrorism – it can save lives of innocent people..

Aside from all the flaws in the imaginary “ticking bomb” argument (How do security forces know they have the right person? How do they know the suspect won't make things up simply to relieve the pain?) most reject it as merely an excuse for dehumanizing behaviour designed to assert power.

The ban on torture is so absolute that the UN body charged with monitoring the prevention of torture has recommended even trainee soldiers should be reminded that they have a duty to disobey orders from a superior officer to commit torture. The fact that some states have gone to such lengths to redefine some of their practices, some argue, shows that they actually respect the universal prohibition on torture, even as they try to subvert it.

Following the September 11 attacks on the United States in 2001, the administration of President George W. Bush reinterpreted the word “torture” very narrowly in an effort to give officials leeway to mistreat suspects. Memos later made public showed the administration believed the prohibitions against torture were “quaint” and “obsolete,” did not apply in what



it labelled the “war on terrorism,” and even that the President could “override” international law.

New euphemisms were invented to cover the administration’s actions. Under “extraordinary rendition” the U.S. whisked suspects off to “black sites” – detention centres in Abu Ghraib in Iraq, Bagram Prison in Afghanistan, Guantanamo Bay in Cuba – to be subjected to “enhanced interrogation techniques.”

These shocking practices were condemned by a long list of organizations and people, including a number of retired generals, admirals, military lawyers and intelligence officers. But any discussion of human rights tended to be submerged under more ‘practical’ discussions – irrelevant under international law – of whether torture was an effective and reliable means of extracting useful information.

Finally, it was the ubiquitous digital camera rather than moral arguments that turned the tide against “defining away” torture. Photos of naked Iraqi prisoners being humiliated while U.S. soldiers grinned proudly into the camera became emblematic of official human rights abuses. The U.S. later repudiated these practices.

Today activists around the world risk their lives to document abuses and disseminate evidence quickly on social media. But what is done with the information depends on political will. “The problem is not lack of early warning,” says Pierre Sané of Senegal, former head of Amnesty International, “but lack of early action.”

Even so, the UN considers that regular monitoring of places of detention by internal and external independent oversight mechanisms to be one of the most effective methods of preventing torture. The elevation of human rights to the international level means that behaviour is no longer governed solely by national standards. International and regional treaties against torture (as well as against genocide and enforced disappearances) have overcome arguments that certain individuals enjoy international immunity from prosecution. Under the principle known as ‘universal jurisdiction’ people suspected of the most serious international crimes – including torture – may be arrested, tried and convicted in countries other than their own.

As one former UN Human Rights Chief Navi Pillay put it, “no one is let off the hook – neither the actual torturers themselves, nor the policy-makers and public officials who define the policy or give the orders.”

As just one example, “Chuckie” Taylor, son of the former president of Liberia, is in prison in Florida in the United States, serving a 97-year sentence for torture and other human rights violations committed on his home soil.

When former Chilean dictator Augusto Pinochet died in 2006, he had spent a year and a half under house arrest in London, and upon his return to Chile was charged with several of the more than 300 crimes in which he had been implicated in relation to human rights violations during the military dictatorship from 1973-1990. Although held under house arrest, he had not yet been tried or convicted by the time he died.

In 1975, a young woman was arrested by Pinochet's political police and interrogated at the infamous Villa Grimaldi torture centre in Chile's capital, Santiago. Decades later, after democracy was restored, Michelle Bachelet went on to serve two terms as president of Chile. Today she is the UN High Commissioner for Human Rights.

## Article 6

### ***Right to Recognition Before the Law***

After setting standards for dignity and freedom, the Universal Declaration of Human Rights (UDHR) devotes a cluster of articles to standards for the administration of justice including what is often known as "due process." Roughly one-fourth of the UDHR is devoted to legal human rights. As we have already seen, in the late 1940s, the abuses of the Nazi regime were fresh in the mind of the UDHR's drafters, who thought these provisions would entrench the strongest protection against future Nazi-type human rights violations. And indeed, by the late 1940s all of these provisions had been incorporated in the legal systems of developed nations.

Articles 6-11 are closely related and for the most part focus on some of the civil and political rights all humans should expect, with the second half of the UDHR devoted to social, economic and cultural rights. Article 6 itself, however, applies across the entire spectrum of rights. If an individual is not recognized "as a person under the law," numerous rights, including ones in the social and economic spheres, may be threatened.

Article 6 has come into sharp focus with the phenomenon of enforced or involuntary disappearances – the practice of certain countries of snatching, detaining -- and likely killing -- people, with their families seldom able to find out their fate.

People like The Mothers of the Plaza de Mayo (Asociación Madres de Plaza de Mayo) who protested for years against the enforced disappearance of their children during Argentina's "Dirty War" between 1976 and 1983. Wearing white scarves to symbolize the diapers of their children, the women defied the military dictatorship to demonstrate in front of the presidential palace to try to get information about their missing children.

"Injustice anywhere is a threat to justice everywhere."

- Martin Luther King, African-American civil rights activist

During the period of military rule in Argentina, security forces 'forcibly disappeared' – the technical term when a kidnapping is carried out by the state – around 30,000 people, many of whom are still unaccounted for. The long list of the disappeared even included two of the founders of the Mothers of the Plaza. Similar policies of enforced disappearance were pursued in several other Latin American countries run by military dictators, such as Chile, Guatemala and Peru.

However, Latin American generals did not invent the concept. During the Spanish Civil War in the late 1930s, more than 143,000 people disappeared without a trace.

And the first instance of enforced disappearance being explicitly and unashamedly sanctioned by law occurred when Hitler issued the directive 'Nacht und Nebel' ('Night and Fog') in December 1941, in order to secretly transfer thousands of people to Germany from the occupied parts of Europe, many of whom were presumably later killed. The measure targeted the civilian population, with the aimed of deterring all forms of resistance. The uncertainty of the fate of the disappeared – removed from all the normal legal protections and processes they should have enjoyed after being picked up in the dead of night – was deliberately designed to terrorize and paralyze society as a whole. They were, to use a term employed by the Nazis, "transformed into mist."

Regional bodies – such as the European Court of Human Rights, which protects the rights of some 800 million people – have played an important part in recent years in providing remedies for victims of this crime, and deterring States from committing it.

However, enforced disappearance is a global problem, not restricted to a specific region, with the UN Working Group on Enforced or Involuntary Disappearances reviewing some 840 cases from 46 countries in September 2018. Amnesty International has identified Syria and Sri Lanka as two of the worst countries for enforced disappearance. Russia and the U.S. (with its rendition programme during the "War on Terror") have also been accused of committing this violation.

But the problem is not necessarily confined to government security forces, with disappearances at the hands of criminal gangs, often entwined with the authorities at some level, becoming a chronic problem in recent years in Central American countries and Mexico, as well as in countries like Iraq. Human rights defenders and environmental defenders have become particular targets, both in Latin America and in some countries in South-East Asia, often while standing up for the rights of local populations against business and economic interests.

Failure to achieve recognition before the law as required by Article 6 is, of course, much broader than the issue of enforced disappearance. In some countries women still do not have the same rights under the law as men. For example, there are some 32 countries where women need their husband's permission to apply for a passport, and 30 where women cannot choose where to live.

And perhaps the biggest issue facing the world's 3.9 million known stateless people, is that they are excluded from some – or even all -- laws and systems designed to protect a country's citizens. This legal limbo can have a devastating impact not just on stateless people themselves: their children and grandchildren may inherit their statelessness, like some abstract genetic disease, as their births cannot be registered, because their parents do not exist in the eyes of the law.

As a result they may suffer violations of almost the entire range of social, political, economic and civil rights: unable to vote, marry, get an education, bring a court case, or receive medical care. While some people become stateless as an unforeseen consequence of a change or flaw in domestic legislation, a sizeable minority are, in the words of the UN Refugee Agency, UNHCR, "the victims of a more pernicious form of statelessness: the deliberate exclusion of

entire groups because of some political, religious or ethnic discrimination.” The most egregious current example of this is the Rohingya minority in Myanmar, who are deprived of many of their rights because they are denied citizenship.

Many still share the dream of physicist Albert Einstein, who said in 1933, as his homeland Germany began to sink into fascism: “As long as I have any choice, I will only stay in a country where political liberty, toleration and equality of all citizens before the law are the rule.” But in an age when refugees are finding more and more obstacles being placed in the way of their legal right to seek asylum from persecution, Einstein’s dream – and the pathway to it laid down in the UDHR -- is still unattainable for many.

## **Article 7**

### ***Right to Equality Before the Law***

At the end of the 19th century and beginning of the 20th century, women in many industrialized countries fought for the right to vote. “There never will be complete equality until women themselves help to make laws and elect lawmakers,” said U.S. suffragette Susan B. Anthony.

More than a century on, the only country in the world where women cannot vote is Vatican City: there the right to cast ballots for a new Pope is restricted to cardinals, who are all men. But, as the UN High Commissioner for Human Rights pointed out in 2107, despite universal gains at the ballot box, “many women and girls continue to be routinely deprived of equal access to resources, denied choice, robbed of opportunities and constrained by false and humiliating stereotypes.”

Article 7 says the law is the same for everyone, and must treat everyone in all these categories fairly. Three times within 39 words, it bans discrimination. These principles of equality and non-discrimination help form the rule of law. These obligations are further elaborated in a number of international instruments to combat specific forms of discrimination against not only women, but also indigenous peoples, migrants, minorities, people with disabilities. Discrimination on grounds of race, religion, sexual orientation and gender identity are also covered.

A succession of international human rights treaties have amplified the rights listed in Article 7, and over the decades, jurisprudence has added further obligations to the ban on discrimination. It is not enough for countries to refrain from treating certain groups unfavourably. They now have to take positive steps to redress discrimination. For example, under the Convention on the Rights of Persons with Disabilities, countries must support persons with disabilities to enable them to make legal decisions by themselves, rather than deny them their legal capacity.

“Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.”

– Kofi Annan, late UN Secretary General

Countries may also need to adopt temporary special measures to overcome past or present discrimination, and accelerate the establishment of real equality – and some have taken very effective measures with regard to specific groups. In the 2018 Rwanda elections, 61% of seats in parliament went to women. The steady increase in the number of women Members of Parliament is a direct result of Rwanda's 2003 Constitution which set a 30 percent quota for women in elected positions, and the decision by political parties to voluntarily adopt their own quotas for women candidates.

The principle of equality for all does not only apply to governments. Discrimination must also be addressed in the workplace, school and home.

Indisputably, women in most parts of the world have made tremendous progress in achieving equality before the law since the days of the suffragettes, and since the UDHR was adopted in 1948. Yet in 2018, according to the World Bank, 104 countries still have laws preventing women from working in specific jobs, 59 have no laws on sexual harassment in the workplace, and in 18 countries, husbands can legally prevent their wives from working.

Many laws around the world do little to deter violence against women and in some cases, even encourage it or condone it. This is, for example, the case in countries where rapists are allowed by law to escape prosecution if they marry the victim.

Even if laws are not discriminatory on paper, their application can be discriminatory in practice. The UN Committee on the Elimination of Discrimination Against Women (CEDAW) has called for the repeal of discriminatory evidentiary rules and procedures, including procedures that allow women to be deprived of their liberty to “protect” them from violence; conducting ‘virginity tests’; and the use, as a legal defence or mitigating factor, of arguments based on culture, religion or male privilege, such as the so-called ‘defence of honour.’ CEDAW has also called for an end to procedures that reserve extraordinarily harsh penalties – including stoning, lashing and death – for women; as well as judicial practices that ignore a history of gender-based violence when dealing with women defendants.

Discrimination against women is often intertwined with discrimination on other grounds, such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. In Latin America, poverty rates are high for women, but even higher for women of African descent. In the U.S., 37 percent of households headed by African-American woman live below the poverty line. And First Nations Canadian and Afro-Canadian women and girls have inferior educational opportunities compared to other Canadians, including men and boys from their own group.

Women and girls are, of course, not the only people in the world who sometimes find themselves deprived of equality before the law. In some countries, discrimination against certain religions or minorities is official policy – or even law. An annual report by the independent World Justice Project showed that in 2017-2018, 71 countries out of 113 surveyed actually slipped back in their efforts to combat discrimination.

UN High Commissioner for Human Rights Michelle Bachelet has noted the considerable progress made in the 70 years since the UDHR was adopted, as a result of people across the

world demanding “an end to discrimination, tyranny and exploitation.” However, there is no question that the world still has a long way to go if it wants to accomplish the pledge made by former South African president Nelson Mandela – a victim of the flagrantly racist laws and regulations of the apartheid system – “to liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender and other discrimination.”

## **Article 8**

### ***Right to Remedy***

The pledge of effective remedy for everyone, found in Article 8, is an intrinsic – if all too often neglected – part of the system of providing justice. “True peace is not merely the absence of war, it is the presence of justice,” said Jane Addams, the second woman to win the Nobel Peace Prize, said in 1931.

After two World Wars, the drafters of the Universal Declaration of Human Rights (UDHR) considered it important to assert the principle of free treatment by fair courts – that all of us have an avenue for redress if our rights are violated. “Societies based on justice and equal rights before the law are not just more fair – they are more cohesive,” said Zeid Ra’ad Al Hussein, former UN High Commissioner for Human Rights. Economic evidence shows they are also more prosperous, he added.

Justice is not just about crime and punishment. Fair trials and due process are also vital components of any system of justice, but as defined in the UDHR, justice is a holistic concept which also includes providing effective remedies for injustice and violations of the rights of all individuals “as granted... by the constitution or by law” – and not necessarily simply financial compensation. As the old saying goes, money does not buy forgiveness, nor does it solve all woes.

Over the years, states have applied a wide variety of different remedies – either in response to domestic courts or to other entities, including regional and international courts and institutions, as well as UN bodies – and they have covered violations across the whole spectrum of civil, political, economic, social and cultural rights.

