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Sheria Lacunae

Addressing Human Rights Law Gaps in East and Horn of Africa

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Abstract

The East and Horn of Africa region has long been subject to the scrutiny of human rights institutions. Though diverse due to the several countries that comprise the region, the East and Horn of Africa has a common history and a common fate. The human rights violations present in the region have been a result of the weak institutions that are present in the nations concerned. The thesis explores the historical background of the East and Horn of Africa starting from the 20th century and wants to offer an analysis of the legislative framework of human rights law, starting from the development of the universal characteristic of it, elaborating on the core human rights treaties, and continuing with the study of the system of regional protection of human rights in the continent, namely the African Charter on Human and Peoples' Rights. After offering an examination of these protection mechanisms, the dissertation will elaborate on the human rights violations present in the countries concerned through reports, cases, and institutional documents that thoroughly describe the main areas of concern inherent to the upholding of human rights. Finally, this thesis wants to promote an optimistic view of the future of the region, in line with Pan-African values, the basic principles promoted by human rights law, and the promising vision of the African Union regarding the fate of the continent as a whole.

Introduction

Sheria Lacunae is literally translated into gaps in law. The word *Sheria* comes from Swahili, a Bantu language that has clear Arabic influence and is spoken in several of the countries that this dissertation deals with. Therefore, the reason behind the choice of Swahili becomes obvious as the thesis is concerned with the gaps of human rights law in the East and Horn of Africa.

Human rights have a long history that, according to several scholars, began in ancient Persia. The future *Magna Carta*, the UK and US Bill of Rights, as well as the *Déclaration* have strengthened and precursed what we know today as the United Nations Charter. Historically speaking, human rights have been a concept that progressed through several centuries, and with their evolution, the concept of universality in the context of human rights became more and more accepted by the international community. This is evidenced by the many documents that aim to protect the fundamental rights of humanity across the globe. The evolution of human rights protection from the Universal Declaration of Human Rights to what we know today as the nine core

human rights treaties is an example of the continued struggle for the advancement of human rights and the fundamental role played by the United Nations and its members in this quest.

The historical context of the region is of utmost relevance when analysing the present culture and institutions that exist in the countries concerned. As a matter of fact, the colonial past and the presence of weak institutions, which see human rights violations as one of the consequences, are connected to one another. Therefore, the thesis offers a historical overview of the colonial rule in the East and Horn of Africa, which was characterised by French, British, and German presence. This past has been characterised by several forms of discrimination, forced or underpaid labor, and resource depletion, as well as what today we would consider an inadmissible contravention of human dignity. The common colonial past, as well as the widespread diaspora and the discrimination faced by people of African descent throughout the world has, however, created a feeling of commonality and unity which finds its epitomisation in the movement of Pan Africanism. This is of fundamental relevance when it comes to the establishment of international organisations like the African Union and, more specifically to the region concerned, the East African Community. The values adherent have paved the way for the birth of regional human rights protection mechanisms such as the African Charter of Human and Peoples' Rights, which highlights the values above mentioned, especially as is evident in the section concerning the duties that the individual has towards the society. As a matter of fact, the upholding and the encouragement of African Unity is a omnipresent matter in this legal framework.

When the law fails to align with reality, the *lacunae* emerge. The robust legal frameworks that aim to sustain the advancement of human rights do not always translate into practical enforcement. This is exactly what the dissertation aims to disclose. The human rights violations in the region are still a matter of severe concern for the specialised agencies that deal with the protection and promotion of human rights law. By analysing cases and reports, both by the commissions established through the core treaties and independent observers, the dissertation wants to give a thorough description of the human rights situation in the East and Horn of Africa.

Nonetheless, the road ahead looks promising. The interventions and contributions by numerous actors involved in the region have been greatly conducive to a culture where human rights are understood and respected. Certainly, the future looks optimistic if the present is invested on in an efficient, comprehensive manner. As a matter of fact, the last section of the dissertation wants to appreciate the work that has been done until now for the sustainment of human rights law, and end with the shared vision of the ones who believe that the region can prosper and be a competitive participant in the struggle for human rights advancement.

Chapter I: Concepts and Context

This chapter provides an overview of the evolution of human rights, focusing on seminal documents such as the UN Charter and the Universal Declaration of Human Rights. As an introductory chapter, the nine core human rights treaties will not be discussed as these will be addressed in the next chapter as a legal framework will be offered by this dissertation for the purposes of the thesis itself. This chapter aims to outline the historical progression of human rights broadly, highlighting key milestones and advancements. Furthermore, as the dissertation concerns the East and Horn of Africa region, a historical contextualisation of the area will be done, which will take into consideration the last decade of the twentieth century, the impact of the ensuing predominantly colonial rule, up until the elaboration of the African Charter of Human and Peoples' Rights, which, as per the several UN treaties aimed at protecting human rights, will also be part of the following chapter concerning the legislative regime around which this dissertation is based.

I.I Evolution of Human Rights

I.I.I Human Rights in the Early Days

The ultimate goal for respecting humanity worldwide should be the implementation of human rights law on an international level. The Universal Declaration of Human Rights established foundational principles and affirmed their universal applicability. Nonetheless, human rights history is not recent whatsoever. As former British Ambassador to Ethiopia Greg Dorey mentions, despite human rights being usually portrayed as Western, their outset is found, surprisingly for some, in ancient Persia. In fact, the conquest of Babylon of 539 BC from Cyrus the Great freed the slaves, allowing for racial equality and religious freedom^{1 2}. Interestingly, he recorded his declaration on a baked-clay cylinder, which we know today as history's first Charter of Human Rights³. Cyrus'

¹ Indeed, this must be understood within historical context. Additional literature reveals erroneous assumptions and research regarding the conqueror's tolerance. According to Van Der Spek (2014), the flawed perception of his positive character arises from frequent comparisons with the policies of the Assyrian rulers of that era, which were considered much crueler and more oppressive. Nonetheless, historians consider this event as the outset of human rights.

² Marco Sutto, Human Rights Evolution, A Brief History, CoESPU Magazine, (2019)

³ Dorey, G. (2015, March 3). Human rights and the Cyrus Cylinder. Foreign, Commonwealth & Development Office Blogs. <https://blogs.fcdo.gov.uk/gregdorey/2015/03/03/human-rights-and-the-cyrus-cylinder/>

ideals have played a fundamental role and have been the building blocks of other great civilisations, including the future United States of America⁴.

Moving westward, later developments of human rights can be found in the stipulation of the Magna Carta of 1215, which defined the framework of the rule of law which was previously perceived as divine justice and controlled by the monarch⁵. The Magna Carta, also known as *the Great Charter*⁶, shaped the development of law around the world and marked the beginning of modern legal thought⁷. The document was signed as a result of the rebellion of barons who were dissatisfied with King John I's rule, specifically with his taxation and costly military campaigns in France⁸. The barons presented the King with the Charter, which limited the monarch's powers to ensure that he would comply to the newly established laws⁹. The legal novelties of the Charter would be the introduction of the need for evidentiary support for trial and the right to trial by jury, which are found in Clauses 38 and 39 of the Charter. Clause 40 is worth quoting for its elegance: *to no one will we sell, to no one will we refuse or delay, right or justice*¹⁰. The relevance of the Magna Carta in the context of human rights is demonstrated by its respect for human dignity through its provisions on proportionality of punishment and protections for vulnerable individuals¹¹. As for proportionality, Clause 20 states that *for a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood*¹². Additionally, the need for a legal protection of the vulnerable was introduced by the charter¹³. Widows, heirs, and debtors fall under the *vulnerable* category of

⁴ Nada, G. (2013, March 18). Cyrus connects ancient Iran and U.S. democracy. United States Institute of Peace

⁵ Md. Kamruzzaman, Shashi Kanto Das. The Evaluation of Human Rights: An Overview in Historical Perspective. American Journal of Service Science and Management. Vol. 3, No. 2, 2016, pp. 5-12

⁶ Translated from Magna Carta Libertatum (the Great Charter of Freedoms)

⁷ Vincent R. Johnson, The Magna Carta and the Beginning of Modern Legal Thought, (2016) 85 Miss. L. J. 621.

⁸ Johnson, B. The origins of the Magna Carta. Historic UK. Retrieved August 8, 2024, from <https://www.historic-uk.com/HistoryUK/HistoryofEngland/The-Origins-of-the-Magna-Carta/>

⁹ *ibid.*

¹⁰ Magna Carta Libertatum, 1215

¹¹ Vincent, 2016

¹² Magna Carta, 1215 as per cited in *ibid.*

¹³ *ibid.*

the document. Forced remarriage was prohibited in the Magna Carta¹⁴, which stands as a great advancement in women's rights as a whole and, despite there still being contextual obstacles to women's protection, the document was crucial in ensuring that widows were protected from exploitation¹⁵. Furthermore, Clauses 2, 3, 4, and 5 offer protections to minor heirs and their estates. This was a necessary step, as oftentimes guardians exploited the lands of underage heirs. The Magna Carta was therefore serving as a protection of the young and vulnerable¹⁶. Finally, Clause 9 provides protections for debtors from the monarch's ability to seize land for the repayment of debts, which proves furthering the safeguarding of the agrarian society¹⁷. The Magna Carta of 1215 marked a turning point in the history of human rights and the rule of law. Its introduction of fair trials, proportional punishment, and safeguards for the vulnerable continues to influence legal systems today, and stands as a milestone for the advancement of human rights and justice.

The English Bill of Rights of 1689 stands as one of the most relevant documents in the realm of law and the advancement of human rights¹⁸. Resulted from the *Glorious Revolution*, which deposed King James II and put William III and Mary II on the throne of England¹⁹, the 1689 Bill of Rights introduced several legal principles aimed at limiting the authority of the monarchy, and strengthening the power of Parliament²⁰. According to Hwang (2023), the Bill of Rights stands as an important step for the advancement of human rights as it advocated for the respect for individual rights and liberties (Art. 5, right of individuals to petition the King; Art. 7, right to bear arms, Art. 8, free elections; Art.9, freedom of speech; Art. 10, protection from unfair punishment; Art. 12, protection of individual property). Several other legal implications of the Bill, like the advancement of public law, the balance of state power, and the evolution of legal interpretation and application further shows the important role that the document played in future legislation.

¹⁴ Clause 8

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ Hwang, J., & Ivanov, A. M. (2023). The Bill of Rights (1689) as a source for regulation of human rights: Comparative legal aspect. School of Regional and International Studies, Far Eastern Federal University. Russia, Vladivostok

¹⁹ Stewart, T. (n.d.). The Glorious Revolution 1688. Historic UK. Retrieved August 10, 2024, from <https://www.historic-uk.com/HistoryUK/HistoryofEngland/The-Glorious-Revolution-1688/>

²⁰ Hwang, 2023

The United States Bill of Rights of 1791 stands as a cornerstone for the development of human rights law. The Magna Carta of 125 and the English Bill of Rights of 1689 have both been the precursors to the document and, as a result of the colonial struggle against the king and Parliament, the Bill of Rights was stipulated and became law²¹. The document comprise of the first ten amendment to the U.S. Constitution and represent mutually reinforcing provisions of individual rights²². Amar's (1990) article explains these rights by examining their structures and judicial interpretation. The first amendment, designed to ensure that Congress could not restrict speech or the press, was a direct response to the experience of the Alien and Sedition Acts of 1789, which criminalised certain kinds of speech critical of the government²³. This amendment aims to protect all kind of speech and press, including unpopular or controversial one. The right to assemble and the right to appeal are also protected under the first amendment²⁴, the former being linked to the Second Amendment, namely the *right to bear arms*, as it guarantees petition as it bars the Congress from disarming the populace²⁵. Complementarily, the Third Amendment forbids the quartering of the military in the houses of the populace without the consent of the owner during peacetime²⁶. The fourth amendment addresses the protection of personal privacy from unreasonable searches and seizure²⁷. Amendments fifth though eight are also referred to as the *judicial process amendments*, as they establish the structure and the procedures of the federal courts²⁸.

I.I.II La Déclaration des Droits de l'Homme et du Citoyen

Deeply inspired by the United States Declaration of Independence, the milestone event which massively impacted the drafting of the Universal Declaration of Human Rights itself was, indeed, during the French Revolution, namely the *Déclaration des droits de l'Homme et du citoyen de 1789*. Here, human rights were finally conceived as universal and applicable to all mankind.

²¹ Britannica, T. Editors of Encyclopaedia (2024, August 14). Bill of Rights. Encyclopedia Britannica. <https://www.britannica.com/topic/Bill-of-Rights-United-States-Constitution>

²² *ibid.*

²³ Amar, A. R. (1990). The bill of rights as a constitution. *Yale Lj*, 100, 1131.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ Legal Information Institute. (n.d.). Third Amendment. Cornell Law School. Retrieved from https://www.law.cornell.edu/constitution/third_amendment

²⁷ U.S. National Archives. Bill of Rights handout <https://www.archives.gov/files/legislative/resources/education/bill-of-rights/images/handout-3.pdf>

²⁸ Amar, 1990

The Declaration of 1789 was a result of the uprisings which permeated throughout France during that time. As a matter of fact, the way to a constitution was characterised by revolts which heightened the division between the third estate (the bourgeoisie) and the most privileged classes, namely the clergy and aristocracy²⁹. The third estate formed *l'Assemblée Nationale*, and as it was drafting the constitution, the Assembly first put forth a document that explained and clarified the rights of man and citizen which directly undermined the estates and privileges held by the higher social classes. The consequence of food scarcity and high bread prices was the march to Versailles, which demanded for better food safety to Louis XIV. Despite initial rejection from the monarch, the Declaration of Man and Citizen was finally instituted and became law, leading to the end of the feudal regime and making the whole of the nation politically sovereign³⁰.

The importance of the *la déclaration* as a milestone document in the advancement of human rights can be clearly understood through Moradi's (2019) legal study and Lefebvre's (1988) historical contextualisation of the document. The legal analysis divides the declaration into four fundamental subjects: sovereignty and representation, universal claim of freedom and equality, economic freedom and the right to property, and tolerance and religion³¹. All of these principles can be understood in the framework of the Enlightenment, corollary of which was liberation and the necessity of progress.

The principles of a new society, as established by the Revolution, proclaimed the inalienable rights of man and citizen, including universal³² rights to freedom, equality, security, and resistance to oppression, along with the right of property. These universal declarations of freedom and equality, accompanied by the economic rights enshrined in the Declaration, protected the economic interests and dominance of the bourgeoisie and, most relevantly, served as an inspiration for what was to become the framework of the Universal Declaration on Human Rights.

I.I.III The Universal Declaration of Human Rights

²⁹ Jones, R. P. (2016). The manipulation of time and the legitimacy of power during the American and French Revolutions, 1774-1815 (Doctoral dissertation). University of Cambridge, Trinity Hall.

³⁰ Moradi, S. (2019). A Critical Legal Study of the Declaration of the Rights of Man and of the Citizen. *Beijing Law Review*, 10, 1137-1171.

³¹ *ibid.*

³² It should be noted, however, that the concept of universality did not, in fact, encompass women, people of color, and several other minorities.

The Second World War left everyone with shock and disarray for the monstrosities practiced by Nazi Germany. This refers not only to the systematic extermination of the Jewish people driven by a racist ideology, but also lethal campaigns against Sinti and Roma, homosexuals, people with disabilities, political dissidents, and others³³. As a result of this, developing a system intended to protect all humans, seemed to be a necessity rather than a choice.

World War II marked a shift in international relations. Before the conflict, despite the League of Nations, governments were largely unconcerned with how other nations treated their citizens³⁴. This changed with the horrifying violations of human dignity by the Nazis. This was evidenced by world leaders such as Prime Minister Churchill and US President Roosevelt whom included the ideals inherent to human rights in the Atlantic Charter, and, later on, in the UN Declaration of 1942. This showed a growing commitment in the struggle against fascism, which directly meant fight for human rights.

The need for an international organisation to safeguard human rights was not just a response to Nazi Germany; it also stemmed from smaller countries and entities demanding representation. NGOs and Latin American countries, concerned about hegemonic power in the newly established United Nations, made efforts to ensure the organisation considered all members. This, as a consequence, meant comprehending the peculiar needs of a part of the world's population that was not fully developed economically. Several Latin American countries proposed strengthening the human rights provisions of the Charter, reflecting an emphasis from the Inter-American Conference in Mexico. This conference had advocated for the Inter-American Juridical Committee to develop a Declaration of the International Rights and Duties of Man. At the San Francisco conference, Chile and Cuba attempted to introduce similar mandates, while Panama urged that a Declaration of Essential Human Rights—drafted by a multinational committee under the American Law Institute—be attached to or incorporated into the Charter³⁵.

Stavrinides' (1999) commentary helps understand the UN Charter's context on human rights. The Charter, with 111 articles, outlines the organisation's principles and objectives, aiming to maintain international peace and security through collective action and peaceful conflict resolution. The preamble reaffirms a commitment to fundamental human rights, the dignity and worth of

³³ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, Cambridge University Press, 3rd Edition (2020)

³⁴ Johnson, M. G., & Symonides, J. (1998). *The Universal Declaration of Human Rights: A history of its creation and implementation 1948-1998*. UNESCO Publishing.

³⁵ *ibid.*

individuals, and the equal rights of men and women and all nations ³⁶. Article 1, 55, and 56 specifically mention the respect for human rights:

Article 1

The Purposes of the United Nations are:

1. (...)

2. (...)

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

(United Nations, 1945)

It is evident that the Organization is duty-bound to pursue and strive to achieve its purposes. At the San Francisco conference, the Chairman of the United States delegation, Secretary of State Edward Stettinius, conveyed the consensus of the Conference. He stated that the purposes outlined in Article 1 of the Charter are obligatory for the Organization, its organs, and its agencies, guiding the direction of their activities and establishing the boundaries within which they must operate³⁷;

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

³⁶ Reinalda, B. (2009). *The Routledge history of international organizations: From 1815 to the present day*. Routledge.

³⁷ Stavrinides, Z. (1999). Human rights obligations under the United Nations Charter. *The International Journal of Human Rights*, 3(2), 38-59

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

(United Nations, 1945)

According to Stavrinides (1999), Article 55(c) of the UN Charter requires the Organization to promote a goal that closely aligns with the objective outlined in Article 1(3). Although the obligations of these articles may seem distinct at first, they share a common purpose. Article 1(3) focuses on achieving international cooperation to advance human rights, while Article 55(c) directly mandates the promotion of human rights. A notable difference is that Article 55, unlike Article 1(3), explicitly links the promotion of human rights with the creation of conditions for stability and well-being, and connects these conditions to the establishment of peaceful and friendly relations among nations³⁸. Article 56 outlines the commitment of all UN Members to promote said objectives.

Given the need for a specific entity to promote human rights, the charter calls on ECOSOC to:

(...) set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

(UN Charter, 1945, Art.68)

Consequently, ECOSOC created a Human Rights Commission. On January of 1947, the commission started its work. A committee consisting of representatives from eight different countries was formed to pursue the task, Eleanor Roosevelt chaired the commission and the editorial board. Furthermore, René Cassin, fundamental figure of French diplomacy, was greatly

³⁸ *ibid.*

instrumental in the drafting process and was the primary architect of the text. The committee presented the final draft and, with the approval of 48 countries, the Universal Declaration of Human Rights was adopted through Resolution 217 (III) ³⁹.

This document was fundamental in establishing human rights within international law, initially through the Universal Declaration of Human Rights and subsequently via two foundational international treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. Additionally, it influenced the creation of several specialized conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), and the Convention on the Rights of the Child (1989).

The Declaration was rooted in the 'classical' civil and political human rights, which were inspired by Enlightenment ideals⁴⁰ and articulated by various states. However, it also acknowledged economic and social rights. Communist states, which were generally unsupportive of civil and political rights, became proponents of economic and social rights, especially as Cold War tensions escalated. An important detail to notice to the Declaration, advocated by India, was the replacement of the term "all men" with "all human beings," ensuring that women were explicitly mentioned in Article 1 ⁴¹. Following the adoption of the Declaration, the General Assembly tasked the Economic and Social Council (ECOSOC) with instructing the Commission on Human Rights to draft a legally binding convention that included mechanisms for monitoring compliance. This initiative aimed to create a cohesive framework comprising the Declaration, a binding convention, and effective monitoring mechanisms, which Reinalda (2009) calls *trinity*. The legal implications of the Declaration, as well as the Covenants that it produced, will be discussed in the following chapter in order to give a theoretical framework for the purposes of this dissertation.

The Universal Declaration of Human Rights of 1948 stands as a hallmark of humanity's history and its efforts in advancing the protection of all human beings, regardless of what their race, religion, nationality, gender or age they might be. The road to this event is characterised by a continuous fight for equality, advanced by a common humanitarian ideology that, as this first part has shown, has existed all throughout history.

³⁹ Zanghì, C. (1979). La protezione internazionale dei diritti dell'uomo. Supplemento alla rivista Vita Italiana - Documenti e Informazioni

⁴⁰ This shows the parallelism with la déclaration de droit de l'homme et du citoyen

⁴¹ *ibid.*, 6

I.II Overview of the East and Horn of Africa Region

The East and Horn of Africa comprises of several countries, each one having its own history, economic structures, and political landscape. For the purposes of this dissertation, this next section will give a historical perspective to the region in order to understand more clearly movements such as Pan-Africanism, which helped pave the way for the Organisation of African Unity and the consequential African Charter of Human and Peoples' Rights. Clearly, a colonial past such as the one inherent to Africa has produced specific peculiarities in the field of human rights, and it would be a disservice to its past not to contextualise the continent in the history it lived.

I.II.I Historical Context

I. East Africa

The British and Germans had seized several key locations in East Africa, becoming the latest in a long line of foreign invaders. The coast and nearby islands had been integral to Indian Ocean trade for centuries. In the nineteenth century, increased trade accelerated Arab immigration and encouraged Indian merchants to establish themselves among the predominantly Muslim, Swahili-speaking black population of the East African coast ⁴².

Throughout the years prior to World War I, Europe's presence, as well as Indian, came to be well existent in East Africa. As much of the land was alienated to whites, finding labour came to be an issue as the pressing demand for unskilled labour and the low availability (and willingness to pay) of decent wages made it easier to use forms of compulsion against the native population ⁴³. This resulted in making use of compulsory labour for public works. Fage (1986) describes the relationships between the whites and the blacks as characterised by threat and violence, and, as colonial rule was advanced (also) thanks to the collaboration of African allies, the British and the German found their way into using further force against the colonised population.

The impact of the First World War in East Africa found its way in cash crops and depleted resources. As a matter of fact, the conflict between Britain and Germany, which also resulted in the shift of administration as German East Africa was officially transferred to Britain, Belgium, and Portugal ⁴⁴, was further evidenced in crippled food production due to the many areas being

⁴² Roberts, A. (1986). East Africa. In J. D. Fage & R. Oliver (Eds.), *The Cambridge history of Africa: Volume 7, from 1905 to 1940* (pp. 649-687). Cambridge University Press. Cambridge Histories Online.

⁴³ *ibid.*

⁴⁴ Pallaver K. From German East African Rupees to British East African Shillings in Tanganyika: The King and the Kaiser Side by Side. *African Studies Review*

emptied of men, and several of the lands that were cultivated were done so until the point of exhaustion ⁴⁵. This, accompanied by the rains' failure throughout the region, caused a famine to be widespread. As a consequence, much of the resistance to diseases was lowered, which meant growing disease like cerebro-spinal meningitis, plague, and smallpox, as well as the influenza pandemic which killed about 160,000 individuals in the region ⁴⁶. Nonetheless, the war also exposed many Africans to European technology. As Roberts (1986) explains, men were trained to operate radios, rapid-firing guns, and motor vehicles, with some advancing to roles as non-commissioned officers and warrant officers. Across East Africa, individuals were uncovering new skills and applying them beyond the confines of family, clan, or chiefdom. While white colonizers made significant decisions regarding the role of Africans in the colonial structure of East Africa, Africans themselves had their own ideas on the matter and were beginning to express them ⁴⁷.

By 1940, East African territories shared notable similarities. The Great Depression had reduced the policy differences seen in the 1920s. Uganda focused on small-scale African production, Kenya and Zanzibar on immigrant estates, and Tanganyika on a mix of both. There was a growing emphasis on British and overseas capital, relying mainly on cheap migrant labor. Colonial governance involved segregation in employment, education, and urban living. White settlement hopes faded, and the Indian presence was grudgingly accepted. While the 1920s witnessed a rapid urban growth, worsening conditions came by 1938, with urban unemployment and official neglect deteriorating the situation ⁴⁸.