Some remedies are compensatory in character; some are restorative – designed to put the victim back in the position they would have been had no wrongful act been committed; and others are designed to prevent the repetition of the violation in question. In addition to money, remedies may include measures such as early release from prison, legislative change, provision of residence permits, reinstatement in public service employment, assistance with finding jobs, or provision of housing.

When the victim is dead, the remedy may involve a matter as simple as ordering of a death certificate enabling his or her family to inherit property, or official acknowledgement of a grave. It might involve the erection of a monument, or the naming of a square after a victim. Or it might take the form of a public oral and written apology for the wrong done, such as the 2008 National Apology by the Australian government to the ‘Stolen Generations’ – the descendants of Australian Aboriginal and Torres Strait Islanders who were forcibly removed from their families by the Australian authorities over a 60-year period up to 1970.

“Nothing is settled permanently that is not settled right.”  
– Anonymous proverb

Such remedies can have immense emotional force for the families and people whose ancestors’ rights were violated. Another example of this is the truth-telling and reparations provided to survivors of the “Magdalene Laundries”, the Irish work-houses where, from 1922 to 1996, some 10,000 women and girls were made to work without pay in laundries run by Roman Catholic nuns. Performing a similar function, numerous Truth and Reconciliation Commissions have been set up to address gross human rights violations in many countries, most notably in Latin America, but also, for example, in South Africa and Kenya.

Other remedies may involve practical measures such as changing hospital procedures to better protect patients, or providing psychological support for someone suffering from post-traumatic stress. It may stretch as wide as the reform of the family justice system, or be as specific as a ban on corporal punishment.

While many people – especially the poor and the marginalized – receive neither justice nor remedy, when the system works in accordance with Article 8 (subsequently fleshed out in other international treaties) remedy is provided -- sometimes quite comprehensively.

In July 2011, reacting to a complaint from a 15-year-old indigenous girl in Argentina who had been a victim of rape by non-indigenous men and of discrimination based on gender and ethnicity, the UN’s Human Rights Committee, based in Geneva, found numerous and wide-ranging violations of the girl’s rights, including her appalling treatment at the hands of all the authorities involved: kept waiting for hours in her blood-soaked clothes in a police station; subjected to offensive remarks about her sexual history, to demonstrate her ‘consent’, and accused of being a prostitute. The Argentinian authorities responded by awarding the girl US\$ 53,000 in compensation and a life-long monthly stipend. She was also given a property and a scholarship. In addition, as a means of rounding off the remedy, all the judicial officials in her home province were made to undergo compulsory training on gender discrimination and violence against women.

In deportation cases, where there is a clear risk of torture or grave human rights violations in the country of return, many states adhere to the legal principle of “non-refoulement” and avoid deporting the individuals concerned. In one such case where an individual was expelled to Egypt where he was subsequently tortured, Sweden ensured his release and return to Sweden, where he was granted a permanent residence permit in July 2012 and compensation amounting to some US\$ 350,000.

In many cases, no remedy, however generous and well-considered, will completely erase the stain of the original violation of the victim’s rights. But remedies are an important way to ease the pain and provide the means for the man, woman or child concerned to look to the future rather than remained enslaved to a dark and damaging past injustice that was imposed upon them.

## **Article 9**

### ***Freedom from Arbitrary Detention***

Can you get locked up for being a poet? Yes, in the Soviet Union in 1964. Joseph Brodsky, now considered one of Russia's greatest poets, was hauled into court in Leningrad, accused of being "a pseudo-poet in velveteen trousers" – specifically a freeloader who contributed nothing to society. Soviet judges simply could not see the value of poetry. Despite having no actual mental illness, Brodsky was sent off for two stints in psychiatric prisons where he was effectively tortured – one of thousands to suffer such a fate in the Soviet Union.

The abuse of psychiatry to keep dissenters in line is one of several violations covered under Article 9 of the Universal Declaration of Human Rights, which basically says no one can be put in prison and kept there without a good reason. It applies not only to prisons, but also to an increasing number of places where people might be held without a fair trial or clear sentence: asylum detention centres, immigration facilities and drug treatment centres.

The use of "political psychiatry" – defining opposition as an ailment and confining dissidents in psychiatric hospitals – temporarily disappeared after the collapse of the Soviet Union in 1991. However, a small number of countries have been accused of still abusing psychiatry to control their citizens.

Freedom from arbitrary detention is closely related to other sections of the Universal Declaration of Human Rights (UDHR): Article 3's right to life and Article 5's ban on torture and cruel, inhuman or degrading treatment or punishment. Although the UDHR never uses the term habeas corpus (Medieval Latin for "you have the body"), the ban on arbitrary detention also harkens back to the centuries-old right of every inmate to be brought to court so it can be determined whether they are unlawfully imprisoned and should be released.

The right to personal liberty under the UDHR is not unlimited, but detention must be in accordance with national and international law. Authorities should only detain people following clear, public procedures. To avoid being classified as arbitrary, detention must be appropriate, predictable, proportionate, necessary – and based on justice. Thus, countries can deprive people of liberty – within certain limits – while they await trial, and after conviction and sentencing, among other situations.

Detention is considered arbitrary if there was no fair trial, or there is no legal basis for it, as when a person is kept in custody after serving their sentence. Significantly, no one should be locked up simply for exercising a number of rights covered by the UDHR, such as freedom of expression (Article 19), freedom of religion (Article 18), or the right to claim asylum (Article 14).

"The right to personal liberty is fundamental and extends to all persons at all times and circumstances, including migrants and asylum seekers irrespective of their citizenship, nationality or migratory status."

-- UN Working Group on Arbitrary Detention, February, 2018

The United States has been accused of arbitrary detention in its so-called "War on Terror," particularly at its Guantánamo Bay military prison in Cuba, and other sites around the world.



More recently, the UN Working Group on Arbitrary Detention has called on the U.S. to protect the rights of young migrants.

Australia has repeatedly been criticized for routinely detaining asylum-seekers, including one stateless man who was held for nine years without charge or trial. In 2018, the Working Group took the extraordinary step of calling on Australia to review its domestic laws, and ruled it had breached a number of international human rights laws. One Iranian man, it said, has been held in detention simply for exercising the right to seek asylum.

It's not only immigration detention that is a concern. On a 2013 visit to Hungary, for example, the Working Group found that an unreasonable number of people were routinely held in detention for a year or longer before their trials on criminal charges. Pre-trial detention, it said, must be the exception and not the rule.

With Article 9, part of the large section of the UDHR (Articles 6-11) devoted to standards for the administration of justice, the Universal Declaration makes clear that a person's freedom does not automatically evaporate on arrest or conviction. The person still has rights in court or behind bars – and the right to hold arresting or imprisoning authorities to specific standards.

## **Article 10**

### ***Right to a Fair Trial***

In the U.S. state of Maryland in 1984, an anonymous woman called police to identify a man shown in a police sketch of a suspect: Kirk Bloodsworth. The former Marine, then 22, was promptly arrested for the gruesome rape and murder of a nine-year-old girl. Despite thin and contradictory evidence presented at trial, he was convicted and sentenced to death.

Constantly protesting his innocence, Bloodsworth was to become, in 1993, the first person in the United States freed from death row on the basis of DNA evidence proving innocence. He was released after more than nine years in prison, but not fully exonerated until 2003. Another man pleaded guilty to the crime in 2004.

The right to a fair trial is at the heart of Article 10, one more section of the 1948 Universal Declaration of Human Rights (UDHR) that aims to prevent a repetition of the atrocities of Hitler's Germany, where compliant judges and courts served the aims of the Nazi regime, rather than the cause of justice in the interest of the people. Some guarantees of a fair trial, including the right to presumption of innocence, can also be found in Articles 6, 7, 8 and 11 of the Declaration.

The right to a fair trial has been accepted beyond dispute by every country (even if they do not always honour it). Fair trials not only protect suspects and defendants, they make societies safer and stronger by solidifying confidence in justice and the rule of law.

But what is a fair trial?

The hallmarks of a fair trial include: the right to be present in court; to have a speedy public trial before an independent and impartial court; and to have a lawyer of one's choice, or one provided at no cost. Also fundamental is the right to be presumed innocent until proven guilty, and the right not to be compelled to testify against yourself. These are spelled out in greater detail in the International Covenant on Civil and Political Rights, a legally binding elaboration of some of the core principles covered in the UDHR.

At one stage in Kirk Bloodsworth's long fight to prove his innocence, an appeals court overturned his conviction because he had not benefitted from another requirement for a fair trial: the right to see evidence. In his case, evidence that pointed to another suspect. After his release, Bloodsworth helped win passage of a law that makes it easier for people in the U.S. to get DNA testing after a conviction – an example of a remedy designed to prevent the repetition of the violation (as described under Article 8 – the Right to Remedy).

As his case shows, standards for what constitutes a fair trial are always being raised, not only in criminal cases, but in civil ones as well. The right to a fair trial is also enshrined in a number of regional human rights documents, such as the African Charter on Human and Peoples' Rights, the European Convention on Human Rights and the American Convention on Human Rights. Developing issues include the quality of transcripts, and the quality of translation in court proceedings.

Issues surrounding the right to a fair trial occur in every country of the world to a greater or lesser degree. Many legal systems contain numerous safeguards to minimize miscarriages of justice – even if they do not always work perfectly – but in some countries such systems are not fully developed, are undermined by corruption or incompetence, or do not work in practice for a variety of other reasons.

The issue is linked not just to the quality of legal safeguards – and the definition of a given crime – but also to the independence of judges, prosecutors and lawyers. This is fundamental: if the key players in the judicial system are subject to political control, or are too afraid to defend or acquit someone whom they know to be innocent of any real crime; or if what is a minor misdemeanour (or the expression of a particular opinion or other fundamental right protected under international law such as freedom of assembly or association) is punishable by a draconian jail sentence or even the death penalty – then the idea of a fair trial becomes illusory.

There are sometimes attempts to politicize or control the judiciary in ways that could threaten suspects' rights to a fair trial, even in countries where the right is fairly well established. In 2018, the European Union's highest tribunal, the European Court of Justice, ordered Poland's government to suspend a law lowering Supreme Court retirement ages that would have obliged two-fifths of its judges to step down. It was widely interpreted as an effort by the government to fill the bench with its own people.

Most worryingly, in a number of countries, the authorities actively work to undermine existing fair trial procedures in order to quash dissent and remove political opponents, or independent-minded journalists and human rights defenders. Recent developments in a

number of countries suggest this problem may be becoming more acute, as more authoritarian governments attempt to consolidate power by locking up dissenters.

In recent years, the UN Human Rights Office, and other UN human rights bodies and independent experts have expressed particular alarm about the situation linked to fair trials and independence of the judiciary in numerous countries including Bahrain, China, Egypt, Guatemala, Guinea-Bissau, Iraq, the Maldives, Myanmar, Saudi Arabia, Sudan, Turkey, Venezuela and Vietnam – to name just a few.

In Egypt and Iraq, the handing down of dozens of death sentences after a number of blatantly flawed trials has been strongly condemned by the UN High Commissioner for Human Rights.

In China, the lack of transparency surrounding trials and administration of justice, as well as the tendency to rely on “confessions” which may well have been coerced, have resulted in the jailing or disappearance of numerous human rights defenders and political activists, along with their defence lawyers, since a major crackdown on dissent began in July 2015. This apparent violation of the right to fair trial has been widely condemned, including by successive UN High Commissioners for Human Rights, and a wide range of UN independent experts.

## **Article 11**

### ***Presumption of Innocence and International Crimes***

At first glance, Article 11 says that every human being is innocent until proven guilty, a fundamental element of fair trials and the rule of law, and a concept everyone can understand. But dig a little deeper into this Article, and we uncover a fascinating story about the development of international courts with the power to hold individuals accountable for the most heinous crimes known to humankind.

Over the last 70 years, the world has come to accept that the world’s worst abusers of human rights should be held responsible for their crimes. They cannot evade prosecution because they were rulers of countries or military leaders. No one should be above the law.

This includes, in recent years, the president and military commander of the Bosnian Serb republic (Republika Srpska) for crimes committed during the Bosnian war in the early 1990s. Radovan Karadžić was found guilty of the genocide in Srebrenica, war crimes and crimes against humanity, while his top general, Ratko Mladić was found responsible for the siege of Sarajevo and the Srebrenica massacre in which some 8,000 people, mostly men and boys, were killed. In total he was convicted of 10 charges – one of genocide, five of crimes against humanity and four of violations of the laws or customs of war. Similarly, former Rwandan prime minister Jean Kambanda is the only head of government to plead guilty to genocide – for his role in the massacre of 800,000 people in 1994.

The second paragraph of Article 11 is a ban on retroactive laws, already a feature of many constitutions in 1946-1948 when the Universal Declaration of Human Rights (UDHR) was being drafted. Paragraph 2 says: “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.”

“The important principle of innocence until proved guilty ... represented great progress from the inquisitorial trial concepts of the Middle Ages to which Nazi Germany had reverted.”

– Alexei Pavlov, UDHR drafter from the Soviet Union

The UDHR was being drafted just after the Nuremberg war crimes trial of the top Nazi leadership had ended, and a similar trial was still under way in Tokyo. Although Article 11's respect for the presumption of innocence was agreed on quickly, the drafters struggled over the wording of the second paragraph. They were concerned that a ban on retroactivity could be used as an argument that the Nuremberg trials had been illegal. They had tried “crimes against peace” and “crimes against humanity” which previously did not exist in national laws.

The wording finally agreed upon in Article 11 paved the way for the formal adoption, in 1968, of a UN convention which stated there is no statute of limitations on war crimes and crimes against humanity. Beginning in the 1990s, with the understanding that certain crimes fall within international jurisdiction, tribunals or special courts were set up for Sierra Leone, Cambodia, the former Yugoslavia, Rwanda and others.

The determination to end impunity for such heinous crimes led to the establishment of the International Criminal Court (ICC) in 2002. Such a court was foreseen in the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN on 9 December 1948, the day before adoption of the UDHR. The Genocide Convention holds individual perpetrators responsible “whether they are constitutionally responsible rulers, public officials or private individuals.”