As the years went by, the growing demand for self governance, accompanied by the international pressures to decolonization⁴⁹, led to the creation of six independent States: Tanganyika

⁴⁵ Roberts, 1986

⁴⁶ Andayi F, Chaves SS, Widdowson MA. Impact of the 1918 Influenza Pandemic in Coastal Kenya. *Trop Med Infect Dis.* 2019 and *ibid.*, 10

⁴⁷ Roberts, 1986

⁴⁸ Ishumi, A. G. M. (1984). *The urban jobless in Eastern Africa: A study of the unemployed population in the growing urban centres, with special reference to Tanzania.* Scandinavian Institute of African Studies and *ibid.*

⁴⁹ Tanganyika and Ryanda Urundi were Trust Territories (i.e. under the administration of the Trusteeship Council, which will be written about into more detail in the following chapter) In 1960, in the midst of the Cold War, the USSR drafted a resolution to the General Assembly calling for the immediate and complete liberation of all colonial peoples from foreign domination. However, as the developing and colonised states did not want the issue of decolonization to be a Cold War issue (ref. to the non aligned movement), Cambodia, on behalf of twenty-six African and Asian countries, stipulated the Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514), which focused on the principles of self determination and human rights violations (Reinalda, 2009). This called for the elimination of all stronghold of colonialism and the granting of independence and freedom to the former colonies to build their own national states (United Nations, 1960).

in 1961, Uganda in 1962, Kenya in 1963, Malawi in 1964, Zambia in 1964, and Zanzibar in 1963, which soon joined Tanganyika to form the United Republic of Tanzania ⁵⁰.

The Pan-African Freedom Movement of East and Central Africa (PAFMECA), formed in 1958, fostered political cooperation among nationalist leaders in East and Central Africa. It supported territorial nationalist movements and was instrumental in the decolonization process ⁵¹. Nyerere's proposal for an East African federation aimed to unite the region upon achieving independence. However, national interests and fears of economic disparity, especially Uganda's concern over Kenya's dominant development, led to the federation's failure ⁵².

Decolonization was, however, met with several difficulties. As for starters, multiracialism was not welcomed with support by the population as the push for African representation increased, and ethnic as well as regional difference caused conflicts within the emerging parties throughout the region⁵³. The seventies were met with rising levels of unemployment and slower economic growth, which compelled for different responses. As an example, Mboya, a historical Kenyan trade unionist and educationist, called for a more substantial external aid and pushed for open negotiations and transparent governance, institution building, and a mixed, capitalist economy⁵⁴, while the Arusha Declaration in Tanzania called for a more socialist and self-reliant policy⁵⁵. These divergences shaped the political and economic structures of East Africa for several decades.

II. Horn of Africa

The early twentieth century saw Ethiopia subject to Oromo migrations and conquests, and the new administration was characterised by a tax system managed by imperial and provincial

⁵⁰ Milford I, McCann G, Hunter E, Branch D. Another World? East Africa, Decolonisation, and the Global History of the Mid-Twentieth Century. *The Journal of African History*. 2021

⁵¹ Thompson, V. B. (1969). *Africa and unity: The evolution of Pan-Africanism* (2nd ed.). Humanities Press. This copy was kindly provided as a gift by the Embassy of Italy in Dar Es Salaam

⁵² Gertzel, C. (1984). East and Central Africa. In J. D. Fage & R. Oliver (Eds.), *The Cambridge History of Africa* (Vol. 8). Cambridge University Press.

⁵³ *ibid.*

⁵⁴ Hegazy, A. (2011, January 16). Thomas Mboya (Joseph Odhiambo) (1930-1969). BlackPast.org. <https://www.blackpast.org/global-african-history/mboya-thomas-joseph-odhiambo-1930-1969/>

⁵⁵ Evans, M. (2012, August 09). (1967) The Arusha Declaration. BlackPast.org. <https://www.blackpast.org/global-african-history/arusha-declaration-1967-2/>

authorities⁵⁶. European control in the Horn of Africa was initially limited to ports, and during this period, British Somaliland incurred substantial military expenses, and resistance to European control was prominent, particularly led by Sayyid Muhammad (the *Mad Mullah*), who opposed Italian influence and European customs. His efforts to resist colonial domination were largely through his influential poetry, rather than political structures⁵⁷.

The twenties and thirties witnessed Eritrea and Somalia under Italy's colonial rule. As Mussolini became Italy's prime minister in 1922, men from Ethiopia and Eritrea were being drafted to help Italy in its mission of reconquest of Libya's hinterland⁵⁸. The administration was faced with economic difficulties due to high costs inherent to Mussolini's goals in the region, namely infrastructure development and agricultural promotion⁵⁹. British and French Somaliland were smaller extensions of the respective empires, whose main advancement relied on the construction of railways and export of salt (specifically for present-day Djibouti, i.e. former French Somaliland).

A fundamental figure in Ethiopia's politics and history is Emperor Haile Selassie, who made several important decisions with the goal of advancing the monarchy. He progressed the country by introducing a written constitution and prioritised fiscal reforms. While progress in education was not as fast as desired⁶⁰, there was an impressive improvement in the transportation infrastructure⁶¹.

⁵⁶ Mekonnen, D. (2019). The Oromo national memories. *RUDN Journal of Sociology*, 19(3), 503-516. <https://doi.org/10.22363/2313-2272-2019-19-3-503-51> and Caulk, R.. (1986). Ethiopia and the Horn. In J. D. Fage & R. Oliver (Eds.), *The Cambridge history of Africa: Volume 7, from 1905 to 1940* (pp. 702-736). Cambridge University Press. Cambridge Histories Online.

⁵⁷ Sayyid's vision of an independent Somali nation emerges clearly. As he crossed into Ethiopia in 1920, he warned his people once more against the Unbelievers:

Somalis, arise from sleep!
Do not be dazzled by their gifts.
They'll wrest your weapons from you ... They'll take away your stock ...
They'll snatch your money and your land what sort of country can it be
Where people fall into slavery to them ...?"

(Sayyid, as cited in Caulk, 1986)

⁵⁸ Fage, 1986

⁵⁹ *ibid.*

⁶⁰ Educational advancement was quite sluggish. By 1934, just 4,200 Ethiopians were enrolled in state schools in Addis Ababa, and only a few hundred had progressed beyond the elementary level. Some students pursued further education abroad, primarily in France or the USA, including a few pilots and officer-cadets. In the provinces, there were around twelve government elementary schools and about 2,000 students in mission schools. Both types of institutions offered instruction in European languages and improved education in geography and mathematics. However, literacy in Amharic and Arabic was largely promoted through the efforts of monks, village priests, and a few shaykhs (Caulk, 1986).

⁶¹ Erlich, H. (2019). *Haile Selassie: His rise, his fall*. Lynne Rienner Publishers.

Italy's invasion of Ethiopia gave Mussolini control over a wide region of north-east Africa, despite initial economic sanction from the League of Nations and the consequent withdrawal of Italy⁶². The Fascists viewed education for Africans as creating 'misfits' and extended their restrictive policies from Eritrea and Italian Somaliland to Ethiopia. Elementary schools were limited to basic skills and propaganda, while high schools for Africans were closed and non-Italian missionaries expelled. Africans with further education were relegated to low clerical roles⁶³. These policies, along with the Fascists' persecution of educated Africans, caused significant setbacks. Despite their military success, Italian control in East Africa was unstable, and this instability reached its peak towards the end of World War II. Thanks to Britain, Haile Selassie was reinstated as head of state of Ethiopia and Italian East Africa came to an end⁶⁴.

The changes underwent by Africa in the second half of the twentieth century were not unknown in the Horn. These included a rapid population growth, development of formal education systems, enhanced focus on exports, as well as the consequent rise of the wealthy African elite⁶⁵. What set the Horn apart was the lack of a stable colonial or post-colonial state to manage social and economic changes. In Ethiopia and the Somali Republic, the state was not an external imposition but an internal force reflecting national ambitions⁶⁶.

I. III Pan-Africanism, the OAU, and the African Charter on Human and Peoples' Rights

Understanding the concept of Pan Africanism as well as its development is fundamental to comprehend the advancement of the African people in the continent as a whole. Pan Africanism can be traced back to the end of the nineteenth century, when Henry Sylvester-Williams formed the African Association in London, England to encourage Pan-African unity and organised the first Pan-African meeting in 1900 with the idea that Africans (descendants and native) that had been subject to the diaspora should have a voice⁶⁷. Thompson (1969) offers a well documented evolution of the movement and gives us a detailed description of the ideological basis of Pan-Africanism. It

⁶² Reinalda, 2009

⁶³ Fage et al., 1986

⁶⁴ González-Ruibal, A. (2010). Fascist colonialism: The archaeology of Italian outposts in western Ethiopia (1936-1941). *International Journal of Historical Archaeology*, 14(4), 547-574.

⁶⁵ Clapham, C. (1984). The Horn of Africa. In J. D. Fage & R. Oliver (Eds.), *The Cambridge History of Africa* (Vol. 8). Cambridge University Press.

⁶⁶ Fage et al., 1986

⁶⁷ Adejumobi, S. (2008, July 30). The Pan-African Congresses, 1900-1945. BlackPast.org. <https://www.blackpast.org/global-african-history/pan-african-congresses-1900-1945/>

is, in fact, often erroneously understood that the roots to Pan-Africanism are related to the grievances of racism, slave trade, and colonialism, and the consequent reaction to said grievances found its way into the foundations of the movement. While it is indeed truthful to say that the humiliations caused by the West have been a propelling factor to the establishment of Pan-Africanism, the economic and social progress of the continent were the main drivers⁶⁸. As a consequence, Marxist Socialism seemed to be the most coherent ideology to communalist Africa⁶⁹. The wide presence of intellectuals in the Pan-African school of thought gave way for concepts like *Negritude* and the *African Personality*, which consist of an emphasis on the shared symbols and heritage of the continent. The movement found its extension worldwide thanks to the many African students abroad, who, as a consequence of the experiences inherent to racism, found a community to refer to and enhanced its growth⁷⁰.

As above mentioned, the first Pan African Conference was held in London in 1900. In the context of human rights, the meeting was a milestone in its advancement, as it was the first time in history when opponents of colonialism and racism gathered for an international meeting⁷¹. Of utmost importance is Du Bois'⁷² address *to the Nations of the World*, in which he demands respect from the imperialist nations towards Africa and the formerly colonised people:

Let the nations of the world respect the integrity and independence of the free Negro states of Abyssinia, Liberia, Haiti, and the rest, and let the inhabitants of these states, the independent tribes of Africa, the Negroes of the West Indies and America, and the black subjects of all nations take courage, strive ceaselessly, and fight bravely, that they may prove to the world their incontestable right to be counted among the great brotherhood of mankind. Thus we appeal with boldness and confidence to the Great Powers of the civilized world, trusting in the wide spirit of humanity, and the deep sense of justice and of our age, for a generous recognition of the righteousness of our cause.

(Du Bois, 1900)

⁶⁸ Thompson, 1969

⁶⁹ An example of this was ujumaa, Tanzania's President Nyerere's socialist policy.

⁷⁰ *ibid.*

⁷¹ Adejumobi, 2008

⁷² W.E.B. Du Bois would eventually become a founder of the NAACP, a prominent human rights activist, and the most influential African American intellectual of the 20th century (BackPast, 2007).

The pioneering Conference of London was followed by regular reoccurring meetings which still occur in the present day, starting in Paris in 1919 and having the next one planned in Lomé in October of 2024. The central topics regard economic exploitation, colonialism, treatment of black workers, imperialism, and racism. African intellectual figures emerged thanks to these congresses and, relevantly, contributed to the advancement of human rights through African liberation and their pan-african ideologies and values are the basis of what came to be known as the *Organisation for African Unity*⁷³. Officially, the Organisation for African Unity (OAU) was a result of the Addis Ababa Conference of May 1963, which further confirmed Pan-African values. The OAU, in the stipulation of its charter, namely made sure to further the promotion of human rights⁷⁴. As a matter of fact, Article II (e) clearly states that:

Article II

1. The Organization shall have the following purposes:

- (a) To promote the unity and solidarity of the African States;
- (b) To coordinate and intensify their cooperation and efforts to achieve a
- (c) better life for the peoples of Africa;
- To defend their sovereignty, their territorial integrity and independence;
- (d) To eradicate all forms of colonialism from Africa; and
- (e) To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

(OAU Charter, 1963)

For the first decade or so, the Organisation for African Unity was very effective in promoting unison and enhancing cooperation through the efficient handling of disputes through the

⁷³ *Recognizing many of these shortcomings, the OAU in September 1999 issued the Sirte Declaration, calling for a new body to take its place. On July 9, 2002, this proposal was fulfilled with the creation of the African Union (2002-today), which continues to this day to uphold many of the founding principles of the OAU (Beverton, 2009)*

⁷⁴ Thompson, 1969

establishment of the Commission of Arbitration and Conciliation from 1964⁷⁵ ⁷⁶. Nonetheless, the Organisation faced a crisis in the seventies due to the growing suspicions and hostilities towards it. As a matter of fact, the OAU was criticised during the sixth Pan-African Congress of 1974 in Dar Es Salaam, Tanzania, for the false unity it represented⁷⁷, remarking its perpetuation of separation by the support of colonial borders, lack of ability in settling conflicts among the African bourgeoisie, and, most pertinently, OAU's failure to address the exploitative and oppressive actions and violation of human rights practiced by several African countries⁷⁸.

Evidently, this criticism was met with corroboration. Indeed, the Organisation for African Unity had in fact and as per mentioned above reaffirmed its commitment to the Universal Declaration of Human Rights, however, there was a lack of direct endorsement which made the commitment actually efficient. To be more clear, the African states were not against the advancement of human rights, they just didn't fully relate to the Declaration⁷⁹, as opposed to the UN Charter itself. As a matter of fact, self determination and development were the main priority to the African states. These principles were, in fact, mentioned in the Charter as opposed to the UDHR.

Nonetheless, the initial reluctance proved that the voice of the continent did not come unheard. The concept of the "right to development," introduced by Kéba M'baye in 1972, was a response to the limitations of the UDHR, which had not adequately addressed issues of economic inequality and historical injustices. M'baye argued that this right was essential for addressing the legacies of colonialism and neo-colonialism, and his ideas gained attention through various UN resolutions and meetings, notably those aligned with the New International Economic Order⁸⁰.

⁷⁵ This arbitration was particularly useful in maintaining the status quo in territorial or boundary disputes. For instance, Somali claims to Ethiopian and Kenyan territories were deferred by OAU foreign ministers in 1964 and 1973. Additionally, in 1963, Haile Selassie and Modibo Keita mediated the Moroccan-Algerian border conflict. The OAU also successfully reconciled states on various issues, such as when Haile Selassie reconciled Nigeria with Zambia, the Ivory Coast, and Tanzania in 1970, despite their support for Biafran secession (Duffield, 2008).

⁷⁶ Fage et al., 2008

⁷⁷ According to critiques like Guyanan politician W. Rodney

⁷⁸ Duffield, I. (1984). Pan-Africanism since 1940. In J. D. Fage & R. Oliver (Eds.), *The Cambridge History of Africa* (Vol. 8). Cambridge University Press.

⁷⁹ Rubner, N. (2023). *The African Charter on Human and Peoples' Rights: Volume 1: Political, intellectual and cultural origins*. James Currey.

⁸⁰ Rubner, 2023

The milestone achievement done in Africa in the context of human rights is the African Charter of Human and Peoples' Rights, which was unanimously approved in 1981. The support for human rights on a regional level was the result of the advocacies for the peculiarities inherent to the continents and, thanks to OAU Secretary General Kodjo and President Sédar Senghor's addresses in Africa's need to asserts its own human rights frameworks, the Charter, which will be further analysed in the next chapter, celebrated the continent's values and integrated them in the context of human rights⁸¹.

Chapter II: The International Human Rights Framework

The international legal framework of human rights represents a robust system of principles, treaties, and institutions designed to protect and promote the inherent dignity and equal rights of all individuals globally. Rooted in the aftermath of World War II and epitomized by the Universal Declaration of Human Rights (UDHR) adopted in 1948, this framework encompasses a wide array of binding agreements, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together, these documents and their related mechanisms establish comprehensive standards for safeguarding fundamental freedoms and ensuring justice and equality. Through the efforts of various United Nations bodies, regional organizations, and non-governmental entities, the legal framework of human rights continually evolves to address emerging challenges and uphold the universal principles of humanity.

II.I The Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, stands as the most significant historical testament to the *consensus omnium gentium* concerning a specific system of values. This declaration brought human rights to the forefront of global relevance and universality, affirmed and shared by individuals worldwide. As reflected in its preamble, the UDHR is not, by nature, legally binding. This non-binding character is evident in the categorical affirmations of human rights within its articles, which often do not

⁸¹ *ibid.*

account for necessary exceptions⁸². The Declaration's primary purpose is to articulate "principles" rather than promulgate legal norms suitable for concrete application. Zanghì's (1979) guide *La Protezione Internazionale dei Diritti dell'Uomo* gives us a clear description of the rights listed in the Declaration.

The first five articles regard equality, freedom, non-discrimination, life, personal security, and physical integrity (Articles 1-5). Following these are civil and political rights, pertaining to the individual's social dimension: the right to legal personality, equality before the law, action against rights violations, protection against arbitrary arrest or detention, privacy, freedom of movement, asylum, citizenship, marriage and family, property, and freedom of conscience and religion (Articles 6-18). Specific judicial rights include the right to a fair trial, presumption of innocence, and non-retroactivity of penal law; political rights encompass freedom of opinion and expression, association, voting rights, and participation in public administration (Articles 19-21); economic, social, and cultural rights include the right to work, trade union freedom, rest, social security, education and vocational training, and cultural life (Articles 22-27). Among the other objectives of the Universal Declaration are the establishment of a social and international order that guarantees fundamental rights, the obligations of individuals to the community, limits on the exercise of rights and freedoms at both the domestic and international levels, and the prohibition of activities contrary to fundamental rights (Articles 28-30)⁸³.

The Declaration, while not legally binding like an international treaty, holds significant weight due to its formal adoption by a United Nations body. It represents a strong aspiration for member states to uphold its principles. Although it doesn't impose legal obligations, it is often treated as a customary standard⁸⁴. The General Assembly has frequently used the Declaration as a model for conduct and has relied on it to make recommendations and requests to governments, encouraging them to take specific actions to protect human rights and fundamental freedoms. Therefore, it can be reasonably concluded that the initial doubts about the Universal Declaration's nature and the legal force of its provisions have been largely addressed by the consistent practice of the UN. This practice has given the Declaration a significance almost equivalent to that of the UN Charter. It not only serves as an authoritative interpretation of the Charter's principles but also clarifies and reinforces the obligations set out in the Charter. Moreover, member states have

⁸² Zanghì, C. (1979). *La protezione internazionale dei diritti dell'uomo*. Supplemento alla rivista Vita Italiana - Documenti e Informazioni

⁸³ *ibid.*

⁸⁴ *ibid.*

contributed to this practice and have not opposed the gradual expansion of the UN's role in this area⁸⁵. The formal development of the Declaration can be understood through the adoption of the two International Covenants, namely the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social, and Cultural Rights*. These two treaties were adopted in 1966⁸⁶ as a way to ensure that the rights outlined in the declaration could be formally enforced and respected by states. These two covenants, accompanied by the Declaration, make up for what is known as the *International Bill of Human Rights*.

The legal status of the Declaration can be understood in the context of *soft law*. Soft law refers to instruments that, while not legally binding in the same way as treaties or customary international law, still play a significant role in shaping norms, influencing state behaviour, and contributing to the development of binding legal standards over time⁸⁷. Further notions which help us understand the legal status of the Universal Declaration of Human Rights are *jus cogens* and *erga omnes*. *Jus cogens* refers to peremptory norms of international law that are considered so fundamental that no state can derogate from them. By definition, they are the category of norms that govern customary international law (LII). These norms are recognised as binding by the international community as a whole, and any agreement that conflicts with a *jus cogens* norm is considered void⁸⁸. Put into context, *jus cogens* is closely related to the idea that certain human rights are non-derogable and, although by its nature the UDHR itself is not legally-binding, many of its provisions may attain the status of *jus cogens* norms (Oette, 2020). *Erga omnes* obligations are those that a state owes to the international community as a whole, meaning any state can hold another state accountable for violations of these obligations (Leopard, 2012). Many human rights are considered *erga omnes* obligations, and the International Court of Justice has invoked the notion several times (ref. *East Timor (Portugal v. Australia)*, 1995 I.C.J, June 30 or *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*, International Court of Justice (ICJ), 11 July 1996). The legal status of the Universal Declaration of Human Rights, when examined through these concepts, reveals that it

⁸⁵ *ibid.*

⁸⁶ The lengthy wait for the approval of both covenants was due to the changes within the UN system itself. As a matter of fact, between 1954 and 1966 the number of Member States more than doubled and, as a consequence, a relevant number of countries had to start examining for the first time the proposed provisions (Zanghì, 1979)

⁸⁷ Guzman, A. T., & Meyer, T. L. (2009). *Explaining soft law*. Berkeley Law School. Retrieved from <https://escholarship.org/uc/item/7796m4sc>

⁸⁸ Bantekas, 2020

serves more than a *recommendatory* role. It functions as the foundational document upon which the nine core human rights instruments are built. Viewed from this perspective, the UDHR clearly establishes the standards for human rights law.

II.II International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty established by the United Nations General Assembly on December 16, 1966. According to Article 49, the covenant came into effect three months after the thirty-fifth instrument of ratification or accession was deposited. This treaty obligates its signatories to uphold various civil and political rights, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights, and the right to due process and a fair trial. As part of the International Bill of Human Rights, the ICCPR complements the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). The United Nations Human Rights Committee oversees the implementation of the ICCPR, reviewing periodic reports submitted by state parties on their compliance with the treaty. States are required to submit an initial report one year after acceding to the covenant and subsequent reports as requested by the Committee, typically every four years⁸⁹.

The commentary offered by Taylor (2020) on the ICCPR gives a comprehensive study of the articles and helps us understand the rights established by the Covenant:

Article 1: Right of Peoples to Self-Determination

The principle of self determinations asserts the principle which allows peoples to freely determine their political statues and pursue their economic, social, and cultural development⁹⁰. This right is of utmost importance in the context of colonial issues and, exactly because of this, it was quite complex to draft it. The right to self determination is reflected in the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples*, and it also includes the control over natural resources. This right has been reinforced in regional instruments like the African Charter on

⁸⁹ Blackstone School of Law. (2019, March 1). The International Covenant on Civil and Political Rights

⁹⁰ Taylor, P. M. (2020). A commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's monitoring of ICCPR rights. Cambridge University Press

Human and Peoples' Rights, which emphasises this right to seek liberation from oppression⁹¹. Furthermore, Article 1 falls under the category of a collective right and is considered to be continuous, meaning that once a group gains independence or sovereignty, the right still remains applicable to all peoples regardless of their political status or development⁹².

Article 2: Non-Discrimination, Constitutional and Legal Framework for Covenant Implementation, and Access to Remedies

Article 2 of the ICCPR is a crucial provision that establishes the framework for ensuring the respect of the rights stipulated in the Covenant. It mandates all signatory states to uphold these rights without discrimination and is fundamental as it provides the basis for domestic implementation. The non-discrimination mentioned in Article 2(1) mandates that the rights are to be ensured without any distinction, including race, colour, sex, language, religion, political or other opinion, national origin, property, birth⁹³. The domestic implementation and remedies refer to the necessary legislative measures that are to give effect to the rights recognised in the Covenant, which means that States are required to enforce laws that align with the ICCPR's standards. If said standards are violated, the state must provide effective remedies for the individuals whose rights have been violated⁹⁴.

Article 3: Equal Rights of Men and Women

Article 3 of the International Covenant on Civil and Political Rights (ICCPR) is a critical provision that explicitly mentions the principle of gender equality, mandating that all rights guaranteed under the Covenant must be enjoyed without discrimination based on sex. This article arose from the recognition that despite broader non-discrimination principles found in Articles 2 and 26, gender-specific inequalities persisted and needed to be directly addressed⁹⁵. It asserts that

⁹¹ *ibid.*

⁹² Cristescu, A. (1981). *The right to self-determination: Historical and current development on the basis of United Nations instruments*. United Nations. New York, NY.

⁹³ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966). Retrieved from <https://www.ohchr.org/en/international-covenant-civil-and-political-rights>

⁹⁴ Taylor, 2020

⁹⁵ *ibid.*

states must not only refrain from gender-based discrimination but also work to make gender equality a practical reality. While Article 3 overlaps with other anti-discrimination provisions, it provides a focused approach for states to remove obstacles to women's full enjoyment of civil and political rights. The significance of Article 3 was further reinforced by the adoption of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, which builds on the foundation laid by Article 3 by defining what constitutes discrimination against women and sets up an agenda for national action to end such discrimination⁹⁶.

Article 4: Derogations

Article 4 provides a framework for States to derogate from certain Covenant rights during a public emergency that threatens the life of the nation. This derogation, however, is strictly regulated and must be limited to what is strictly required by the exigencies of the situation. States must immediately notify other States Parties and the UN Secretary-General about the derogation measures, specifying which rights are suspended and for how long⁹⁷. Certain fundamental rights, such as the prohibition against torture and slavery, are non-derogable. The Human Rights Committee, through *General Comment No. 29* (2001) and the *Siracusa Principles* (1984), outlines that derogation measures must adhere to principles of necessity, proportionality, and non-discrimination⁹⁸.