“For almost 20 years I have witnessed war crimes committed against women, girls and even baby girls, not only in my country, the Democratic Republic of Congo, but also in many other countries.”

– Denis Mukwege, Congolese physician and Nobel Peace Prize laureate

The list of crimes for which they could be convicted was expanded by the Rome Statute that established the ICC. It clearly stated that rape and gender-based crimes were on the list of crimes against humanity and war crimes, building on a growing perception that rape was not just committed by soldiers on a rampage, but, in the 20th century, had become an actual tactic of war.

The committee that awards the Nobel Peace Prize sought to further underline the world's revulsion towards such acts in 2018, when it awarded the Peace Prize to Congolese doctor Denis Mukwege and Nadia Murad, a Yazidi campaigner, for their efforts to end the use of sexual violence as a weapon of war and armed conflict. As the Nobel Committee noted: “A more peaceful world can only be achieved if women and their fundamental rights and security are recognised and protected in war.”

## **Article 12**

## ***Right to Privacy***

Should schools use cameras in the classroom to monitor children's faces and determine whether they are paying attention? Would you use free WiFi at a street kiosk if you knew its cameras and sensors were collecting data on you, and that you would continue to be tracked even after you left the WiFi zone? If you wear a fitness tracker on your wrist, how would you feel if an insurance company used its data to deny you coverage?

These are not fragments of a dystopian nightmare, but very real issues of our digital age that could not have been foreseen in 1948 by the drafters of the Universal Declaration of Human Rights (UDHR). Yet the concept of privacy, enshrined in Article 12, has in fact become ever more central to all our lives over the last 70 years, with the increase in data collection by governments and business.

Privacy is often asserted as a "gateway" right that reinforces other rights, online and offline, including the right to equality and non-discrimination, and freedom of expression and assembly.

However, privacy is also a value in itself, essential to the development of human personality and protection of human dignity, one of the main themes of the UDHR. It allows us to protect ourselves from unwarranted interference in our lives, and to determine how we want to interact with the world. Privacy helps us establish boundaries to limit who has access to our bodies, places and things, as well as our communications and our information.

Privacy is not an absolute right, and can be limited in some cases, such as prison authorities searching cells for contraband. However, intrusions on privacy have to be in proportion to the benefit to society. The European Court of Human Rights, for example, ruled in 2000 that it was not "necessary in a democratic society" for the secret service to amass a dossier against a Romanian citizen including details (some false) dating back 60 years.

Privacy, especially digital privacy, can seem an abstract concept. As concerns about terrorism have mounted in recent years, governments have sought to intrude ever more into citizens' privacy, citing national security as the reason. "If you have nothing to hide," so the argument goes, "what are you worried about?"

Perhaps the value of privacy can be more easily understood in the physical world. Suppose someone broke into your house and didn't take anything, but snooped into your closets and read your private letters. Such an intrusion would make most of us feel, at a minimum, uncomfortable. Yet something very similar is happening today in cities blanketed with closed-circuit TV cameras, with companies that sell information about your online search history, and with government surveillance of individuals.

Sometimes we choose to surrender aspects of our privacy. Whenever we order something online, or use a free WiFi service, we give up some privacy in exchange for something of value.

"Governments in every region are also using digital surveillance tools to track down and target human rights defenders and people perceived as critics – including lawyers, journalists,

activists on land rights or the environment, and people who support equality for members of the LGBTI community.”

– Michelle Bachelet, UN High Commissioner for Human Rights, November 2018

However, individuals are not always aware of what they are surrendering, or to whom. They may not know that when whenever you get something free in the digital world, you are not the customer, you are the product. In 2018, some 87 million Facebook users discovered they had been turned into a commodity – without their knowledge or permission – when their browsing habits, purchases, political opinions and networks of friends were analysed and sold for profit.

Privacy defenders are also concerned that many uses of technology presented as an advantage may have a darker side. Some insurance companies offer a discount to customers who can prove their health habits by wearing a tracker. Is it a big leap to their denying insurance to those who decline to wear the “smart” wristband? You may be happy to “smile and pay” – use facial recognition as a shortcut to your bank account. But what if your face becomes part of a massive government surveillance scheme that can track you anywhere?

Massive data banks now hold information – search history, location, financial and health data – on every single woman, man and child in certain parts of the world. This does not mean “everyone perceived to be a critic or an activist, or even every Internet user, but quite simply: everyone,” says the UN High Commissioner for Human Rights, Michelle Bachelet.

The extent of global government snooping came to light in 2013 when former Central Intelligence Agency (CIA) contractor Edward Snowden leaked classified information from the U.S. National Security Agency. According to the leaks, some 90 percent of those whose communications had been intercepted, were not the intended targets, but ordinary people. This has major ramifications, as collecting and linking many types of information on individuals could be abused to determine their “social value” to reward or blacklist them in ways they know nothing about.

Around the world, some are fighting back in order to preserve privacy. Public pressure has caused many companies to tighten their digital security and offer fully encrypted communications services to their customers. Some governments are adopting legal frameworks that protect individuals against intrusions by States and businesses. And such boundary-breaking projects as building a “smart” neighbourhood in Toronto are facing increased scrutiny of their data practices. “I imagined us creating a Smart City of Privacy, as opposed to a Smart City of Surveillance,” wrote Ann Cavoukian, a leading Canadian privacy expert, as she resigned from the project.

Seventy years on, the UDHR offers a clear framework to secure the dignity and rights of all people, even in a digital age its drafters could not foresee. UN Human Rights Chief Michelle Bachelet says human rights lawyers, computer scientists and engineers, and government representatives have to work together “to ensure the continued application of human rights in the way in which States operate in the digital age, and in the way in which they regulate the activities of companies in the digital space.

## Article 13

### ***Freedom of Movement***

After the collapse of the Siad Barre regime in Somalia in 1991, conflict and drought forced more than 15 percent of the country's entire population from their homes. Most of them tried to build new lives in other parts of the country, usually in wretched, unsafe makeshift settlements where they cobbled huts together from discarded detergent cartons and scraps of cloth, and were subject to constant extortion and sexual violence.

Ironically, with relative peace in the capital, Mogadishu, hundreds of thousands of these internally displaced people (IDPs) face a new danger: eviction by land developers intent on rebuilding the war-ravaged seaside city.

Article 13 of the Universal Declaration of Human Rights (UDHR) guarantees freedom of movement. You should be able to travel around your own country and choose where you live.

This right is not absolute. Countries can limit the freedom of people on their territory, such as confining them to their village during an Ebola outbreak, or compel them to leave their homes if, for example, they are threatened by a typhoon or other natural disaster. But there has to be an overriding public interest: it's unlawful for a dictator to expel people from their homes to build a golf course. And evacuation of civilians during a war cannot be cover for ethnic cleansing.

Derived from Article 13 are the rights of internally displaced people, which are elaborated more fully in the UN Guiding Principles on Internal Displacement. They prohibit arbitrary displacement, and say that internally displaced people (IDPs) "have the right to move freely in and out of camps or other settlements," a principle that was not respected, for example, in the closed IDP camps for Rohingya in Myanmar's Rakhine State.

Uprooted civilians, 80 percent of whom are women, children and the elderly, should in theory be protected by their government. However, it is often this very government that caused them to flee in the first place, or is unable to protect them from lawless rebel groups, as has been the case in Colombia, the Democratic Republic of the Congo, Iraq, South Sudan and other countries.

"Better to die in a wide field than to decay in a narrow shanty"  
–Aleksandr Solzhenitsyn, *The Gulag Archipelago*

Article 13 underpins the right to seek safety in another part of the country and the right of IDPs to find a lasting solution by returning to where they used to live, settling where they found safety, or settling somewhere else in the country. Somalia has come under international criticism for trying to limit these rights and, for example, trying to force people to return to their original areas rather than allowing them to live where they feel safer.

Ukraine is another country that has been criticized for cumbersome bureaucratic procedures that have effectively stripped up to 900,000 elderly people of their pensions because – through no fault of their own – they ended up on the wrong side of the dividing line in

breakaway eastern zones. These pensioners, among the 1.6 million people displaced within Ukraine since the conflict broke out in April 2014, were compelled by government regulations to cross a frontline – in areas infested with landmines – to collect their pensions.

The UN in Ukraine has encouraged the government to separate displacement status from people's right to collect the pensions they have acquired through a lifetime of hard work, and to facilitate freedom of movement for all civilians.

Displacement is one of the central issues of our time. At the end of 2017, 68.5 million people were forcibly displaced by war, conflict and persecution, displaced at the rate of one every two seconds. This does not include a new and growing category of displaced people – those fleeing climate change.

Entire low-lying island-states, such as the Maldives, Tuvalu, Kiribati and the Marshall Islands, are in danger of being made uninhabitable by climate change – or eventually being submerged entirely. As far back as 2005, the UN Environment Programme reported some 100 villagers in northern Vanuatu had already been forced to relocate inland because of rising sea levels, and called them the world's first climate change "refugees," a very loose usage of the legal term. New Zealand has considered creating a new visa category to help Pacific peoples displaced by climate change.

Unlike these people forced to move, there are others who would like to travel freely within their countries but cannot. UN Women says there are 17 countries where, by law, women cannot travel outside their home in the same way as their husbands. Or they face other obstacles to their freedom of movement, such as social or cultural norms, sometimes in the guise of "protecting" them, that may keep them indoors and out of school from childhood.

UN Human Rights chief Michelle Bachelet has encouraged all of us to stand up for these rights. "It is essential that we must continue the work for the full implementation of human rights in a way that improves the lives of men, women and children everywhere," she said.

## **Article 14**

### ***Right to Asylum***

In 1950, two years after the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR), it created the United Nations High Commissioner for Refugees (UNHCR). The agency was to have three years to help the millions of Europeans who had fled or lost their homes during the Second World War, and then was to be disbanded.

Decades later, the UN Refugee Agency is still in business, and the number of displaced people in the world is over 68 million. Of that total, 25 million are refugees – people fleeing conflict or persecution – who have crossed an international border, while 40 million are displaced within their own country. The remainder are asylum-seekers – people who may, or may not, ultimately be determined to be refugees.

Article 14 of the UDHR grants the right to seek and enjoy asylum from persecution. This right, in addition to the right to leave one's own country (Article 13), and the right to nationality



(Article 15), can be traced directly to events of the Holocaust. Many countries whose drafters worked on the UDHR were acutely aware that they had turned away Jewish refugees, likely condemning them to death. In addition, many Jews, Roma and others hunted by the Nazis had been unable to leave Germany to save their lives.

Under the umbrella of Article 14, more fully articulated in the 1951 Refugee Convention, over the decades millions of people have been given life-saving protection as refugees, been able to rebuild their lives and often have gone home again once the danger has passed. Many have also been resettled in generous third countries, where they use their skills to contribute to their new homelands. And some can settle permanently in the countries where they found refuge, like more than 170,000 Burundians who fled the country in 1972 and received Tanzanian citizenship in what is believed to be the world's biggest naturalization of refugees.

“We can't deter people fleeing for their lives. They will come. The choice we have is how well we manage their arrival, and how humanely.”

-UN Secretary-General António Guterres

The right to seek asylum is not unfettered. Article 14 makes it clear people cannot be granted asylum simply to avoid prosecution for “non-political crimes or acts contrary to the purposes and principles of the United Nations.” So war criminals, and those guilty of a crime against the peace or a crime against humanity, do not qualify for asylum.

Cross-border displacement – including migrants, asylum-seekers and refugees – has become hugely controversial around the world in recent years. In order to exercise the right articulated in Article 14, people have to actually enter another country, and today countries all over the world are slamming the doors shut, keeping out refugees and other migrants with barbed-wire fences, walls and armies.

Advocates say people flee – and will continue to flee – because of the dangers behind them, regardless of the dangers and obstacles that lie ahead. Despite efforts to erect a “Fortress Europe,” refugees and migrants continue to risk their lives in unseaworthy boats, trying to cross the Mediterranean to Europe. Since 2014, every year at least 3,000 have lost their lives in this way, and in 2016 nearly 5,000 people died at sea. Many others perish during overland journeys.

People on the move are also at considerable risk from those who prey on their vulnerability, including state authorities who try to profit from, rather than protect, them, as well as unscrupulous people smugglers who treat fellow humans as highly profitable commodities as they try to circumvent land and sea borders.

“We commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees.”

–UN General Assembly, Declaration for Refugees and Migrants, 19 September 2016

Countries have the right to control their borders. However, as the UN has been pointing out for years, an orderly migration system grounded in the human rights principles enshrined in

the UDHR, would not only address countries' legitimate security concerns, but would also honour the rights that belong to both refugees and migrants.

In 2016, the 193 member states of the United Nations unanimously adopted the New York Declaration for Refugees and Migrants to protect those forced to flee, and support countries that shelter them. It paved the way for the adoption of two new global compacts in 2018: a global compact on refugees, and a global compact for safe, orderly and regular migration.

Many people who have clear protection needs, and leave their homes for reasons beyond their control, are not granted asylum because they do not fall under the accepted definition of 'refugee.' So-called 'climate refugees' are a good example of today's protection gaps and challenges. It is not clear how many people have been displaced across borders by climate change, but statistics on internal displacement are illustrative. The Internal Displacement Monitoring Centre estimates that from 2008-2016, weather-related disasters displaced, on average, 21.7 million people within their own countries every year. This does not include problems that build more slowly because of more insidious forms of climate change, such as rising sea levels, ground water turning salty, or farming and grazing land turning into deserts.

Similarly, people displaced by famine are in many cases not considered refugees within the definition of the 1951 Refugee Convention, or the various expanded forms of refugee protection. Yet clearly, they are in need of protection and assistance – and if they cannot get it at home, they have no option but to go abroad.

The Global Compact for Migration calls on countries to “cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation.” For such people not able to return to their home country, solutions envisioned in the Compact include planned relocation and new visa options.

## **Article 15**

### ***Right to Nationality***

On the outskirts of the Vietnamese capital, Ho Chi Minh City, an elderly man revealed his most fervent wish: “just one simple hope – that when I died I could get a death certificate, to prove that I ever existed.” As a stateless person, he had not legally existed for the 35 years he had lived in Viet Nam – unable to own property, send his children to school or even buy a motorbike.

A former Cambodian refugee, he had fallen into a legal limbo, unable to relinquish his Cambodian citizenship as required in order to acquire Vietnamese citizenship because Cambodia had already renounced him. Fortunately, in 2010 Vietnam cut the Gordian knot and granted citizenship to some 6,000 people in this position.

Most of the people on this planet take for granted the right to nationality guaranteed by Article 15 of the Universal Declaration of Human Rights (UDHR). Most of us can acquire an ID card, passport or other documents without any problem. But around the world some 3.9

million people are officially without nationality, and the UN Refugee Agency estimates the true figure could be three times higher.

They suffer profoundly, condemned to a hopeless life on the margins, and often passing their condition to their children, so that generations can be condemned to statelessness.

“To be stripped of citizenship is to be stripped of worldliness; it is like returning to a wilderness as cavemen or savages... they could live and die without leaving any trace.”

- Hannah Arendt, *The Origins of Totalitarianism*

The Universal Declaration asserts that all human beings are born with the inherent rights it sets out. For this reason, many dislike Hannah Arendt’s formulation that nationality is the “right to have rights.” But without nationality, it is practically impossible to exercise many other rights – to go to school, get medical treatment, get a job legally, report a crime, travel across borders and, as the Vietnamese man lamented, even for your family to get a death certificate when you go.

Some people are stateless because of the break-up of states, or disintegration of empires, generations ago. Others do not have, or lose, their nationality unintentionally because of badly drawn up, or clashing laws within a state – or even (when parents are of different nationalities) between states. Even a change in administrative practice can plunge people, by mistake, into a legal limbo because of some quirk of birth, marriage or inheritance.

Other people are deliberately made stateless – refused or stripped of their nationality as part of a process of political or racial or ethnic persecution, and often subsequently forced to flee to another country where they may remain stateless for many years. The Rohingya of Myanmar being one obvious example, and German Jewish philosopher Hannah Arendt – who was both stateless and a refugee, first in France and then the U.S. – another.

As far back as 2010 – seven years before the latest round of violence, possibly amounting to genocide, erupted in Myanmar’s Rakhine State – the UN Special Rapporteur on Myanmar was warning that “the problem of statelessness” – including the refusal to issue birth certificates to many Muslim children since 1994 – lay at the “root of chronic scourges” endured by the Rohingya. More recently, in its excoriating September 2018 report, the UN Fact-Finding Mission on Myanmar noted that “the denial of nationality is based on prohibited racial grounds.”

Since the UDHR was adopted 70 years ago, there has been an increasing recognition of the issue of statelessness. In recent years, there has been a concerted effort to solve it, and prevent it from occurring in the first place, with the UN Secretary General submitting an annual report on the deprivation of nationality to the General assembly.

“The last 10 years I have lost all my rights: I couldn’t study, work, nor drive. I can’t be with my husband. To simply have a life and a nationality after 17 stateless years... is that too much to ask?”

-A 24-year-old woman held in detention because her parents infringed immigration rules when she was a child.

Often it can be solved with the metaphoric stroke of a pen – a simple change to laws, for instance, to eliminate gender discrimination that prevents women from passing on their nationality to their children. Issuance of birth certificates is also a vital step in preventing statelessness.

Since the UN Refugee Agency, UNHCR, launched a campaign in 2014 to end and prevent statelessness, more than 166,000 stateless people have acquired or had their nationality confirmed and 20 states have acceded to the two Statelessness Conventions. Nine states have established or improved statelessness determination procedures, and six states reformed their nationality laws, among many improvements.

Even as progress is being made, a debate has arisen over whether climate change could add millions more to the ranks of the stateless. Legal scholars are already exploring solutions in case some island-states now on the map become submerged entirely by rising sea levels – though not all agree that would result in their citizens' becoming stateless.

A youth leader from Kiribati, one of the lowest-lying countries in the world, told the Human Rights Council in 2017 that all his people might – in the worst case – have to leave because of rising sea levels, erosion or cyclones, and that that “relocating means having no home to go back to.”

Added 27-year-old Rae Bainteiti: “It means leaving your land and your country for good and severing ties to all that is important to you as a people. Such a move would threaten our sovereignty, our culture, our identity and all our fundamental human rights.”

## **Article 16**

### ***Right to Marry and to Found a Family***

Most of the 30 Articles in the Universal Declaration of Human Rights (UDHR) begin with gender-free language: "Everyone," "All" or "No One. But Article 16 states that "men and women" have the right to marry, with the women drafters of the UDHR succeeding in their determination that it should spell out clearly that women had equal rights in marriage, given there was still very widespread discrimination in matters relating to marriage at the time.

Some subsequently interpreted the wording as limiting marriage rights to heterosexual couples, although nowadays it is increasingly interpreted as simply referring to both sexes having an equal right to marry, rather than stipulating they must marry someone of the opposite sex. Various UN human rights mechanisms have urged all States to legally recognize same-sex unions – whether by making marriage available to same sex couples or through other arrangements, such as civil partnerships – and have also called for the same benefits and protections for all. And an increasing number of states are bringing in legislation along these lines.

Article 16 delves into the intimate lives of humans. It says every adult has the right to marry and have a family if they want to. Women and men also have the same rights during their marriages, and if they divorce. In addition, for the only time in this document, it explicitly

invokes the duty of the State to provide protection, underscoring the high regard the drafters had for the family.

"Denying people access to marriage ...it's denying them the status and dignity of being ordinary citizens in society."

–South African Judge Albie Sachs, in Constitutional Court decision striking down statute defining marriage as "between one man and one woman."

As Pakistani drafter Begum Shaista Ikramullah put it, "it was imperative that the peoples of the world should recognize the existence of a code of civilized behaviour which would apply not only in international relations, but also in domestic affairs."

These rights have cascaded down and been amplified in a number of other UN instruments: The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights as well as the Conventions that protect women, people with disabilities and migrant workers.

The drafting of Article 16 involved reconciling different world views (the Communist bloc was critical of what it saw as U.S. restrictions on women's rights at the time) and overcoming religious objections. World War II, just ended, "had shown the equality of the sexes," said Polish drafter Fryderyka Kalinowska, and it was important to reflect that.

The Article was also a response to Nazi laws prohibiting inter-racial marriage, bestowing the right to marry and to found a family on "men and women of full age without any limitation due to race, nationality or religion." Equal rights are guaranteed "during marriage and at its dissolution." This was a milder word for "divorce," which had caused heated debate during the drafting. Some argued including it would send a signal to the general public that the UN "approved of divorce on the same footing as marriage." In the end, divorce was treated as an issue of non-discrimination rather than as a basic human right. As one commentator put it: "No one has to contract marriage, but once one is in that state, certain rights become operative."

Paragraph 2 of Article 16 says "marriage shall be entered into only with the free and full consent of the intending spouses." This, together with the phrase "of full age" in Paragraph 1, amounts to a ban on child and/or forced marriage because children may not be in a position to give free and full consent. However, child marriage continues to be a problem affecting huge numbers of girls, with around one million girls under 18 getting married every month.

Closely related is the issue of forced marriage, where girls are married off to a man, often much older, for a "bride price." Faced with international outrage, in June 2018, Sudan overturned the death sentence on Noura Hussein for killing her husband, who was some 16 years older than her. The man had approached her parents when she was just 15 and in Grade 8. On their "honeymoon," the court heard, the husband raped her while three of his male relatives pinned her down. When he tried to rape her again, she killed him with a knife – in self-defence, she argued.

In neighbouring South Sudan, in November 2018, the father of a 16-year-old girl auctioned her off to the highest bidder on Facebook. The sale provoked a storm of condemnation, including against Facebook, with many people afraid the record amount paid for the girl would stimulate more sales of child brides via social media.

"That a girl could be sold for marriage on the world's biggest social networking site in this day and age is beyond belief."

– George Otim, director of Plan International in South Sudan

A recent ruling by the International Criminal Court (in the case against Dominic Ongwen of the Lord's Resistance Army) that forced marriage, when part of a widespread or systematic attack against civilians, may amount to a crime against humanity was, for many, a welcome development in jurisprudence.

In a 2018 report on the Kyrgyz Republic, the Committee on the Elimination of Discrimination against Women concluded the Government had failed to protect women and girls from abduction for forced marriage and related sexual violence, thus violating their right to enter into marriage only with their free and full consent. It also found that the Kyrgyz Republic had knowingly failed to take effective measures to address discriminatory stereotypes and norms that legitimize bride kidnapping, as well as to enforce existing laws criminalizing the practice alongside child marriage.

On another topic, Article 16's language on the "right to found a family" reflects the prevailing morality of the time associating families with marriage. Since then, it has been argued that the right to "found" a family implies a conscious decision, so it should extend to rights to plan births and control one's reproduction – and even to a "right" to in-vitro fertilization, as the Inter-American Court of Human Rights held in the 2012 case of *Artavia Murillo v. Costa Rica*. Also more recently, the rights laid down in Article 16 have been re-interpreted to try to ensure equality and non-discrimination for all people who want to marry, and all families, however they are constituted.

In 2012, then UN Human Rights Chief Navi Pillay discussed how sexual violence and denial of contraception are frequently used against women. "Ensuring that women have full autonomy over their bodies is the first crucial step towards achieving substantive equality between women and men," she said. "Personal issues – such as when, how and with whom they choose to have sex, and when, how and with whom they choose to have children – are at the heart of living a life in dignity."

## **Article 17**

### ***Right to Own Property***

Australia's aboriginal people have no written language, so they pass their heritage along through ceremonies and story-telling. As elders recite, others often draw icons in the sand, depicting beliefs, events and life-giving places where water and food could be found. When the ceremony ends, the sand is brushed away to guard the secrets.

Within the last 50 years, they were encouraged to transfer their secret sand paintings to canvas. Their striking paintings, incorporating dots, spirals and cross-hatching, have become valuable art pieces.

In a court in the year 2000, they also unlocked the title to a vast territory in the Great Victoria Desert in Western Australia, which the court ruled was their ancestral home, accepting paintings as proof of the Spinifex people's claim in lieu of a formal written deed. Kirsten Anker, an expert on indigenous law said that for this group: "the painting is not just a fact about law, it is law."

Article 17 of the Universal Declaration of Human Rights (UDHR) guarantees the right to property. This is yet another right included in reaction to the atrocities of the Holocaust, when property was confiscated from Jews and others, often to enrich Nazi officials. European Jews were stripped of billions of dollars' worth of cash, artwork, houses, businesses and personal belongings. "Hitler's Final Solution was not only an act of genocide: it was also a campaign of organised theft," says one writer.

Despite this motivation, as the UDHR was being drafted between 1946 and 1948, the world was dividing into the ideological camps of the Cold War, with democratic and capitalist countries on one side and non-democratic socialist states on the other.

"The theory of Communism may be summed up in one sentence: Abolish all private property."

–Karl Marx

The socialist countries, as well as some developing countries, were hostile to the idea that private property was a fundamental human right. In some quarters this suspicion remains until today. Unlike many rights in the UDHR that are amplified in other important UN instruments, the right to private property is not specifically amplified in subsequent human rights conventions. Some prohibit discrimination on the basis of property (or other formulations), but none of them have a specific right to private property. However, the United Nations Declaration on the Rights of Indigenous Peoples recognises indigenous peoples' rights with respect to their lands, territories and resources.

One of the early drafts of the UDHR (later rejected) called for workers to have the right to own the means of production. Another draft would have required government to help their citizens obtain a minimum of private property in order to assure "the essential material needs of a decent life." The Soviet Union delegation opposed any kind of absolute right to private property, but finally settled for Paragraph 2, which says, in its entirety: "No one shall be arbitrarily deprived of his property."

This phrasing today is often invoked by minority and indigenous groups who are displaced from their resource-rich lands by development projects. Recognition of the property rights of indigenous peoples is fundamental to their ability to survive (spiritually, culturally and financially), defend their territory and often to guard against climate change – for example through the destruction of the Amazon rain forest.

On 26 May 2017, the African Court on Human and Peoples' Rights made a landmark judgment in a case involving the mass eviction of the Ogiek peoples from the Mau Forest by the Kenya Forest Service. The Court found that the Kenyan Government had violated seven separate articles of the African Charter on Human and People's Rights, with the violations amounting to a persistent denial of Ogiek land rights and their religious, cultural and hunter-gather practices.

On the other side of the world, the Inter-American system has contributed to the understanding and strengthening of indigenous rights, for example via a ground-breaking ruling by the Inter-American Court on the requirement for free, prior and informed consent, in a case involving the Saramaka people of Suriname. The Court held that "regarding largescale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramaka, but also to obtain their free, prior, and informed consent, according to their customs and traditions."

Women also are often shut out of property ownership by laws and social norms. The World Bank says close to 40 percent of the world's economies have at least one legal constraint on women's rights to property, and 39 countries allow sons to inherit a larger proportion of assets than daughters. It was not until 1922 that the UK and the US allowed women equal inheritance, and as recently as 1976 that women in Ireland were able to own their homes outright.

Many see a link between women's property rights and prosperity. Educated women who control their own property benefit society, says Chilean writer Isabel Allende.

"If a woman is empowered, her children and her family will be better off. If families prosper, the village prospers, and eventually so does the whole country."

## **Article 18**

### ***Freedom of Religion or Belief***

Article 18 of the Universal Declaration of Human Rights (UDHR) says we all have the right to our own beliefs, to have a religion, have no religion, or to change it. For its time, the UDHR was very progressive in asserting that believers of all religions and secular beliefs should be able to live peacefully with their rights guaranteed by the State, while not presuming any national or state-sponsored religion.

"The obligation of the state is to guarantee freedom of religion, and that implies dealing with all of them on an equal footing."