Article 5: Prohibition of Misuse and Savings Clause

Article 5 serves as a safeguard against the misinterpretation and misuse of the Covenant's provisions. Article 5(1) ensures that the Covenant cannot be used to justify the destruction or excessive limitation of any rights it protects, countering any attempts to exploit the Covenant for harmful purposes⁹⁹. This article prevents States from using the Covenant as a pretext for violating or excessively restricting rights beyond its intended scope¹⁰⁰. Article 5(2) establishes that the

⁹⁶ United Nations. Convention on the elimination of all forms of discrimination against women (CEDAW). United Nations. Retrieved August 12, 2024, from <https://www.un.org/womenwatch/daw/cedaw/>

⁹⁷ Taylor, 2020

⁹⁸ *ibid.*

⁹⁹ ICCPR, 1966

¹⁰⁰ Taylor, 2020

Covenant sets only minimum standards, therefore preventing States from using it to justify reducing the level of protection offered by domestic laws¹⁰¹.

Article 6: Right to Life

The right to life is a *jus cogens* norm, and article 6 reflects its status as the supreme human right¹⁰². Article 6(1) affirms that every person possesses the inherent right to life, which must be protected by law and not arbitrarily deprived. This right entails both negative and positive obligations: states must refrain from interfering with life and must actively protect it through legal and institutional means¹⁰³. The article addresses a broad spectrum of risks, including arbitrary killings, enforced disappearances, and excessive use of force. It underscores the necessity for preventive measures and protection against various threats such as armed conflict, domestic violence, and health crises¹⁰⁴. Article 6(2)–(6) allows for the death penalty in jurisdictions where it has not been abolished, but imposes strict conditions: it must be reserved for the most serious crimes, adhere to due process, and cannot be applied to minors or pregnant women. Article 6(3) affirms that the right to life cannot be derogated in situations of genocide, in alignment with the Genocide Convention¹⁰⁵. Furthermore, Article 6 provides for the right to seek pardon or commutation of the death sentence and mandates that states must not delay or prevent the abolition of capital punishment¹⁰⁶. Regarding abortion, states are required to ensure that restrictions do not

¹⁰¹ ICCPR, 1966 and *ibid*.

¹⁰² Taylor, 2020

¹⁰³ CCPR Centre. (2021). Simple guide on The International Covenant on Civil and Political Rights (ICCPR). CCPR Centre. <https://www.ccprcentre.org/publications/iccpr-guide>

¹⁰⁴ *ibid*.

¹⁰⁵ Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly on December 9, 1948, and entered into force on January 12, 1951. This Convention, one of the first United Nations treaties addressing humanitarian issues, was established in response to the atrocities of World War II. It followed General Assembly Resolution 180 (II) of December 21, 1947, which recognized genocide as an international crime entailing national and international responsibility for both individuals and states. The Convention has been widely accepted and ratified by the majority of states. It defines genocide with specificity in terms of intent and prohibited acts (Article II) and asserts that the crime can occur in both peacetime and wartime. Jurisprudence of the International Court of Justice (ICJ) views the prohibition of genocide as a peremptory norm of international law (*jus cogens*), as noted in *Reservations to the Convention on Genocide*, 1951 I.C.J. Rep. 15, 23, and *Barcelona Traction, Light and Power Co. (Belg. v. Spain)*, 1970 I.C.J. Rep. 3, 32. The ICJ recognizes that the principles underlying the Convention are binding on states even in the absence of explicit conventional obligations. (ICRC)

¹⁰⁶ Taylor, 2020

endanger the health or rights of women, especially in cases of severe health risks or where the pregnancy results from rape or incest¹⁰⁷. The effective protection of the right to life also involves addressing issues like extrajudicial killings, enforced disappearances, and conditions leading to high mortality rates. The Committee's General Comment (35) on Article 6 emphasises that this right encompasses a wide array of protective measures to address societal threats and ensure comprehensive safeguarding of life¹⁰⁸.

Article 7: Prohibition of Torture; Article 9: Prohibition of Arbitrary Detention; Article 10: Conditions of Detention

This article prohibits torture as defined by the *Convention Against Torture* in Article 1¹⁰⁹ and any form of degrading punishment. The article aims to protect the dignity as well as the physical and mental integrity of the individual. The article is non-derogable and part of customary law (it is, in fact, considered *jus cogens* by the international community)¹¹⁰. Article 7 is complemented by Articles 9 and 10 by providing essential protections that intersect with the rights covered under these articles. Article 9 prohibits arbitrary detention and protects an individual's right to personal security, safeguarding them from physical and mental harm, including excessive use of force and threats to life¹¹¹. This aligns with Article 7's broader prohibition against torture and cruel, inhuman, or degrading treatment (CIDT). Furthermore, Article 10 requires the humane treatment of individuals deprived of their liberty, particularly in detention settings. This overlaps with Article 7's prohibition on mistreatment of detainees, ensuring that their dignity and integrity are kept even in conditions of incarceration¹¹².

Article 8: Prohibition of Slavery

¹⁰⁷ *ibid.*

¹⁰⁸ United Nations Human Rights Committee. (2019). General comment No. 36: Article 6: Right to life (UN Document No. CCPR/C/GC/36). United Nations. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/286/96/PDF/G1928696.pdf?OpenElement> and *ibid.*

¹⁰⁹ The Convention Against Torture (CAT) will be later analysed in this chapter.

¹¹⁰ CCPR, 2021

¹¹¹ Taylor, 2020

¹¹² *ibid.*

Article 8 establishes a comprehensive system of protections against slavery, servitude, and forced or compulsory labor. These provisions are non-derogable. Section 1 prohibits slavery and any trade of slaves and is a principle that cannot be overridden by any state in any circumstances as a peremptory norm of international law¹¹³. Servitude, which includes human trafficking, debt bondage and other forms of exploitation are prohibited under section 2. Finally, section 3 prohibits forced labor, a concept which includes a service that is extracted from a person under the threat of penalty and for which they have not offered themselves voluntarily (as defined by the ILO). The efforts made to prohibit human exploitation are rooted in international conventions such as the 1926 Slavery Convention¹¹⁴.

Article 11: Imprisonment for Failure to Fulfil a Contractual Obligation

Article 11 prohibits the imposition of detention on the grounds of a debtor's inability to fulfil a civil-law contractual obligation¹¹⁵. The legal scope is the protective ambit which is circumscribed to instances of genuine incapacity of the debtor to pay, excluding cases of *mala fide* refusal¹¹⁶. The explicit exceptions to the article refer to criminal liability, hence when the non-fulfilment of the civil obligation constitutes a criminal offence such as fraud¹¹⁷. Therefore, while maintaining the integrity of the legal system's enforcement mechanism, this articles makes sure that incarceration is not used as a solution to poverty¹¹⁸.

Article 12: Freedom of Movement

This Article establishes the right to free movement and residence within a State's territory, including non citizens. The article imposes specific obligations on States to uphold these rights and delineates the conditions under which they may be restricted¹¹⁹. The *General Comment No. 27* of

¹¹³ *ibid.*

¹¹⁴ *ibid.*

¹¹⁵ CCPR, 2021

¹¹⁶ Taylor, 2020

¹¹⁷ *ibid.*

¹¹⁸ *ibid.*

¹¹⁹ CCPR, 2021

the HRC (1999) gives an elaborate interpretation of this right. Firstly, freedom of movement is recognised as essential for personal freedom and autonomy and it affects other rights such as privacy, family life, and participation in society¹²⁰. This freedom not only refers to the ability to move within a country, but also to leave, as per stated in paragraph 2¹²¹. This, as per specified by the Human Rights Committee, also refers to the right to access services to obtain the necessary travel documents, like passports and other identity documents¹²². Paragraph 3 allows restrictions only when the national security is at stake or when the freedoms of others are threatened¹²³. These restrictions are to be proportional and non discriminatory¹²⁴. Finally, the right to enter one's own country is mentioned in paragraph 4¹²⁵. The definition of *own country* is discussed in Taylor's (2020) commentary as he explains that this term extends beyond just citizenship. As a matter of fact, thanks to the evolution of the jurisprudence of the Human Rights Committee, the concept of *own country* can be closely associated to long standing ties, residency, or family connections¹²⁶ (see the evolution of the concept in *Stewart v. Canada*, Communication No. 538/1993, U.N. Doc. CCPR/C/58/D/538/1993 (1996) and *Nystrom v. Australia*, Communication No. 1557/2007, U.N. Doc. CCPR/C/102/D/1557/2007 (2011)).

Article 13: Right to Remain in a State

Article 13 of the ICCPR aims to protect non nationals who are lawfully present within the territory of a State. The article delineates procedural protections against expulsions and the protection of individual rights¹²⁷. The articles prohibits expulsions in the cases this is not in accordance to law and calls for the principle of arbitrariness, meaning that the grounds for expulsion

¹²⁰ UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), CCPR/C/21/Rev.1/Add.9, 2 November 1999, <https://www.refworld.org/legal/general/hrc/1999/en/46752> [accessed 13 August 2024]

¹²¹ ICCPR, 1966

¹²² HRC, 1999

¹²³ ICCPR, 1966

¹²⁴ HRC, 1999

¹²⁵ ICCPR, 1966

¹²⁶ Taylor, 2020

¹²⁷ CCPR, 2021

have to be reasonable, non discriminatory, and justified under legislative norms¹²⁸. Furthermore, non nationals have the rights to present reasons against their expulsions and have their case reviewed by competent authority, which typically necessitates a judicial or quasi-judicial oversight. The article also aims to uphold the non refoulment principle, which means that the State may not expel or return an individual to a country where they would face torture, cruel, or inhuman treatment¹²⁹. The General Comment No.15 issued by the Human Rights Committee serves as a key interpretation of Article 13. The General Comment explicitly mentions that the rights established by the ICCPR apply to all individuals within a State territory, including aliens, which affirms the universal applicability of this specific article¹³⁰. The safeguards established, as per specified by the HRC, underlines the importance of *de jure* and *de facto* protections, meaning that States should not just codify these protections in their legal framework but also, and most importantly, enforce them in practice¹³¹. This *dual* obligation calls for States to establish accessible mechanisms to allow aliens to seek redress when their rights are threatened (see *Ahani v. Canada, Communication No. 1051/2002, U.N. Doc. CCPR/C/80/D/1051/2002 (2004)*).

Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial

Article 14 ensures the right to a fair trial and is the most detailed provision in the Covenant. It deliberates procedural guarantees that are fundamental to the administration of justice. The Article build on the principles brought forth by the UDHR in Articles 10 and 11 and stipulates specific guarantees, principles and special protections¹³². The Articles guranatees the right to a fair and public hearing, requiring that every individual is entitled to a competent, independent, and impartial tribunal. General Comment No. 32 of the HRC also specifies that a fair hearing needs to be characterised by promptness, meaning that when delays arise, for instance, due to insufficient rsesources and persistent underfunding, it is of utmost importance to allocate additional budgetary

¹²⁸ Taylor, 2020

¹²⁹ *ibid.*

¹³⁰ UN Human Rights Committee (HRC), CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, <https://www.refworld.org/legal/general/hrc/1986/en/38724>

¹³¹ *ibid.*

¹³² Taylor, 2020

resources as needed to support the administration of justice¹³³ see (See. Concluding observations, *Democratic Republic of Congo*, CCPR/C/COD/CO/3 (2006), para. 21, *Central African Republic*, CCPR//C/CAF/CO/2 (2006), para. 16). The principle *in dubio pro reo* mandates that any person charged with a criminal offence is presumed innocent until proven guilty and is stipulated in the article. Furthermore, the right to an interpreter, to examine witnesses and the right to detailed information of the charges are protected. The special protection for juveniles is also mentioned, and it mandates that criminal procedures involving juveniles must account of their age and promote rehabilitation. Appropriate measures for young offenders including limiting pre trial detention, providing educational and psychological support, avoiding solitary confinement and ensuring separation from adults in detention¹³⁴. General Comment No. 32 highlights the necessity of protecting juvenile rights and mentions timely trials and appropriate support¹³⁵ (see *Berezhnoy v. Russian Federation* (Communication No. 2107/2011). CCPR/C/118/D/2107/2011 and *Sharifova et al. v. Tajikistan*, CCPR/C/92/D/1209 & 1231/2003 & 1241/2004). The principle *ne bis in idem* is affirmed in paragraph 7 of the article. The principle prohibits individuals from being tried or punished for the same offence for which they have already been convicted or acquitted¹³⁶. Nonetheless, the article does not preclude retrial of a person who was convicted in absentia, meaning that it applies specifically to preventing a second conviction for the same crime rather than the retrial of a person who has not had a fair opportunity to contest their case¹³⁷.