—Former Cuban foreign minister Ricardo Alarcón

Article 18 protects theistic, non-theistic and atheistic believers as well as those who do not profess any religion or belief. Less well known is the role that religious organisations played in launching and sustaining the human rights movement. In South Asia, Hinduism inspired Mahatma Gandhi's long march for the liberation of India. Protestant Christians led the fight to abolish slavery in the UK and US in the 19th century. Roman Catholics in Poland and Lutherans in East Germany were at the vanguard of fighting authoritarianism at the end of



the 20th century, and Roman Catholics in Latin America pressed for social justice with their "liberation theology."

As former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein pointed out, "religious leaders, with their considerable influence on the hearts and minds of millions of people, are potentially very important human rights actors."

However, religions and human rights are often viewed as conflicting with each other, with debates raging in Western Europe over whether women should be allowed to wear headscarves, and blasphemy laws are reportedly misused in parts of Asia to settle personal grudges. Some argue there needs to be not only freedom of religion but also freedom from religion, particularly when it is cited as justification for discriminatory or even harmful practices against women.

Various UN human rights bodies have frequently raised issues related to religious diversity. The UN Committee on the Elimination of Discrimination against Women, to give just one example, recommended that Nigeria repeal or amend its discriminatory laws, and include religious leaders in the process of addressing issues of faith and human rights.

To explore potentially positive connections between religions and human rights, the UN Human Rights Office in 2017 launched an initiative called "Faith for Rights" to engage religious leaders in an effort to build peaceful societies that uphold human dignity and equality, and embrace diversity. The campaign began with a ground-breaking agreement, reached at a meeting in Beirut, on 18 commitments articulating how "Faith" can more effectively stand up for "Rights" so that supporters of both can help, rather than oppose, each other. The commitments include a pledge to defend the freedom of religion or belief of minorities as well as their right to participate equally and effectively in cultural, religious, social, economic and public life. Subsequent events in Morocco, Tunisia and Mauritania focused on the role of religious leaders, women and youth in the promotion of human rights in the Middle East and North Africa.

The UN Human Rights Committee has emphasized that domestic laws must not punish criticism of religious leaders or prevent commentary on religious doctrine and tenets of faith. Analysis by the Pew Research Center shows that about one-quarter of the world's countries and territories had anti-blasphemy laws or policies in 2014, the last year for which figures are available. Some 13 percent had laws or policies penalizing apostasy, in some cases making it punishable by death. Some of the most restrictive countries are also among the most populous, with the result that roughly three-quarters of the world's population are living under severe restrictions.

In 2018, Pakistan's Supreme Court acquitted a Christian woman, Asia Bibi, of blasphemy charges and overturned her death sentence after determining she had been falsely accused by Muslim women who did not want her to drink water from the same cup as them. Her case is one of the best-known examples of how blasphemy laws can all too easily be used to pursue private vendettas, and the Supreme Court decision has led to riots by people who insist Asia Bibi should be put to death.

The protection of the right to change religion – labelled apostasy in some countries – caused divisions among the drafters of the UDHR. Saudi Arabia abstained in the final vote on the UDHR because of this clause, but other Muslim-majority countries such as Syria, Iran, Turkey and Pakistan voted for the Declaration. Just before the proclamation of the UDHR on 10 December 1948, the former Foreign Minister of Pakistan stressed that Islam strives “to persuade men to change their faith and alter their way of living, so as to follow the faith and way of living it preached, but it recognized the same right of conversion for other religions as for itself.”

In some countries, the establishment of secular norms has sometimes clashed with new residents bringing different cultures and religions. In July 2018, in two landmark decisions, the UN Human Rights Committee found France had violated the rights of two women by fining them for wearing the niqab, a full-body Islamic veil.

“You can’t deny women their basic rights and pretend it’s about your ‘religious freedom’... Religious freedom doesn’t mean you can force others to live by your own beliefs.”  
–Former U.S. President Barack Obama

Courts in many countries have also made it clear that religious belief is not a license to spread hatred, or even commit violence, against followers of other faiths. It is also not a license to suppress or discriminate against women. In the words of Asma Jahangir, the former UN Special Rapporteur on freedom of religion or belief and winner (posthumously) of the 2018 UN Human Rights Prize: “It can no longer be taboo to demand that women’s rights take priority over intolerant beliefs that are used to justify gender discrimination.”

## **Article 19**

### ***Freedom of Opinion and Expression***

Why would a human rights organization go to court to support someone whose extreme political views or ethical position it fundamentally opposes? A pornographer perhaps, or an anarchist? Because of the rights asserted in Article 19 of the Universal Declaration of Human Rights (UDHR), we all have the right to form our own opinions and to express and share them freely.

“The first human who hurled an insult instead of a stone was the founder of civilization.”  
–Sigmund Freud

“If we do not believe in freedom of expression for people we despise, we do not believe in it at all,” says linguist and political activist Noam Chomsky. Adds Human Rights Watch: “freedom of speech is a bellwether: how any society tolerates those with minority, disfavored or even obnoxious views will often speak to its performance on human rights more generally.”

This right underpins many others, such as religion, assembly and the ability to participate in public affairs, but freedom of expression is not unlimited. A common metaphor to describe its limits is that you cannot falsely yell “fire” in a crowded theatre and cause a panic and possible injury. Other forms of speech generally not protected include child pornography, perjury, blackmail, and incitement to violence.

The UDHR's drafters wrestled with the issue of how tolerant a tolerant society should be of people like Nazis and fascists who themselves are intolerant. They were acutely conscious of the role played by the Nazi media and film industry in the creation of an environment that enabled the slaughter of 6 million Jews, and other groups such as the Roma and people with disabilities. After gaining power in 1933, the Nazis used a series of new laws and regulations to crush the independent media, substituting a rabid totalitarian propaganda machine in its place, under the guidance of Joseph Goebbels, the "Reich Minister of Public Enlightenment and Propaganda."

As a result, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence was explicitly prohibited when the UDHR was translated into binding international law via subsequent treaties. In the International Covenant on Civil and Political Rights, freedom of expression occupies the same slot (Article 19) as it does in the UDHR, providing explicit criteria that Governments need to comply with when restricting freedom of expression. Article 20, following immediately afterwards, sets the limits with the prohibition of incitement.

The potentially lethal results of hate speech – including its ability to enable the violation of the right to life on a massive scale -- was graphically displayed once again when Rwanda's Radio Mille Collines laid the groundwork for the 1994 genocide by dehumanizing fellow citizens and branding them enemies. Some 800,000 people were killed. More recently in Myanmar, messages of incitement to hatred and violence spread with alarming speed on Facebook, and may have contributed to genocide and crimes against humanity. The Independent Fact-Finding Mission on Myanmar pointed to the use of Facebook by the Myanmar military to incite hatred and spread false information to justify their actions against civilians. In reaction, Facebook closed several of those accounts.

You are entitled to hold any opinion, no matter how foul it may be, but the expression of that opinion – if it amounts to incitement -- must be outlawed, with clear historical examples of what can happen when it is not.

When a British tabloid newspaper revived Mille-Collines-style language in 2015, by referring to migrants and refugees as "cockroaches," the UN Human Rights Chief Zeid Ra'ad Al Hussein urged European countries to take a firmer line on racism and xenophobia which, he said, "under the guise of freedom of expression, are being allowed to feed a vicious cycle of vilification, intolerance and politicization of migrants, as well as of marginalized European minorities such as the Roma."

Freedom of expression is however explicitly protected in most spheres, and there are rising concerns today at the continuing, and possibly increasing, efforts to misuse the concept of "hate speech" or "incitement" as an excuse for stifling dissent or criticism of a government in power, often using anti-terrorism legislation as the legal means to what is, under international law, an illegal end.

The UN has on numerous occasions criticized flawed domestic laws that suppress opposition or dissent in the name of combatting "hate speech," with David Kaye, the UN Special

Rapporteur on the promotion and protection of the right to freedom of opinion and expression noting that “States often assert vague prohibitions on ‘advocacy of hatred’ that do not amount to incitement.”

Article 19 includes the right to “seek, receive and impart information and ideas through any media and regardless of frontiers.” Although individuals enjoy the same rights online as offline, states are also censoring, and sometimes criminalizing, a wide range of online content via vague or ambiguous laws prohibiting “extremism,” “blasphemy”, “defamation”, “offensive” language, “false news” and “propaganda”.

If journalists are attacked, spied on, jailed or even murdered when their quests for information are interpreted by governments or criminal enterprises as a threat, people may be unable to form an opinion or take informed decisions.

The Committee to Protect Journalists says that in 2017, 262 journalists around the world were thrown in prison, and Reporters Without Borders says 90 percent of crimes against journalists go unpunished. Even in democracies that pride themselves on being free, demonization of journalists and allegations of “fake news”, and limitations on the protection of journalistic sources, are undermining their work.

As efforts to control speech and information increase, the UN Human Rights Office has provided guidance on how to distinguish free speech from hate speech through the Rabat Plan of Action, which suggests setting a high threshold for interpreting the restrictions set by international human rights law in restricting freedom of expression. Its six-part threshold test takes into account the context, intent, content, extent, speaker’s status, and likelihood that the speech in question would incite action against the target group, and is being used in Tunisia, Côte d’Ivoire and Morocco, and by the European Court of Human Rights in a recent judgment on the Pussy Riot case.

## **Article 20**

### ***Freedom of Assembly and Association***

From student occupations of universities in Paris in 1968 to the Arab Spring of 2011, mass demonstrations have been the way people demand social change. Article 20 of the Universal Declaration of Human Rights (UDHR), combined with Article 19’s freedom of expression, together ensure the right to gather publicly or privately and collectively express, promote, pursue and defend common interests.

To exercise the rights in Article 20, you do not have to march down the Champs-Élysées or take over your local equivalent of Egypt’s Tahrir Square. Freedom of “peaceful assembly” also covers sit-ins, walk-outs, vigils, group discussions and theatre performances.

“The exercise of fundamental freedoms should never be considered a crime, and impunity should never be accepted.”

- UN experts, on an Egyptian mass trial of 739 protestors, and the failure to investigate deaths and injuries caused by security forces.

States not only have an obligation to protect peaceful assemblies, but should also take measures to facilitate them. In the context of protests and demonstrations, the UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials contains very strict guidelines on the use of force, including that "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

The former UN Special Rapporteur on the rights to peaceful assembly and association, Maina Kiai, pointed out that "Participating in peaceful protests is an alternative to violence and armed force, as a means of expression and change, which we should support. It must thus be protected, and protected robustly."

Article 20 also gives us the right to form or join a group – and protects us from being compelled to join an association. Associations include trade unions, clubs, religious associations, political parties – and, increasingly today, online groups.

Social media has played a vital role in helping human rights defenders and communities to organize, voice their concerns and respond to threats. Technological innovation has also greatly helped them document human rights violations, and carry out remote monitoring and swift reporting. But on the dark side, video and on-line surveillance, on-line censorship and harassment, and incitement to violence via social media platforms also endanger associations, and their individual members, in a variety of ways.

Civil society groups, included under Article 20's protection of the right to association, were in the forefront of securing many of the world's most significant human rights advances – such as the movements to abolish slavery and to secure the right to vote for women, as well as current movements such as those calling for an end to discrimination against people based on their sexual orientation or gender identity, and an end to sexual abuse and harassment of women.

Every day, in every part of the world, civil society contributes to the promotion, protection and advancement of human rights. This is one of the reasons why the UDHR holds the world record for the number of translations, many of which have been arranged or carried out by civil society rather than by governments. The rights and freedoms laid down in the UDHR are of fundamental importance to civil society, and their own fundamental importance to the cause of human rights is recognized in the protection granted to them under Article 20.

Successive UN High Commissioners for Human Rights have consistently underlined the vital role of civil society in defending human rights. In the words of current High Commissioner, Michelle Bachelet, without human rights defenders, "the Universal Declaration of Human Rights would be lifeless. It is the courage, the generosity of spirit, the integrity and the selflessness of human rights defenders which have kept the Universal Declaration alive. Time and again, it has been thanks to their work that States have acted in support of rights."

However, civil society groups face a growing tide of legal restrictions on their registration, funding, and ability to speak and operate freely, often with counter-terrorism and security concerns providing justification for far-ranging constraints. But they also face threats to their security: according to UN data, at least 1,019 human rights defenders, including 127 women,

were killed in 61 countries across the world from 2015 to 2017. And that is only the tip of the iceberg as many killings are not reported and countless other human rights defenders were subjected to intimidation, harassment, criminalization, arbitrary detention, torture, forced disappearance and other human rights abuses.

In a 2018 report on reprisals, UN Assistant Secretary-General Andrew Gilmour, highlighted three worrying trends: the growing tendency to label human rights defenders as "terrorists" or "criminals" in an attempt to discredit them; applying legal and administrative procedures to retaliate against them; and the abuse of accreditation and security procedures to block civil society organizations from engaging with the UN.

“When the rights of human rights defenders are violated, all of our rights are put in jeopardy – and all of us are made less safe.”

- Former UN Secretary-General Kofi Annan.

The global alliance of civil society organizations known as CIVICUS summed up the importance of such organizations: “When governments showed the worst of humanity, as in Myanmar, Syria and Yemen, civil society showed the best, voluntarily placing ourselves in the firing line, doing what we could to help and exposing human rights abuses.”

A view strongly endorsed by the UN Human Rights Chief, Michelle Bachelet, who has asserted that “the expansion of human rights protection would not have been possible without national human rights institutions, civil society and human rights defenders.”

## **Article 21**

### ***A Short Course in Democracy***

In three concise paragraphs, Article 21 of the Universal Declaration of Human Rights (UDHR) outlines some of the fundamental principles of democracy: the will of the people should be the basis of government authority, and everyone has the right to take part in the government “directly or through freely chosen representatives.” It calls for periodic, genuine elections with universal suffrage and secret ballot, and also establishes that “everyone has the right to equal access to public service.”

It does not actually include the word “democracy” – which does not appear anywhere in the UDHR, apart from one reference, in Article 29, to “democratic society.” Just three years after the end of World War II, the term “democracy” was already snared up in the rapidly developing Cold War ideological disputes, with the Soviet bloc and Western countries interpreting the term quite differently.

“No famine has ever taken place in the history of the world in a functioning democracy.”  
— Amartya Sen, Indian winner of the 1998 Nobel Prize in economics

This Article, in making core elements of democracy a fundamental human right, reflects the resounding statement in the Preamble to the UDHR that “it is essential” that human rights must be protected by rule of law “if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.”

Fresh in the minds of the UDHR drafters was the election of Adolf Hitler through democratic processes, and his subsequent rejection of the very same processes as a foundation for the democratic state. Instead, he advanced the Führerprinzip (leader principle) based on the philosophy that the best, strongest and brightest should rule the weaker and “less pure.” Such a leader would command total obedience from those under him, and he was above, and therefore could totally disregard, the rule of law. In this respect, like so many others, the UDHR can be seen as a key part of the world’s attempt to inoculate itself against any future would-be dictators.

To a considerable extent it has been successful: the adoption of the Universal Declaration has been credited with helping advance the spread of democracy throughout the world since 1950, when there were just 20-25 democratic countries. Since then, the percentage of countries where the government is formed on the basis of majority rule, determined by regular elections, has risen considerably, boosted first of all by the end of colonialism and then by the collapse of Communism in the Soviet Bloc in 1989.

In recent years, the number of countries around the world holding periodic free and fair elections rose to a postwar high. However, the tide may now be receding, with various countries, including established democracies, appearing to be moving backwards. A number of think tanks and civil society organizations have reported that, after years of advance, the proportion of “free” democracies is now declining.

“I do not acknowledge that there are various models of democracy; there is just democracy itself.”

– Shirin Ebadi, Iranian lawyer and winner of 2003 Nobel Peace Prize

They place the blame for this on various factors, including increasingly brazen actual (or would-be) autocrats, divisive politics and disillusioned electorates. The United States’ withdrawal from its leadership role in promoting human rights at the global level is also cited. And there are signs that the younger generations of adults have little knowledge or memory of their parents’ experiences under fascism and communism and may be losing faith and interest in the democratic project.

Populism, driven by parties from the political extremes, is once again pushing for power via existing democratic processes – its promoters described by former UN Secretary-General Kofi Annan as “charismatic individuals or fake prophets promising simplistic solutions to people’s grievances through radical policies that dismiss institutions and laws as either irrelevant or inconvenient.”

Democracies are not only about elections and parliaments: they also depend on effective channels for people’s broader participation in policy discussions and decisions, including at the local and regional levels; and rule of law and human rights are indispensable for a truly democratic system.

A number of key rights contained elsewhere in the UDHR are among the first casualties when democracy withers. Laws are brought in to curtail freedom of expression and opinion (Article

19); and the freedom of assembly and association (Article 20) is also among the first to go, smothering civic space (often referred to as “the oxygen of democracy”). The rule of law Articles (6-11) soon follow – undermined by redrawn legislation and amendments to Constitutions designed to strengthen the leadership’s hold on power.

Once the rule of law and independence of the judiciary have been compromised, social, economic and cultural rights are endangered, especially for those parts of the population viewed unfavourably by the party in power. The slide from democracy to dictatorship can be startlingly rapid.

Even generally well-functioning democracies suffer significant shortcomings, such as the number of women in public life. According to the Inter-Parliamentary Union, the average global percentage of women members of parliament is just 24 percent, and four national parliaments still have no women at all

The number of women ministers is also an indication of how much political will there is to render a country truly democratic in terms of gender balance. The Nordic countries in particular have made a major effort to build a society based on gender equality, and the current Norwegian cabinet is made up of equal numbers of women and men. After his election in 2015, Canadian Prime Minister Justin Trudeau also appointed an ethnically diverse cabinet with 15 women and 15 men, saying it “looks like Canada.” When questioned later by journalists about why he had made – and kept – a promise of gender parity, his answer was simple: “Because it’s 2015.”

## **Article 22**

### ***Right to Social Security***

After spelling out a long list of civil and political rights, the Universal Declaration of Human Rights (UDHR) now turns to economic, social and cultural rights with Article 22 and the six following Articles. These rights, mostly developed in the 20th century, include the right to work, an adequate standard of living, education, maternity and childhood, social security, and the right to take part in cultural life.

Inclusion of these economic and social rights give effect to one of U.S. President Franklin Roosevelt’s “Four freedoms” – freedom from want, which is mentioned explicitly in the preamble of the Declaration.

“For the UN, health care, education, housing, and the fair administration of justice are not commodities for sale to the few, but rather rights to which all are entitled without discrimination.”

– Former UN Human Rights Chief, Navi Pillay, in *The Tunis Imperative*

Article 22 spells out the qualities of the modern welfare state that are almost universally accepted today. According to the International Labour Organization (ILO), in 1900, only 17 countries had social protection systems to support individuals and families through pensions for the elderly, disability payments for injured workers, benefits for mothers, health insurance and many other programs. Social assistance can include cash transfers, and is often referred



to as a “social safety net” that helps people, especially the poor and vulnerable, cope with life’s shocks, find jobs and educate their children.

According to ILO, the number of countries with social protection systems had increased to 104 by 1946 and 187 by 2015. Around the world, about 45% of people had access to at least one social protection benefit in 2017, while 29% had access to comprehensive social security systems.

The division between economic, social and cultural rights on the one hand, and the civil and political rights on the other, has always been artificial. Without a basic education, can you effectively make use of the right to free speech? The right to work may well be undermined if you are not able to assemble in groups and have the space to voice your opinion about working conditions. And any form of discrimination can have a highly corrosive impact on a whole range of social, economic and cultural rights of the group of people discriminated against.

Interestingly, the head of the UDHR drafting committee, Eleanor Roosevelt, a long-time rights activist, did not want to impose obligations on States. The Declaration, she said, “should enunciate the rights of man and not the obligations of States.”

This view was opposed by the Soviet bloc, and Canadian delegate Ralph Maybank said that if the rights in the Declaration were achieved, “the social and international order would be good, whether it came within the framework of capitalism, communism, feudalism, or any other system.”

The issue of states’ obligations to uphold the rights set out in the Universal Declaration was in effect gradually sorted out later via the elaboration of the nine core international human rights treaties, which created binding law: in particular, the two overarching Covenants covering all rights -- the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights – adopted 18 years after the UDHR in December 1966.

Article 22 asserts that economic, social and cultural rights are indispensable for human dignity and development of the human personality. This phrase appears again in Article 29, underlining that the UDHR drafters wanted not just to guarantee a basic minimum, but to help us all become better people.

That promise has not been fully realized. UN Human Rights Chief Michelle Bachelet has pointed out that “71 percent of the world’s population lacks access to full social protection. In other words, in two-thirds of the globe, societies have not been able to guarantee their people the basic means to live without fear and without feeling discriminated against or ostracized.” She added that almost two-thirds of the world’s children, 1.3 billion children, are without coverage.

In 2009, the United Nations agreed to a “Social Protection Floor Initiative” that encouraged countries to build comprehensive social security systems. Since then improvements have been seen not only in developing countries, but also many middle- and low-income countries.

Mongolia has introduced a family benefits scheme. Argentina is expanding a successful program to support pregnant women and new mothers who do not have health insurance. Thailand, Colombia, Rwanda and China have all made progress in ensuring universal access to health care.

A large number of other countries are making headway on programs to guarantee an income to senior citizens: Azerbaijan, Bolivia, Botswana, Brazil, Cape Verde, China, Cambodia, Kosovo, Lesotho, Mongolia, Georgia, Namibia, South Africa, Thailand, Nepal, Trinidad and Tobago, and Ukraine.

Social protection floors, laid on a firm foundation of human right standards and principles, can help create a better world for all of us, says Bachelet. “We all want to see a world where all children and all adults have their basic needs met; where unemployment, injury, ill-health, old age or disability do not signal misery and hardship; where people are not left unprotected in times of crisis and disaster,” she says.

## **Article 23**

### ***Right to Work***

As First Lady of the United States, Eleanor Roosevelt told striking workers in 1941 that she had always “felt it was important that everyone who was a worker join a labour organization, because the ideals of the organized labour movement are high ideals.”

Five years later, when she headed the United Nations committee drafting the Universal Declaration of Human Rights (UDHR), she gave international labour organisations an important role in shaping the Declaration to reflect their vision of how the world should develop.

The American Federation of Labour had a full-time staff person at the UN while the UDHR was being drafted – Toni Sender, a politician and journalist who had fled Nazi Germany. Along with other labour representatives, she argued forcefully for the specific inclusion of trade union rights. Roosevelt also helped ensure that Article 23 spelled out, in four paragraphs, the right of “everyone” to work, with equal pay for equal work, and without discrimination. The right to form and join trade unions is also clearly enunciated.

“I belong to the generation of workers who, born in the villages and hamlets of rural Poland, had the opportunity to acquire education and find employment in industry, becoming... conscious of their rights and importance in society.”

–Lech Walesa, head of the Solidarity trade union and subsequently President of Poland

In its third paragraph, Article 23 calls for “just and favourable remuneration” to ensure “an existence worthy of human dignity” for workers and their families, reflecting again a vision of a better world than the just-defeated Nazi Germany with its slave labour.

The drafters built on the work of the International Labour Organisation (ILO), one of the few institutions from the League of Nations to become incorporated into the United Nations, when it was created in 1945. Just as the UN was founded in the wake of the Second World War, the ILO had been set up in 1919 out of the ashes of the First World War. It pursued the vision that universal, lasting peace can be established only if it is based on social justice.

Latin American delegates, along with those from the Communist bloc (whose ideology espoused full employment), were instrumental in formulating the final text of Article 23. The Soviet Union, in particular, wanted not only the final terminology of “protection against unemployment,” but greater obligations on states to prevent unemployment.

Over the past 25 years, the number of workers living in extreme poverty has declined dramatically, but unemployment is still a major issue, with more than 204 million people unemployed around the world in 2015.

Equal pay for equal work is still a dream in most countries. More generally, women face enduring obstacles in achieving economic empowerment. According to the World Bank, about 155 countries have at least one law that limits women’s economic opportunities, while 100 states place restrictions on the types of jobs women can do. In 18 states, husbands can dictate whether their wives can work at all.

Child labour also still exists in many countries. The ILO says 152 million children are engaged in mentally, physically or socially dangerous work that prevents them from getting an education. In Africa, one in five children is a child labourer, with smaller proportions in other parts of the world. Globally, around half of the victims of child labour are between five and 11 years old.

One of the UN’s 17 Sustainable Development Goals (SDGs) is devoted to decent work and economic growth. The UN hopes to eradicate forced labour, slavery and human trafficking, and achieve full and productive employment and decent work for all women and men by 2030.

Unfortunately, by many measures, the world is slipping back, not progressing, in protecting workers’ rights. The International Trade Union Confederation (ITUC) promotes and defends workers’ rights. In its 2018 Global Rights Index, it says an increasing number of countries are chipping away at labour protection and persecuting advocates for workers’ rights in an effort to undermine trade unions and create a climate of intimidation among workers and unions.

In 2018, it reported, governments in three of the world’s most populous countries – China, Indonesia and Brazil – passed laws that denied workers freedom of association, restricted free speech and used the military to suppress labour disputes.

While workers have the right, on paper, to freedom of association, in 2018, 92 out of 142 countries surveyed by the ITUC excluded certain categories of workers (for example, part-time employees) from this right. At the same time, many consumers, largely as a result of sustained advocacy by civil society organizations, are becoming more aware of the issues covered in Article 23, such as being paid a living wage and working in safe conditions.

In addition to States, all companies, whatever their size or sector, have a responsibility to respect core labor rights such as the right to work, and the right to freedom of association and collective bargaining. This responsibility applies across a company's global value chain and follows from the UN Guiding Principles on Business and Human Rights, adopted by the United Nations in 2011.

"There is no longer a choice for business to act responsibly."

– John Ruggie, author of UN Guiding Principles on Business & Human Rights

UN Human Rights Chief Michelle Bachelet argues that there is a "colossal" cost to violations of economic and social rights. Excluding people with disabilities from the work force, for example, can cost economies as much as seven percent of GDP.

"Evidence from many business sectors indicates that respecting human rights can have a direct impact on a company's bottom line," she says. Consumers also have a role to play in examining the "human rights issues related to the goods they buy and the services they pay for."

## **Article 24**

### ***Right to Rest and Leisure***

In 19 crisp words, Article 24 of the Universal Declaration of Human Rights presents the flip side of the right to work articulated in Article 23 – the right not to be over-worked. It enshrines the right to limited working hours and paid holidays, but as Cuban drafter Pérez Cisneros said in the late 1940s, it should not be interpreted as "the right to laziness."

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Even in the 19th century, there was recognition that working excessive hours posed a danger to workers' health and to their families. Limitations on working hours and the right to rest are not explicitly mentioned in any of the core human rights Conventions, but had been enshrined in the very first treaty adopted by the International Labour Organization (ILO) in 1919, which applied an eight-hour day and 48-hour week to industry.

Article 23 owes much to the contributions of Latin American countries to the drafting process between 1946 and 1948. In the mid-1940s, almost all countries in this region had democratic governments, and their constitutions were rich with social and economic rights, including provisions for annual holidays and other forms of paid leave.

These constitutions were examined as inspiration for the Universal Declaration of Human Rights (UDHR), and they met with the approval of the Communist bloc. As the Yugoslav drafter Vladislav Ribnikar said, "the right to rest without pay meant nothing."

Linked to reasonable working hours, leisure time and paid vacations is the right of each person to self-development and education. This provision is one of many places where the UDHR aims to ensure the full development of people's personality.

Safeguarding workers' physical and mental health is not only compassionate, it helps to ensure high productivity. On the other hand, over-work – too many hours and past one's capacity – can be fatal.

"When a father puts in long hours at work, he's praised for being dedicated and ambitious. But when a mother stays late at the office, she's sometimes accused of being selfish, neglecting her kids."

– Michelle Obama

In Japan, there is a word for "overwork death" – Karōshi (過労死) – first identified in 1969. Not only confined to Japan, karōshi deaths are most often caused by heart attacks and strokes due to stress and a starvation diet.