Article 15: Non-Retroactivity of Laws

This article addresses the principle of retroactivity in criminal legislation. The first paragraph is grounded in the principle of *nullum crimen sine lege* and *nulla poena sine lege*, which ensure that no criminal offence may be applied retroactively, meaning that an individual cannot be

¹³³ UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, CCPR/C/GC/32, 23 August 2007, <https://www.refworld.org/legal/general/hrc/2007/en/52583>

¹³⁴ *ibid.*

¹³⁵ UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, CCPR/C/GC/32, 23 August 2007, <https://www.refworld.org/legal/general/hrc/2007/en/52583>

¹³⁶ ICCPR, 1966

¹³⁷ HRC, 2007

convicted for an act that was not criminal at the time it was committed¹³⁸ (see *Weinberger v. Uruguay*, Communication No. 028/1978, U.N. Doc. CCPR/C/11/D/28/1978 (1978) and *Pietraroia v. Uruguay*, Communication No. 044/1979, U.N. Doc. CCPR/C/12/D/44/1979 (1979)). The second paragraph of the article provides for exception, as it allows for the prosecution and punishment of acts that were considered crimes under international law, such as war crimes and crimes against humanity, even if these principles were only later codified in national law¹³⁹. This provision was added in order to address specific concerns related to the prosecution of war crimes and other serious violations of international law, such as those persecuted at the Nuremberg and Tokyo Tribunals post World War II¹⁴⁰. The aim was to ensure that these trials would not be questioned based on the afore mentioned principle of *nullum crimen sine lege*.

Article 16: Recognition as a Person before the Law

Article 16 is a fundamental provision in the Covenant as it establishes the recognition as a person before the law, which is foundational to the enjoyment of all the other rights under the Covenant. The principle of legal personality ensures that individuals cannot be deprived of their human rights and, as non derogable, states cannot suspend this right under any circumstances.¹⁴¹ The specific issues addressed by this article concern birth registration and enforced disappearance, the former which is expressed by the HRC as essential to ensure legal recognition and protection. As a matter of fact, several remote or marginalised communities fail to resort to birth registration systems, which leads to significant human rights issues (see *Congo CCPR/C/COD/CO/3 (2006)*; *Paraguay CCPR/C/PRY/CO/2 (2006)* and *Rwanda CCPR/C/RWA/CO/4 (2016)*). As for the issue of enforced disappearance, it is mentioned that the right to recognition as a person before the law is effectively stripped from the individual in the moment when a person is forcibly disappeared¹⁴². Finally, human trafficking is considered a deprivation of the legal personality of the victim, as the individuals are effectively removed from the protection of the law¹⁴³.

¹³⁸ CCPR, 2021

¹³⁹ Taylor, 2020

¹⁴⁰ *ibid.*

¹⁴¹ CCPR, 2021.

¹⁴² Taylor, 2020.

¹⁴³ *ibid.*

Article 17: Right to Privacy

The right to privacy is provided for in Article 17, and it safeguards the personal sphere, including the home life, family integrity, honour and reputation¹⁴⁴. The article includes the protection of personal information, like telephone communications, correspondence, medical records, as well as DNA¹⁴⁵. Furthermore, protection against arbitrary searches, forced entry, or seizure of personal effects, which are comprise in the home life category protected by the article, is provided. Defamatory statements and false attribution of authorship are also included in the provision¹⁴⁶. Some specific issues that are addressed regard the privacy of consensual sexual activity, which affirms that laws must ensure that such activities are not criminalised, and privacy in state procedures and enquiries, which calls for states to ensure privacy and confidentiality during immigration and other official processes (see *Ngambi v. France* (CCPR/C/81/D/1179/2003))¹⁴⁷. Relevant to this article is the concept of *arbitrary interference*, which, as per stated in comment No. 16 of the Human Rights Committee (1988), refers to any intrusion into an individual's privacy, family, home, or correspondence that is not justifiable under the law.¹⁴⁸ Other provisions aim to ensure data security, confidentiality in professional contexts, privacy in voting and elections and respectful surveillance practices¹⁴⁹. The protection of family life includes the right to live together as a family and maintain regular contact with it, with the primary consideration being the best interests of children, if any¹⁵⁰. The right to privacy at home can be best understood through the case *Rojas Garcia v. Colombia*, a case in which the security of a family were severely compromised due to an unlawful military raid. Rojas filed a complaint about the unlawful entry and abuse, but local

¹⁴⁴ UN Human Rights Committee (HRC), CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988, <https://www.refworld.org/legal/general/hrc/1988/en/27539>

¹⁴⁵ Taylor, 2020

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.*

¹⁴⁸ HRC, 1988

¹⁴⁹ Taylor, 2020

¹⁵⁰ *ibid.*

investigations were inadequate and shelved without resolution¹⁵¹. The violation of Article 17 was determined on the grounds that the raid constituted arbitrary interference with the family's home and the manner of the raid itself, which included an entry through the roof at 2 a.m and verbal abuse, also directed at children, was deemed not justifiable under the circumstances¹⁵² (the raid concerned an investigation into the murder of the mayor, and Rojas' family was later found to be mistakenly targeted). As for the protection of honour and reputation, which falls under this article, mentions the use of false rumours to generate public aversion, elaborating on how state policies and laws could lead to severe infringement on personal reputation (see *El Hojouj Jum'a et al. v. Libya* (Communication No. 1958/2010) regarding Libya's 'Charter of Honour')¹⁵³. Furthermore, reputation can be infringed during the questioning and treatment of post-rape victims, like the case *L.N.P. v Argentina* (U.N. Doc. CCPR/C/102/D/1610/2007 (2011)).

Article 18: Freedom of Thought, Conscience, and Religion

Article 18 relates to the freedom of thought, conscience, and religion. It guarantees the right to hold beliefs of any kind, whether theistic, non-theistic, or atheistic, and protects the freedom to adopt, practice, or change one's religion or belief¹⁵⁴. General Comment No. 22 emphasises that the freedom to manifest religion encompasses the wide range of practices inherent to the religion itself, including worship, observance, and teaching¹⁵⁵. The HRC goes further by saying that state religions or predominant religions should not lead to discrimination against other beliefs¹⁵⁶. The right to conscientious objection is also protected under article 18. As a matter of fact, despite it not being explicitly mentioned in the article, engaging in military service which can involve the use of lethal force can conflict with an individual's freedom of conscience¹⁵⁷. As a result of this link, many

¹⁵¹ Rojas García v. Colombia, Communication No. 687/1996, U.N. Doc. CCPR/C/71/D/687/1996 (2001). Retrieved from <http://hrlibrary.umn.edu/undocs/687-1996.html>

¹⁵² *ibid.*

¹⁵³ Taylor, 2020

¹⁵⁴ *ibid.*

¹⁵⁵ UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30 July 1993, <https://www.refworld.org/legal/general/hrc/1993/en/13375>

¹⁵⁶ *ibid.*

¹⁵⁷ Taylor, 2020

states have often provided for alternative to national service that do not directly require being employed for military service¹⁵⁸ (see *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea*, CCPR/C/88/D/1321-1322/2004).

Article 19: Freedom of Expression

This article guarantees the right to hold opinions without interference and remains absolute and non-derogable. The provision is divided into three paragraphs, each one addressing a specific aspect of this right. The freedom of opinion encompasses the right to hold opinions without interference, as well as the right to change said opinion¹⁵⁹. Therefore, no individual shall suffer under any circumstances impairment of their rights due to their opinions. The first paragraph of Article 19 also protects individuals from any form of coercion that would impair their freedom to hold opinions¹⁶⁰. The meaning of *interference* refers to any kind of entity that may, in fact, interfere with this right. This relates to governments, private entities, or individuals¹⁶¹. General Comment No. 34 also elaborates on this article mentioning that any form of harassment, intimidation or stigmatisation of a person based on their opinions, which may take form in arrests, detentions, and trials is prohibited under Article 19(1)¹⁶². Freedom of expression is also part of the provision. The scope is not only to protect individuals, but also to allow for democracy and societal progress¹⁶³. This right is also elaborated on by the Human Rights Committee, which also mention the role of journalists in this legal framework, establishing that reporters have the right to protect their sources and press restrictions need to be non discriminatory and non transparent¹⁶⁴. Finally, Article 19(3) mentions the conditions under which the right to freedom of expression may be restricted¹⁶⁵. According to General Comment No. 34, such restrictions must be prescribed by law, which means

¹⁵⁸ HRC, 1993

¹⁵⁹ ICCPR, 1966

¹⁶⁰ Taylor, 2020

¹⁶¹ *ibid.*

¹⁶² UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, CCPR/C/GC/34 , 12 September 2011, <https://www.refworld.org/legal/general/hrc/2011/en/83764>

¹⁶³ Taylor, 2020

¹⁶⁴ HRC, 2011

¹⁶⁵ ICCPR; 1966

the law must be sufficiently precise to allow individuals to understand the scope of the restrictions, therefore having to have transparency¹⁶⁶. This requirement ensures that laws do not permit arbitrary power to authorities. Furthermore, restrictions must be proportionate to achieving a legitimate aim, such as protecting national security or public order¹⁶⁷. States are also required to ensure that restrictions do not exceed what is needed to protect these interests, and must demonstrate that their laws align with the Covenant's objectives and non-discrimination principles¹⁶⁸.

Article 20: Prohibition of Propaganda for War and Advocacy of National, Racial, or Religious Hatred

Article 20 mandates States to prohibit by law specific forms of expressions that can have dangerous and discriminatory implications for peace and human rights. It calls for a prohibition of propaganda for war, meaning that it aims at preventing the dissemination of materials or communication that could incite war¹⁶⁹. Furthermore, any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination or violence¹⁷⁰ is prohibited on the grounds that hate speech targets specific groups based on these factors¹⁷¹. The legal interpretation of concepts such as propaganda of war can be best understood as encompassing any deliberate and systematic effort to influence the public opinion in a way that fosters the initiation (or continuation) of belligerency¹⁷². This prohibition is aligned with the UN Charter and further elaborated on in General Comment No.11 of the Human Rights Committee¹⁷³. Additionally, according to the latter, several states are you to provide sufficient information on how they are implementing this Article, elaborating that there is not enough effort in prohibiting these actions¹⁷⁴. The Committee goes

¹⁶⁶ HRC, 2011

¹⁶⁷ Taylor, 2020

¹⁶⁸ *ibid.*

¹⁶⁹ CCPR, 2021

¹⁷⁰ ICCPR, 1966

¹⁷¹ CCPR, 2021

¹⁷² Taylor, 2020

¹⁷³ *ibid.*

¹⁷⁴ UN Human Rights Committee (HRC), General Comment no. 11, Article 20, Prohibition of propaganda for war and inciting national, racial or religious hatred, CCPR/C/GC/11, 29 July 1983, <https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/CCPRGeneralCommentNo11.pdf>

further by adding that advocacy for the sovereign right of self-defence or the right to self-determination and independence, as per described in the UN Charter, is not subject to such prohibitions¹⁷⁵.

Article 21: Freedom of Assembly

This article protects the right to peaceful assembly, which relates to their human right of public expression of views and opinions. This is considered functional for a democratic society and it is emphasised that states have the duty to facilitate the right to peaceful assembly rather than limiting it¹⁷⁶. This right is to be applied domestically and not exclusively to citizens but also aliens within a state's jurisdiction, taking into consideration the elimination of deterrents, such as harassment and/or intimidation¹⁷⁷.

Article 22: Freedom of Association

Article 22 provides for the protection of the freedom of association and supports pluralism in politics, society, culture, on in the economy¹⁷⁸. The scope is explicit as it aims to protect the right of individuals to join associations, including trade unions. This association includes groups with specific purposes and calls for restriction when said groups are threatening of national security, public safety, public order, or public health or morals¹⁷⁹. The right to *not* join an association is also protected by this article. This addition was proposed by a representative from Somalia who specifically suggested that no one may be compelled to join an association¹⁸⁰. A highly relevant case in the context of article 22 is *Farah v. Djibouti*, where the *Mouvement pour le Renouveau Démocratique et le Développement*, which was the opposition political party at the time, was dissolved by the government of Djibouti¹⁸¹. As Djibouti failed to prove that the dissolution was

¹⁷⁵ *ibid.*

¹⁷⁶ Taylor, 2020

¹⁷⁷ *ibid.*

¹⁷⁸ CCPR, 2021

¹⁷⁹ Taylor, 2020

¹⁸⁰ *ibid.*

¹⁸¹ Human Rights Committee. (2020). *Farah v. Djibouti*, Communication No. 3593/2019, U.N. Doc. CCPR/C/130/D/3593/2019. Retrieved from <https://ccprcentre.org/decision/17164>

necessary to address a threat to national security (et alia), thus, dissolving the *Mouvement* was not proportional and comprised of a violation of the Article¹⁸².