The ILO reports the case of a man working in a major snack food processing company in Japan, who put in as many as 110 hours a week, and died from a heart attack at the age of 34. In another case, a widow received workers' compensation 14 years after the death of her 58-year-old husband, an employee of a large Tokyo printing company, who had worked 4,320 hours a year, including night work -- the equivalent of 16 hours out of every 24.

In addition to over-worked employees, there is another group who, in many countries, work harder than they ever thought possible – often in unsafe or unhealthy conditions – and still find themselves sinking into debt and poverty. These are migrants, regardless of their status: both undocumented and those with residence rights.

A 1990 treaty, the Convention on the Protections of the Rights of All Migrant Workers and Members of Their Families, aims to protect the labour and related rights of non-nationals, including their right to rest and leisure. However, it has so far only been ratified by 54 states – mostly those which are producing migrants, rather than those that receive them.

However, important regional bodies are also working to uphold the employment rights of migrants. In the case of an undocumented Mexican worker in the U.S. who was fired for attempting to organize workers, the Inter-American Court of Human Rights stated that he should still receive the back pay owed to him, and affirmed that governments have the obligation to ensure the rights of everyone within their jurisdiction, including labour rights.

"The idea that the poor should have leisure has always been shocking to the rich."

– British philosopher Bertrand Russell In Praise of Idleness (1932)

Governments everywhere have a legal obligation to ensure the right to safe and healthy working conditions, the right to limited working hours and paid holidays, but these rights have been under assault in some countries since the global recession of 2008.

In a number of developed countries, steady jobs – with benefits, holiday pay, a measure of security and possible union representation – are increasingly giving way to contracts.

As one expert put it, in today's world, workers seem like "nothing so much as teenagers lending a hand in an affluent family business." Instead of old-fashioned employment with full labour protections, "there is now getting some experience, earning a bit of money, or helping out when the orders come in."

The concept that employees are trying to earn a living wage, and that their employers have obligations toward them, is being steadily eroded in some countries where it was well-established, even as it advances haltingly in others where it has never fully taken hold.

Companies themselves have a responsibility to respect the right to leisure as part of their responsibilities under the UN Guiding Principles on Business and Human Rights. This responsibility applies throughout their supply chains, and it means that, as part of its 'human rights due diligence,' a company should consider whether any of its activities or operations are resulting in excessive working hours for employees.

CONTACT US

## **Article 25**

### ***Right to Adequate Standard of Living***

Article 25 of the Universal Declaration of Human Rights covers a wide range of rights, including those to adequate food, water, sanitation, clothing, housing and medical care, as well as social protection covering situations beyond one's control, such as disability, widowhood, unemployment and old age. Mothers and children are singled out for special care.

This Article is an effort to secure freedom from want, based on U.S. President Franklin Roosevelt's famous vision of four freedoms. In a speech in 1941, he looked forward to a world founded upon four essential human freedoms: the freedom of speech and expression, the freedom to worship God in his own way, freedom from want and freedom from fear. After Roosevelt's death and the end of World War II, his widow Eleanor often referred to the four freedoms as head of the committee drafting the UDHR.

"A hungry 14-year-old girl picked up a narrow line of grain fallen into the dust from a truck. She was penalized only 3 years with the extenuating circumstances of not having plundered the socialist property directly from field or corn loft."

–Aleksandr Solzhenitsyn in *The Gulag Archipelago*

The phrase "freedom from fear and want" appears in the Preamble to the UDHR, and Article 25 tells us what that should look like. It is further fleshed out in the International Covenant on Economic, Social and Cultural Rights, part of the trio of instruments that comprise the Bill of Rights, along with the UDHR.

After two Articles that looked after the rights of working people, Article 25 emphasizes that "everyone" has social and economic rights. There is a level below which nobody should fall.

In language that is now old-fashioned, yet expresses a progressive notion, this Article specifies that all children are guaranteed the same rights "whether born in or out of wedlock." Article 25 also forms the basis for current efforts to address the particular challenges facing millions of older women and men around the world.

The first requirement listed in Article 25 as being necessary for "a standard of living adequate for... health and wellbeing" is food. A former UN Special Rapporteur on the Right to Food, Jean Ziegler, observed that "the right to food does not mean handing out free food to everyone." However, governments are obliged not to prevent access to adequate food by, for example, forced eviction from land, destruction of crops or criminalization of poverty. Governments also have to take adequate steps to ensure that private sector activities do not impinge on people's right to food. And, similarly, private water services cannot compromise equal, affordable and physical access to sufficient, safe and acceptable water supplies.

Many experts say the world produces enough food to feed itself. But some 815 million people continue to suffer from chronic hunger because of unequal distribution of wealth and resources: they are too poor to buy food, do not have land to produce their own food or face a variety of other obstacles that could be resolved.

"Half the world's population is missing out on essential health services, and 100 million are pushed into poverty each year trying to pay for them. This is a violation of the human right to health."

– WHO Director-General, Dr Tedros Adhanom Ghebreyesus

Poverty is both a cause and a consequence of violations of human rights, and places many other rights listed in the UDHR out of reach. The World Bank and World Health Organization reported in 2017 that at least half of the world's population (some 3.8 billion people) is too poor to get essential health care services, inconsistent with the right to health spelled out in Article 25. They also said nearly a billion people spend 10 percent or more of their household income on health expenses for themselves, a sick child or another family member. For almost 100 million people, these expenses are high enough to push them into extreme poverty, an unacceptable and unnecessary situation, they said.

Extreme poverty is more than just a lack of sufficient income. For the Special Rapporteur on extreme poverty and human rights, extreme poverty involves a lack of income, a lack of access to basic services – health, schooling and living conditions – and social exclusion. By this measure, over 2.2 billion people – 30 per cent of the world's population – are either near or already living in poverty.

The current Special Rapporteur, Philip Alston – tasked with advancing the eradication of such poverty – has pointed out that extreme poverty is not confined to developing countries. Government policies can entrench high levels of poverty and inflict "unnecessary misery" in even the richest countries in the world.

"I have spoken with people who depend on food banks and charities for their next meal, who are sleeping on friends' couches because they are homeless and don't have a safe place for their children to sleep," Alston said after a 2018 visit to the UK. He said he also met people

"who have sold sex for money or shelter, children who are growing up in poverty unsure of their future."

Where national governments step back from international obligations (such as the United States' announced withdrawal from the Paris Agreement on climate change), cities increasingly are stepping in to fill gaps. The global South has led the movement to establish "human rights cities," and York has followed this lead to become the first human rights city in the UK.

In a 2017 declaration, it embraced "a vision of a vibrant, diverse, fair and safe community built on the foundations of universal human rights." It selected five human rights priorities: the rights to education, housing, health and social care, a decent standard of living, and equality and non-discrimination. York's first four priorities are among the social rights found in article 25, while the fifth – equality and nondiscrimination – lies at the very heart of the UDHR and of all social rights.

## **Article 26**

### ***Right to Education***

In 2002, when the Kenyan government announced free primary school education for all, Kimani Ng'ang'a Maruge decided to enroll in Grade One. What's unusual about that? He was an 84-year-old great-grandfather. A photo on the front page of a Kenyan newspaper showed him sitting at a tiny desk next to six-year-olds, wearing a uniform he had fashioned for himself, complete with regulation shorts.

Maruge said he wanted to learn to read the Bible to find out if preachers had been quoting it correctly all his life. He lived five more years, was certified by the Guinness Book of World Records as the oldest person to enroll in primary school, and was taken to New York to address the UN Millennium Development Summit on the importance of free primary education.

"Education is the most powerful weapon which you can use to change the world."  
–Nelson Mandela

Article 26 of the Universal Declaration of Human Rights (UDHR) makes universal free primary education compulsory, and is usually thought of as a right about children. But as Maruge showed, people of any age can seek and benefit from education and literacy. Not only was a movie made about his life, but his story inspired many dropouts in Kenya to return to school and complete their education.

This right is further enshrined in various international conventions, in particular the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child (which has been ratified by every country except the United States). In Article 26 of the UDHR, we see the right to "full development of the human personality," which also appears in Articles 22 and 29. It is clear the drafters saw this term as a way of summarizing many of the social, economic and cultural rights in the Declaration, and there has been an increasing focus by international bodies on the role of education in empowering individuals – both children and adults.



Unusually for the UDHR's long list of rights, this one has in some respects been widely achieved. More children around the world have access to education today than ever before, with rates of primary school attendance for girls rising to parity with boys in some regions. The overall number of children out of school worldwide declined from 100 million in 2000 to an estimated 57 million in 2015.

The World Bank and OECD estimate that in 1960, only 42 percent of people in the world could read and write. By 2015 that figure had risen to 86 percent. Some countries – Andorra, Azerbaijan, Cuba, Georgia, Liechtenstein, Luxembourg, Norway, Poland, Russia, Slovenia and Tajikistan – have literacy rates at or near 100 percent.

However, literacy is a moving target. Many countries now aspire – in accordance with the aims laid out in Article 26 – to make secondary education free and universal, and some aim for more widespread tertiary education. "Literacy" is also being expanded in many places to include the ability to use numbers, images and computers as well as language, and to encompass other ways of communicating and gaining useful knowledge.

But these positive figures mask the fact that progress has also been very uneven, due largely to inequalities and discrimination, with the right to education continuing to be denied to children from marginalized groups and those living in the worst forms of poverty and deprivation. The most disadvantaged children have continued to be left behind, for example children with disabilities, indigenous children and stateless children – and especially girls who belong to these groups.

Despite the steady rise in literacy rates over the past 50 years, there are still 750 million illiterate adults around the world, most of whom are women. The Sustainable Development Goals (SDGs) provide a key opportunity to ensure that all youth and most adults achieve literacy and numeracy by 2030, with SDG 4 in particular addressing both access to, and quality of, education.

In many places, girls are prevented by social and cultural practices from getting an education. In 43 countries, mainly located in Northern and sub-Saharan Africa and Western and Southern Asia, young women aged 15 to 24 years are still less likely than young men to have basic reading and writing skills.

"One book, one pen, one child, and one teacher can change the world."  
– Malala Yousafzai

A lack of education, especially of girls, has been demonstrated to have an enormous impact on society at large, on health, and on the economic development of countries, not least because deprivation of the right to education often spans generations, as it perpetuates entrenched cycles of poverty. Education is perhaps the most powerful tool available to pull marginalized children and adults out of poverty and exclusion, making it possible for them to play an active role in the processes and decisions that affect them.

Education as a fundamental human right is essential for the exercise of all other human rights. It promotes individual freedom and contributes definitively to a child's broader empowerment, wellbeing and development, not least by ensuring that they are equipped to understand and claim their rights throughout their lives.

Perhaps the most prominent advocate of girls' education is Malala Yousafzai, a Pakistani activist and the youngest ever winner of a Nobel Prize. When she persisted in attending school in her native Swat Valley after the local Taliban had banned girls from school, Malala and two other girls were shot by a Taliban gunman in an assassination attempt.

Undaunted, she continued to pursue her activities after her recovery. "With guns you can kill terrorists, with education you can kill terrorism," she says

## **Article 27**

### ***Right to Cultural, Artistic and Scientific Life***

The monumental Buddhas of Bamiyan, statues 10 to 16 storeys high hewn from sandstone cliffs, inspired reverence and awe in central Afghanistan for 15 centuries – until the Taliban blew them to smithereens in 2001. In 1993, during the Bosnian War, Stari Most, the gracefully-arched Ottoman bridge that gave the town of Mostar its name, was deliberately targeted by a barrage of artillery shells, sending the 427-year-old protected monument into the Neretva River.

When attacking armed groups want to crush the morale of civilians or opposing forces, they often deliberately destroy symbols of cultural heritage.

Article 27 of the Universal Declaration of Human Rights (UDHR) helped lay the ground for this to be recognized as a war crime, and in a landmark judgment in September 2016, the International Criminal Court declared Ahmad Al Faqi Al Mahdi, a member of the Ansar Dine armed group operating in Mali, guilty of the war crime of attacking historic and religious buildings in Timbuktu. He was sentenced to nine years in prison.

It was the first time the destruction of cultural sites had been prosecuted as a war crime at the ICC, giving hope that more such court cases would follow – especially for members of ISIS who carried out wanton targeted destruction of a wide range of cultural and religious monuments in territory it once held in northern Iraq and Syria.

The ICC Al-Mahdi case was the first time someone had been charged with the destruction of cultural heritage as a stand-alone war crime. Other tribunals have charged individuals with the criminal destruction of cultural heritage sites – including the destruction of the bridge in Mostar -- but only as an additional offence attached to more established war crimes such as summary executions and torture.

All but one of the historic mausoleums Ahmad Al Faqi Al Mahdi had helped destroy were UNESCO World Heritage sites, and UNESCO Director-General Irina Bokova has described this war tactic of tearing communities apart as "cultural cleansing."

"It takes centuries, sometimes thousands of years to create a culture, but genocide can destroy a culture instantly."

–Raphael Lemkin, proponent of 1948 Genocide Convention

According to the Special Rapporteur on cultural rights, Karima Bennoune, "the destruction of cultural property with discriminatory intent can be charged as a crime against humanity, and the intentional destruction of cultural and religious property and symbols can also be considered evidence of intent to destroy a group within the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide."

Article 27 says everyone has the right to freely participate in the cultural life of the community, to share scientific advances and its benefits, and to get credit for their own work. This article firmly incorporates cultural rights as human rights for all. They relate to the pursuit of knowledge and understanding, and to creative responses to a constantly changing world. A prerequisite for implementing Article 27 is ensuring the necessary conditions for everyone to continuously engage in critical thinking, and to have the opportunity to interrogate, investigate and contribute ideas, regardless of frontiers.