Article 23: Right to a Family

The right to a family is established in Article 23 and stands as a significant provision to guarantee family protection. The definition of the family is quite broad in the article and is purposely so. As a matter of fact, the term family wants to encompass the various family structures that may not necessarily coincide with the traditional formal marriage (see *Benjamin Ngambi v. France*, CCPR/C/81/D/1179/2003). The article deals with specific issues such as family separation, the destruction of family homes, and the custody of children. Forced eviction, for instance, is considered as a severe form of interference with family life, such as was the *Chiti v. Zambia* case (CCPR/C/105/D/1303/2004), where the family has been illegally evicted from their home, causing the loss of personal documents and possessions. Mr Chiti was arrested, tortured, and put into prolonged detention, leading to the separation from his family and the consequent disruption of it¹⁸³.

Article 24: Protection Required for Children

Article 24 of the ICCPR underlines the importance of safeguarding children's right by understanding their specific vulnerabilities compared to adults. The article was introduced to align with the principles set forth by the Declaration of the Rights of the Child of 1959 and to ensure that children are protected under international law¹⁸⁴. The article mandates that all states take the necessary measures to protect children and extends to promoting the right of children to be free from abuse, exploitation and discrimination¹⁸⁵. The specific provision called for in this article are: non-discrimination, registration and identity, and the right to nationality¹⁸⁶. The Committee has expressed great concern over child labour practices and is addressed under this article. The exploitation of children is also a violation of article 8, as it deprives children of their rights to

¹⁸² *ibid.*

¹⁸³ *Chiti v. Zambia*, Communication No. 1303/2004, U.N. Doc. CCPR/C/105/D/1303/2004 (2012). Retrieved from <https://www.globalhealthrights.org/wp-content/uploads/2015/04/Joyce-Nawila-Chiti-v-Zambia.pdf>

¹⁸⁴ CCPR, 2021

¹⁸⁵ *ibid.*

¹⁸⁶ Taylor, 2020

education, health, and a safe environment¹⁸⁷. Children are also highly vulnerable to sexual exploitation, including prostitution, pornography, and sexual abuse (Djibouti CCPR/C/DJI/CO/1 (2013)). The committee has raised concerns about the prevalence of these abuses, as was the case of Japan, which was recommended to raise the age of sexual consent from 13 years to better protect the children from sexual exploitation and abuses¹⁸⁸. The use of children in armed conflict is also addressed in this article. Countries like Yemen, Congo, and Sudan involve children in military activities, consequence of which is the Committee calling for an urgent disarmament¹⁸⁹. The treatment of children in detention is protected under the article, and mandates that age-related needs are considered when minors are detained, segregating them from adults and calling for a need for quicker adjudication. Additionally, the provision establishing the obligation for states to ensure that every child afforded legal recognition serves as a further safeguard for children as it plays a fundamental role in reducing the risks associated with the abduction, sale, or trafficking¹⁹⁰. Finally, the right to nationality of every child is mentioned in the article, which, as per specified in General Comment No. 17, does not call for an obligation to the States to grant nationality to every child born in their territory (*ius soli*), but rather calls for a cooperation between the community of nations to ensure that every child does, in fact, have a nationality from the moment they are born¹⁹¹.

Article 25: Electoral Rights

This right is excluded to citizens and ensures their right to participate in public affairs and have legislative and executive roles without any form of discrimination¹⁹². This provision stands as an indicator of democratic health, and it is not limited to a specific political system, allowing for flexibility of other systems to take place. This is strictly aligned with the principle of self determination afore mentioned and aims to support the other freedoms, like the freedom of

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid.*

¹⁹⁰ *ibid.*

¹⁹¹ UN Human Rights Committee (HRC), CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, <https://www.refworld.org/legal/general/hrc/1989/en/37603>

¹⁹² CCPR, 2021

expression and of assembly and the prohibition of abuse of rights. Relevant case law is the *Nasheed v. Republic of Maldives*, where Mr. Nasheed was forced to resign due to threats of violence from political opponents. This was a clear violation of the article which was accompanied by further breaches, like political disqualification, unlawful judicial proceedings, lack of due process, and the politically motivated arrest¹⁹³.

Article 26: Equality Before the Law

Article 26 protects the principles of equality before the law and equal protection of the law, mandating that all individuals are entitled to equal treatment and protection against discrimination. This provision requires states to ensure that laws are applied impartially and prohibits any form of discrimination on grounds such as race, sex, language, religion, political opinion, national origin, or other status¹⁹⁴. It imposes both negative duties, meaning that it requires states to refrain from discriminatory practices, and positive duties, mandating the enactment of legislation to prevent and address discrimination in an efficient manner¹⁹⁵. The Human Rights Committee's General Comment No.18 elaborates on the principle of non discrimination and on the scope of the article, establishing that it provides for a general right to equality before the law and mandates that all individuals are entitled to an effective protection against discrimination¹⁹⁶, whether direct or indirect¹⁹⁷ (see *Gueye et al. v. France* (CCPR/C/35/D/196/1985)).

Article 27: Rights of Individuals Belonging to Minorities

Article 27 represents a significant advancement in the protection of minority rights. It explicitly ensures that individuals belonging to ethnic, religious, and linguistic minorities enjoy

¹⁹³ *Nasheed v. Republic of Maldives*, Communication No. 2851/2016, U.N. Doc. CCPR/C/122/D/2851/2016 (2016). Retrieved from <https://ccprcentre.org/decision/16863>

¹⁹⁴ Taylor, 2020

¹⁹⁵ *ibid.*

¹⁹⁶ UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, 10 November 1989, <https://www.refworld.org/legal/general/hrc/1989/en/6268>

¹⁹⁷ The distinction between direct and indirect discrimination is elaborated upon by the *Equality and Human Rights Commission*, an independent equality and human rights regulator. Direct discrimination occurs when an individual is treated less favourably due to a specific characteristic, which may be based on race, gender, disability, or religion. Indirect discrimination refers to a policy, a practice, or a rule that disproportionately disadvantages individuals with a specific characteristic (EHRC, 2019)

their culture, practice their religion, and use their language¹⁹⁸. This provision requires states to take both preventive and positive measures to protect these rights, extending its scope to include non-nationals such as migrants and temporary visitors¹⁹⁹. Article 27 serves as a further provision for the legal recognition and protection of minority rights, addressing issues such as discrimination, land rights, and representation in decision-making processes²⁰⁰. The Human Rights Committee has acknowledged that while regulating economic activities typically falls under state jurisdiction, these activities may invoke Article 27 if they are central to the culture of an ethnic community. Cases such as *Lovelace v. Canada* and *Chief Ominayak and the Lubicon Lake Band v. Canada* are relevant in the context of indigenous groups²⁰¹. The use of one's language, names, and educational opportunities in one's mother tongue are also recognised as minority rights and are protected under this article²⁰².

Parts IV to VI (Articles 28-53) of the Covenant address the monitoring and technical aspects essential for its implementation²⁰³. Part IV, spanning Articles 28 to 45, establishes the Human Rights Committee as the body responsible for overseeing the Covenant's application. It details the Committee's structure, functions, and procedural rules²⁰⁴. Part V, covered by Articles 46 and 47, includes provisions related to the United Nations Charter and the inherent rights of peoples to their natural wealth and resources, ensuring that these rights are not undermined²⁰⁵. Finally, Part VI, comprising Articles 48 to 53, outlines the procedural aspects for treaty ratification, notification, and amendments. Article 50 specifically ensures that the Covenant's provisions apply uniformly across all levels of federal states, affirming that federal authorities must ensure compliance throughout their territory, regardless of internal divisions of power²⁰⁶.

¹⁹⁸ ICCPR, 1966

¹⁹⁹ Taylor, 2020

²⁰⁰ *ibid.*

²⁰¹ *ibid.*

²⁰² *ibid.*

²⁰³ Office of the High Commissioner for Human Rights. (2005, May 1). *Droits civils et politiques: Le Comité des droits de l'homme* (Fiche d'information N° 15, Rév. 1). <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet15rev.1fr.pdf>

²⁰⁴ *ibid.*

²⁰⁵ *ibid.*

²⁰⁶ *ibid.*

II.III International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) completes the International Bill of Rights and aims to protect social and economic rights. The monitoring body is the Committee on Economic, Social, and Cultural Rights. Saul et al.'s (2014) and Zanghi's (1979) commentaries complement the research inherent to the Covenant.

Article 1: The Right to Self-Determination and Article 25: Preservation of the Right

Also known as the *common article*, it voices the same right voiced in the ICCPR (Art. 1)²⁰⁷. It empowers peoples to freely determine their political status and pursue their economic, social, and cultural development²⁰⁸. Additionally, it grants peoples the authority to dispose of their natural wealth and resources for their own benefit, while ensuring they are not deprived of their means of subsistence²⁰⁹. This provision builds upon principles established in earlier resolutions, such as the Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514/XV)²¹⁰. Article 1's focus on collective rights is somewhat unique in a framework predominantly concerned with individual rights but serves to protect essential livelihoods and promote political and economic self-governance²¹¹. Article 25 of the ICESCR reinforces Article 1 by asserting that nothing in the Covenant should impair the inherent right of all peoples to fully and freely enjoy and utilize their natural wealth and resources²¹².

Article 2: Progressive Realisation of the Covenant and Article 3: Gender Equality Clause

Article 2 outlines a framework for the *progressive* realisation of economic, social, and cultural rights, which significantly marks the difference from the *immediate* obligations found in the

²⁰⁷ Consequently, ref. to the explanation given earlier in the section dedicated to the ICCPR.

²⁰⁸ ICESCR, 1966

²⁰⁹ *ibid.*

²¹⁰ Zanghi, 1979

²¹¹ *ibid.*

²¹² Saul, Ben, David Kinley, and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, 1 (2014; online edn, Oxford Academic), <https://doi.org/10.1093/law/9780199640300.001.0001>

ICCPR. This article requires States Parties to undertake steps, using "all appropriate means, including particularly the adoption of legislative measures,"²¹³ to progressively achieve these rights. The choice of the word progressive is a consequence of an understanding that immediate full compliance might be impractical, especially for developing nations. This approach recognises the varying capabilities of states and allows for flexibility in achieving these rights based on available resources²¹⁴. The drafting process in the early 1960s saw extensive debate, with delegates from different nations emphasising the need for a differentiated approach to the obligations associated with economic, social, and cultural rights compared to civil and political rights²¹⁵. This flexibility was intended to accommodate the diverse conditions and resources of states while still promoting significant efforts towards these goals²¹⁶. The non discrimination clause is found in the second paragraph of the article, which has the same value as the one found in the ICCPR, and Article 3 further supports gender equality in the context of the protection of rights established in the Covenant. However, the third paragraph permits special measures that differentiate between national and non nationals for developing countries. This provision was added in order to help newly independent states manage their economic legacies of colonialism and aims to rectify economic imbalances²¹⁷.

Article 4: Permissible Limitations

Article 4 serves as a limitation clause and is the primary mechanism through which States can justify limitations on rights protected by the Covenant. These limitations must adhere to specific criteria and need to be implemented for the overall welfare of the citizens²¹⁸. Any restriction should not be arbitrary but rather codified in national laws, meaning that restrictions cannot be imposed based on informal ad hoc decisions. Furthermore, the law, though limiting of the Covenant, still must align with the overall objectives and provisions of the ICESCR²¹⁹.

²¹³ ICESCR, 1966

²¹⁴ Saul, 2014

²¹⁵ *ibid.*

²¹⁶ *ibid.*

²¹⁷ *ibid.*

²¹⁸ *ibid.*

²¹⁹ Amrei Müller, Limitations to and Derogations from Economic, Social and Cultural Rights, *Human Rights Law Review*, Volume 9, Issue 4, 2009, Pages 557–601, <https://doi.org/10.1093/hrlr/ngp027>

Article 5: Prohibition of Abuse of Rights

Shared common article with the ICCPR²²⁰. It ensures that rights cannot be used to undermine other rights and prohibits using the Covenant to reduce existing national protections. Article 24 complements it as it stipulates that the Covenant must not be interpreted in a way that impairs the UN Charter or the constitutions of UN organs and specialised agencies that address ICESCR-related matters²²¹.