One of the great unachieved goals of the UN's ill-fated predecessor, the League of Nations, was protection of minority groups. Charles Malik, the Lebanese drafter who made important contributions to the UDHR as it was drawn up between 1946 and 1948, strongly defended the rights of minority groups. He wanted to make sure members of minority communities were protected from extreme forms of assimilation. In the end, the Declaration did not include a separate article devoted to the rights of members of minority groups, but the term "culture" is understood to also refer to "the way of life" of ethnic, religious and linguistic minorities. It is about preserving diversity.

Article 27 is closely linked to Articles 22 and 29 in asserting that economic, social and cultural rights are indispensable for human dignity and development of the human personality. Taken together, they show the UDHR drafters' determination not just to guarantee basic minimum standards, but to help us all become better people.

All three rights were subsequently enshrined in other international treaties including the International Covenant on Economic, Social and Cultural Rights, ratified by 169 states.

"Science is a beautiful gift to humanity; we should not distort it."

–A.P.J. Abdul Kalam, scientist and former President of India

Under a separate topic covered by Article 27, lies a concern that everyone's right "to share in scientific advancement and its benefits" has been attacked in recent years, particularly in debates over climate change and disease.

In some circles, the issue of whether humans cause climate change, or whether climate change even exists, is treated as a matter of personal belief rather than rigorous science. And scientific publications have expressed alarm at what one described as "a rise of populist antagonism to the influence of experts." In 2018, a group of 58 experts wrote an open letter condemning a misplaced sense of balance creating "a false equivalence between an

overwhelming scientific consensus and a lobby, heavily funded by vested interests" that intentionally sows doubt. Climate change is real, they declared: "We urgently need to move the debate on to how we address the causes and effects of dangerous climate change" because the alternative, they said, will be "catastrophic."

"The point of modern propaganda isn't only to misinform or push an agenda. It is to exhaust your critical thinking, to annihilate truth."

–Gary Kasparov, former world chess champion and Russian politician

Scepticism about science, or pseudoscience, can cost lives, as tragically illustrated by pressure placed on parents not to vaccinate their children against diseases which had greatly diminished after decades of successful vaccination campaigns. The World Health Organization says 21 million lives were saved by the measles vaccine between 2000 and 2017. But between 2016 and 2017, reported measles cases jumped 30 percent, in part because of parents refusing to use the vaccine because of false claims about its risks. In 2017 alone, WHO estimates 110,000 children died from the virus

In the same way, putting commercial interests before the common good can also lead to loss of life, when patent policies and subscription prices for specialist publications make knowledge and its application inaccessible to those who need it. This is true in medicine, but also in food production, architecture, engineering and many other spheres.

## **Article 28**

### ***Right to a Free and Fair World***

The Universal Declaration of Human Rights was drafted in a period, 1946-1948, that was simultaneously filled with optimism, yet overshadowed by the preceding thirty years of disaster – the Great Depression and two world wars. In the view of the drafters of the UDHR, a world at peace was essential for respect for human rights and to create opportunities for everyone to improve their lives.

Article 28 says, in its entirety, that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

"To deny people their human rights is to challenge their very humanity."

–Nelson Mandela

French jurist and judge René Cassin, one of the guiding thinkers behind the Declaration, saw this Article as the first of the crowning trio that bind the whole Declaration together. He used an architectural analogy to describe the UDHR, comparing it to the portico, (or entrance porch) of a classical Greek temple – with a foundation, steps, and four columns surmounted by a triangular pediment on top (Articles 28, 29 and 30).

Cassin envisioned Articles 1 and 2 as the foundation blocks, comprising the fundamental principles of dignity, equality, liberty and solidarity, The Preamble – explaining why the Declaration is needed – he saw as the steps. Articles 3-27 are four columns: firstly the fundamental rights of the individual; then civil and political rights, followed by spiritual, public

and political freedoms; with the fourth pillar devoted to social, economic and cultural rights. Articles 28-30 – concerned with the duty of the individual to society, and the prohibition of privileging some rights at the expense of others, or in contravention of the purposes of the United Nations – form the triangular pediment of Cassin's Greek temple.

For decades after the adoption of the UDHR in 1948, there was general acceptance that one of the principal ways to achieve "a free and fair world" – and maintain peace – was through international cooperation. In 1966, countries came together to adopt the other two essential documents that join the UDHR in forming the international Bill of Rights, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Even during the Cold War, during which the Soviet Bloc and Western countries led by the United States struggled for world domination, further human rights treaties were adopted: the International Convention on the Elimination of All Forms of Racial Discrimination (in 1965), The Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention Against Torture (1984) and the Convention on the Rights of the Child (1989). All of these binding laws were firmly rooted in the principles laid down in the Universal Declaration, years earlier.

In recent years, however, belief in multilateralism has started to fray, as some countries overtly assert their national self-interests over the welfare of humankind in general. As Human Rights Chief Michelle Bachelet puts it: "The grave danger we see today is the attempts to undermine and even discard the entire multilateral framework that was designed to protect human rights and prevent conflict. Increasing numbers of leaders no longer pretend to care about human rights, and seek to clamp down on civil society, often using national security as the pretext."

The question facing world leaders, as IMF Chief Christine Lagarde sees it is: "Do we cooperate as a global family or do we confront each other across the trenches of insularity? Are we friends or are we foes?" The answer, she suggested is "a renewed commitment to international cooperation; to putting global interest above self-interest; to multilateralism."

"We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."

–U.S. civil rights leader Martin Luther King

Aggressive nationalism has an impact on respect for human rights. The right to a free and fair world implies the critical need to promote equality of opportunity and outcome within and between countries: "Inequality and discrimination are some of the defining challenges confronting the world today, a world that is wealthier but also more unequal than ever before" said Mr. Saad Alfaragi, the UN expert on the right to development.

UN human rights bodies and independent human rights experts, important tools for realizing the international order that Article 28 speaks of, are increasingly under attack, as – sometimes – are people who cooperate with them. The UN Special Rapporteur on Myanmar, Yanghee Lee, who has herself been threatened, informed the General Assembly in 2018 that people

who had spoken to her during her visits to Myanmar had faced serious reprisals. An experience shared by a number of other UN Special Rapporteurs, in flagrant disregard of states' obligation to cooperate with mechanisms set up by states themselves, in the form of the Human Rights Council.

The failure of countries to cooperate could destroy our planet, UN Secretary General António Guterres has warned. What is missing in tackling climate change, he said in 2018, "is the leadership, and the sense of urgency and true commitment to [a] decisive multilateral response."

French President Emmanuel Macron has also called for "dialogue and multilateralism" to resolve the world's crises, saying that "nationalism always leads to defeat." Speaking to the UN General Assembly in 2018, Macron urged his fellow world leaders not to "accept our history unraveling," adding: "Our children are watching."

## **Article 29**

### ***Duty to Your Community***

So far, the Universal Declaration of Human Rights (UDHR) has concentrated on rights that every person has simply by virtue of being born human. Now Article 29 says the corollary of rights is duties. We all have a duty to other people, and we should protect their rights and freedoms.

Fernand Dehousse, the Belgian representative to the United Nations while the UDHR was being drafted, said that Article 29's first paragraph "quite properly established a sort of contract between the individual and community, involving a fair exchange of benefits."

Article 29 also says rights are not unlimited. If they were, social balance and harmony would be impossible. It seeks to link the exercise of rights with the interests of the world community, which the United Nations had been set up in 1945 to represent.

Two early draft versions included these provisions: "These rights are limited only by the equal rights of all," and "Man is essentially social and has fundamental duties to his fellow-men. The rights of each are therefore limited by the rights of others."

Neither survived in its original wording, but the meaning they convey is close to the final version, which says "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..."

"Human rights face a stress test today. We face a bare-knuckled, multi-directional brawl about the legitimacy and necessity of rights. We will need to mobilize a much larger community to defend our collective rights. And this is a fight worth fighting."

-Zeid Ra'ad Al Hussein

At an individual level, it has long been accepted that we ought not to infringe on the rights of others while exercising our own rights. As the well-known 1919 formulation by a judicial

philosopher put it: "Your right to swing your arms ends just where the other man's nose begins."

What is less well known is that the Declaration of rights could well have been a "law of human rights and duties." Canadian law professor John Humphrey, who was also the first director of the UN Human Rights Division, scoured dozens of national constitutions for inspiration for his first draft of the UDHR. His original draft said the exercise of rights was limited by the "just requirements of the State." As we shall see, that idea was viewed as problematic by the other drafters.

Eight months before the UDHR was adopted on 10 December 1948, the American Declaration of the Rights and Duties of Man had been agreed in Bogota, Colombia.

It was a seminal document in the development of international protection of human rights. Some of its 28 provisions, such as the right to a fair trial, are also found in the UDHR. Others – like the duty of children "to honour their parents always" – are not.

At the time, Latin America was largely democratic, and military dictatorships were decades in the future. Even so, delegates from other countries saw the danger that governments might use such "duties" to limit human rights in unpredictable, unacceptable ways, and declined to accept the concept.

They were particularly concerned about the duties in the American Declaration "to obey the law and other legitimate commands of the authorities of his country," and "to render whatever civil and military service his country may require for its defence and preservation."

This, they perceived as opening a Pandora's Box that might unravel the whole delicately interlaced structure of individual rights and freedoms.

What would happen if these duties came into conflict with human rights of expression, association, religion, and political participation? The UDHR drafters feared some of the language in the American Declaration (and even some of the language that appeared in early drafts of the UDHR) would allow States to impose any limitations they liked on the rights of individuals.

Since 1948, international jurisprudence has made it clear that some rights cannot be limited at all, and others can be limited only under certain conditions: restrictions can only be prescribed by law; they must serve one of the purposes listed by international law; and they must be proportional to the purpose in terms of their severity and intensity.

UN High Commissioner for Human Rights Human Rights Michelle Bachelet has warned that "increasing numbers of leaders no longer pretend to care about human rights, and seek to clamp down on civil society, often using national security as the pretext." In so doing, they are distorting the notion, contained in Article 29, that individual rights may be legally constrained by "the just requirements of morality, public order and the general welfare in a democratic society."

Not only that, they are ignoring the very last words of Article 29 which stresses nothing should occur which is "contrary to the purposes and principles of the United Nations."

## **Article 30**

### ***Rights are Inalienable***

A judge at the European Court of Human Rights, Elisabet Fura-Sandström, was asked which of the rights in the Universal Declaration of Human Rights (UDHR) is most important. "Life? Freedom? Democracy? I hope I never need to choose," she replied.

This idea that rights are indivisible is at the heart of Article 30. All the rights in the UDHR are connected to each other and are equally important. They all have to be followed, and no one right trumps the others. These rights are inherent to every woman, man and child, so they cannot be positioned in a hierarchy, or exercised in isolation.

As we saw when we discussed Article 28, the Declaration can be imagined as the portico of a Greek temple. Take away any one element, and the portico collapses. In this analogy, suggested by UDHR drafter René Cassin, it is Articles 28-30 that bind the whole structure together.

Article 30 has been called "limits on tyrants." It gives all of us freedom from State or personal interference in the rights in all the preceding Articles. However, it also stresses that we may not exercise these rights in contravention of the purposes of the United Nations. Working in the shadow of the Second World War, the drafters wanted to prevent Fascists' returning to power in Germany by, for example, taking advantage of freedom of expression and freedom to stand for election at the expense of other rights and freedoms. They were acutely aware that many of the atrocities inflicted by Hitler's regime were based on an efficient legal system – but with laws that violated basic human rights.

Drafters were looking for an international legal framework to guard against excesses of individual countries, and to prevent another war or Holocaust. States that treat their own citizens well, they believed, were less likely to have aggressive designs on other countries.

What they produced was an astonishing achievement. In the midst of recovery from war, at the outset of the Cold War, with the United Nations in its infancy, the drafters managed to agree on a text that transcended differences in language, nationality and culture – not completely, but to an extent unprecedented in international relations.

The magnitude of this achievement is underscored by the fact that it took a further 18 years to reach agreement on the other two documents that, with the UDHR, make up the international Bill of Rights: The International Covenant on Economic, Social and Cultural Rights, and The International Covenant on Civil and Political Rights. And then 11 additional years until enough countries ratified them to bring them into effect.

In 1948, most regarded the Declaration as creating moral but not legal obligations. However, Belgian prime minister Count Carton de Wiart believed the UDHR had not only "unprecedented moral value," but also "the beginnings of a legal value." Cassin, one of the



chief architects of the UDHR, believed it would have legal standing because it was the first declaration by an international group having its own "legal competence."

Because it is not a treaty, The Universal Declaration does not directly create legal obligations for countries. However, as an expression of the fundamental values which are shared by all members of the international community, it profoundly affected the development of human rights law. Its provisions were further elaborated by a number of other international instruments, including The Convention on the Elimination of All Forms of Discrimination Against Women (1979), The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and The Convention on the Rights of the Child (1989).

Some argue that because countries have consistently invoked the Declaration over decades, some of its components have grown into customary international law, and many academics and lawyers are of the view that they are therefore binding, for example the total prohibition of torture. The UDHR has been an extraordinarily flexible foundation for broadening and deepening the concept of human rights. Today it is embedded in laws, and in the DNA of regional intergovernmental organizations and of NGOs and human rights defenders everywhere. But the fact that some lawyers view the Declaration as legally binding does not, of course, mean it is uniformly observed.

Yet, over the last 70 years, there has been remarkable progress. "Globally, human life has improved immensely, including in health and education," says UN Human Rights Chief Michelle Bachelet. "Governments have grown in their understanding of how they should serve their people. Businesses are more aware of their responsibilities towards the protection of human rights and prevention of violations."

Perhaps Eleanor Roosevelt, the tireless human rights champion who steered the drafting process, expressed best the aims and impact of the Declaration. When, she used to ask audiences, do universal human rights begin? Her answer: "In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Such are the places where every man, woman and child seeks equal justice, equal opportunity, and equal dignity, without discrimination. Unless these rights have meaning there, they have little meaning anywhere."

Today, 70 years on, the Universal Declaration of Human Rights, the most translated document in the world, is still a vibrant force for all those people in villages and cities throughout the world who, without necessarily knowing that is what they do, struggle to make human rights a reality in their daily lives in their own communities.