Article 6: The Right to Work

This Article emphasises the fundamental right to work and acknowledges it as a human right. This right includes both the right to seek employment and the right to accept work under conditions that respect individual autonomy²²². As a way to safeguard the right, the Covenant calls State Parties to take appropriate measures to protect this right, which means enacting and enforcing legislations that ensures individuals to gain a livelihood through work that they have freely chosen or accepted²²³. General Comment No. 18 from the Committee on Economic, Social, and Cultural Rights (CESCR) further elaborates on the article, defining the forms of work covered. As a matter of fact, it encompasses all forms of work, from independent to dependent²²⁴. Furthermore, fair remuneration and ensuring the ability for workers to provide for themselves and their families, which aligns with Article 7, is also mentioned²²⁵. This provision is linked to the labor standards developed by the ILO, as the many conventions and recommendations stipulated by it have offered specific guidelines and standards regarding labor practices²²⁶. The role of the ILO was significant in complementing the provisions of Article 6 and CESCR's Comment gives a more elaborate

²²⁰ ref. to ICCPR Art.5

²²¹ Saul, 2014

²²² Zanghì, 1979

²²³ *ibid.*

²²⁴ UN Economic and Social Council, General Comment No. 18: The Right to Work (Art. 6 of the Covenant), E/C.12/GC/18, UN Committee on Economic, Social and Cultural Rights (CESCR), 6 February 2006, <https://www.refworld.org/legal/general/cescr/2006/en/32433> [accessed 17 August 2024]

²²⁵ *ibid.*

²²⁶ Saul, 2014

explanation on ILO's contribution. As an example, the ILO Convention No. 158 inherent to the termination of employment establishes the principles regarding the valid grounds for termination and provides for ways to redress in cases of unjustified dismissal²²⁷. Furthermore, Convention No. 111 concerning discrimination in the context of employment and occupation ensure that all individuals have access to work regardless of their social condition²²⁸. Both these Convention align closely with Article 6 and have been of great contribution to its stipulation²²⁹.

Article 7: Conditions of Work

This Article aims to provide just and favourable conditions of work. It mentions fair remuneration, which ought to be able to provide a living for the worker, safe and healthy working conditions and the right to rest²³⁰. In order to ensure fair remuneration, the Article calls all states to establish a fair minimum wage to set the standards in the matter. However, the Article does not mention any means or mechanisms to achieve that, leaving it to the discretion of the State Parties²³¹. On this note, the CESCR has been concerned with the methods used (or rather, not used as not established) by certain States on circumventing the respect of this right, As a matter of fact, several State Parties have been criticised for setting the minimum wage salary way below the average salary, which is counterproductive in achieving the goal of just conditions of work²³². In this context, ILO's Convention No. 131 on Minimum Wage Fixing is relevant as the CESCR calls on States for the ratification on it²³³. The Convention sets out the elements to take into consideration when setting a minimum wage and calls for inspections to monitor the implementation of such practices²³⁴. The second paragraph of Article 7 concerns the safety and health of working

²²⁷ International Labour Organization (ILO), C158 - Termination of Employment Convention, 1982, No.158, 22 June 1982, <https://www.refworld.org/legal/agreements/ilo/1982/en/122499> [accessed 17 August 2024]

²²⁸ International Labour Organization (ILO), C111 - Discrimination (Employment and Occupation) Convention, 1958, No.111, 25 June 1958, <https://www.refworld.org/legal/agreements/ilo/1958/en/9383> [accessed 17 August 2024]

²²⁹ Saul, 2014

²³⁰ ICESCR, 1966

²³¹ Saul, 2014

²³² *ibid.*

²³³ *ibid.*

²³⁴ International Labour Organization (ILO), C131 - Minimum Wage Fixing Convention, 1970, No.131, 22 June 1970, <https://www.refworld.org/legal/agreements/ilo/1970/en/122496> [accessed 17 August 2024]

conditions. As per the previous provisions, the ILO played a role in determining the standards of occupational health and safety thanks to its vast inventory of Conventions regarding exactly this matter (i.e. Convention No. 155 on Occupational Health and Safety; Convention No. 161 on Occupational Health Services 1985; Convention No. 187 on Promotional Framework for Occupational Safety and Health Convention)²³⁵. There is, however, a wide range of other international agencies that set the standards on the matter, like the World Health Organisation (WHO), UNEP, and FAO. Throughout the reports, the CESCR has express several concerns inherent to unsafe working conditions related to occupational accidents, some related to the use of out-of-date technology, a lack of protection for workers, inadequate clothing, lack of training, and the exposure to hazardous substances²³⁶. As a consequence, the CESCR has recommended, in General Comment No. 23, the requirement for actions in response to accidents and disease, including grievance mechanisms and adequate compensation²³⁷. The right to rest is protected under Article 7 and stands as a result of the labour movement fighting for the reduction of working hours and set the standard of the eight-hour working day limit²³⁸. The focus of the CESCR has mainly been on excessive working hours and unpaid overtime work²³⁹. Additionally, Recommendation No. 116 of the ILO, as Saul (2014) mentions, encourages states to meet the forty-hours a week standard and to take ‘immediate steps’ if the working hours exceed forty eight hours, ensuring that this does not result in any reduction in the wages of the workers²⁴⁰.

Article 8: Trade Union Rights

²³⁵ Saul, 2014

²³⁶ *ibid.*

²³⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, <https://www.refworld.org/legal/general/cescr/2016/en/122360> [accessed 17 August 2024]

²³⁸ Saul, 2014

²³⁹ CESCR, Concluding Observations: Paraguay, E/C.12/PRY/CO/3 (4 January 2008). Retrieved from: <https://www.refworld.org/policy/polrec/cescr/2008/en/53154>

²⁴⁰ International Labour Organization. (1962). *Reduction of hours of work recommendation* (No. 116). Geneva: International Labour Organization. Retrieved from https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312454:NO

Article 8 relates to the rights inherent to trade union and gives everyone the right to form one and the right to strike²⁴¹. Restrictions may be imposed on specific beneficiaries, like the armed forces or the state administration²⁴². The influence from the USSR can be clearly seen in this article, specifically to the right of trade unions to function freely²⁴³. As a matter of fact, the CESCR has often express concerns on the interference of states in the operations and the management of said unions²⁴⁴. The activities inherent to trade unions and their functioning are protected under this article, which also protects various forms of strikes against anti union discrimination²⁴⁵. The restrictions to the right to strike and to form trade union has been object of debates, and it applies to military personnel, police, and the state administration. As a matter of fact, while it is true that a strike from these categories would affect the functioning of a nation, the right to form a trade union could severely impact the respect for the fundamental rights of the individuals making part of said categories, including, but not limited to, a violation of afore mentioned Article 22 of the ICCPR ²⁴⁶.

Article 9: The Right to Social Security

The right to social security is provided for in Article 9. The minimum standards for social security are found in Convention No. 102 of the ILO, which requires state parties to comply with certain general obligations and have at least three of the nine services of social security: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors' benefit²⁴⁷. As per the previous case above mentioned, the ILO has set the standards for the drafting of the Article and contributed heavily in recognising social security as a human right²⁴⁸. General Comment No. 19 (GC 19) of the

²⁴¹ ICESCR, 1966

²⁴² Zanghì, 1979

²⁴³ Saul, 2014

²⁴⁴ CESCR, Concluding Observations: Egypt, E/C.12/1/Add.44 (23 May 2000), and Kenya, E/C.12/KEN/CO/1 (1 December 2008) as per cited in *ibid.*

²⁴⁵ Saul, 2014

²⁴⁶ *ibid.*

²⁴⁷ International Labour Organization (ILO), C102 - Social Security (Minimum Standards) Convention, 1952, No.102, 28 June 1952, <https://www.refworld.org/legal/agreements/ilo/1952/en/122537> as per cited in Saul, 2014

²⁴⁸ Saul et al., 2014

CESCR elaborates expressing its concerns on the lack of achievement of realisation of social security in several state parties, noting particular importance of access to healthcare in areas affected by endemic disease such as HIV/AIDS, tuberculosis, and malaria²⁴⁹. Furthermore, ensuring access to a social security scheme that will enable individuals and families to acquire basic health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education²⁵⁰ is considered as a core obligation, among many others relating to non-discrimination, the extent of realisation of the right, and monitoring of the implementation of the same²⁵¹.

Article 10: The Rights of Families, Mothers and Children

This Article regards the right of families to be protected and provides for special protective measures of mothers and children²⁵². As a first issue, the meaning of *family* may differ from country to country and, as a consequence of this, the Committee has mentioned several times the recognitions of the diversity of the concept of family, adding that marriage itself is not essential to its notion²⁵³. The contexts which are relevant in the context of this Article are many, such as the issue of domestic violence, problem which has been mentioned as a subject of concern by the CESCR. This issue arises under the observed Article and what is's called for is a system that encourages reporting, accompanied by a legislative reform that would create a specific offence for domestic violence and broaden the definition of rape²⁵⁴. The issue of sexual slavery, marriage trafficking, and human trafficking are also fought against under this clause. A further problem which may arise in this context is the protection of the family during an armed conflict. The obligation to protect the family is further supported by International Humanitarian Law (IHL), which, specifically referring to the Fourth Geneva Convention, requires states involved in a conflict to enable communication between the members and to reestablish contact between dispersed

²⁴⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), E/C.12/GC/19, 4 February 2008, <https://www.refworld.org/legal/general/cescr/2008/en/41968>

Ibid.

²⁵¹ *ibid.*

²⁵² ICESCR, 1966

²⁵³ Saul et al., 2014

²⁵⁴ *ibid.*

ones²⁵⁵, which involved the use of services of the International Committee of the Red Cross and national Red Cross and Red Crescent Societies²⁵⁶. Evidently, provision and access to family benefits is ensured under this Article and is strictly related to the previous Article inherent to access to social security²⁵⁷. As a matter of fact, regardless of the form in which the benefit is given, the CESCR calls States to take measures to ensure adequate standards of living for all families²⁵⁸, and has expressed concern on the insufficiency of childcare benefits to cover the costs of raising a child²⁵⁹. Assistance to childcare, which has been a matter of concern of the Committee given the lesser amount of child day care institutions, has also been put into consideration as it relates not only to the development and the protection of an adequate upbringing for the child, but also enhances the participation of women in the labour market²⁶⁰. The protection of mothers provisioned for in the article, and relates to maternity leave, maternity benefits and overall protection for the women experiencing the stages of motherhood²⁶¹.

Article 11: The Right to an Adequate Standard of Living and the Right to Food

As for the right to an adequate standard of living, Article 11 deals with the matter. The Article clearly mentions the necessity of ensuring access to adequate food, clothing and continuous improvement of living conditions²⁶². Furthermore, the Covenant calls all State Parties to adopt measures to reduce hunger and makes specific recommendations to achieve this goal, namely, improving the methods of production and reforming agrarian systems to achieve the most efficient development of natural resources, as well as using scientific knowledge inherent to the basic

²⁵⁵ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 75 UNTS 287, 12 August 1949, <https://www.refworld.org/legal/agreements/icrc/1949/en/32227>

²⁵⁶ Saul, 2014

²⁵⁷ *ibid.*

²⁵⁸ *ibid.*

²⁵⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding observations: Ireland, E/C.12/1/Add.35, 14 May 1999, <https://www.refworld.org/policy/polrec/cescr/1999/en/35387>

²⁶⁰ Saul, 2014

²⁶¹ *ibid.*

²⁶² ICESCR, 1966

principles of nutrition²⁶³. As a consequence, food security was central to the drafting of this Article²⁶⁴. On this note, the Food and Agriculture Organisation (1) had an important role as FAO's Voluntary Guidelines to support the progressive realisation of the right to adequate food²⁶⁵ in the context of national food security have been extensively used as a framework of the methods which need to be used to achieve the goal of food security²⁶⁶. The right to food is present in several national legal systems. The case *People's Union for Civil Liberties v Union of India* is a landmark case on this matter as the Supreme Court explicitly established a constitutional human right to food and determined a basic nutritional floor for India's impoverished millions, and incorporated the right to food to the right to life²⁶⁷. In addition, the right to water is also protected as the right to have sufficient, safe, acceptable and affordable water is a human right²⁶⁸. This is of fundamental importance in the context of water being necessary for reducing the risk of death, disease, and domestic hygienic requirements²⁶⁹.

Article 12: The Right to Health

The right to health is protected by Article 12 and includes the right to control one's health and body, including sexual and reproductive freedom, as well as the right to be free from interference, non-consensual medical treatment, and experimentation²⁷⁰. The socio economic context is also taken into consideration as this right can be fully achieved when factors are favourable to the realisation of it²⁷¹. Access to water, sanitation, nutrition, housing, and education

²⁶³ *ibid.*

²⁶⁴ Saul, 2014

²⁶⁵ Food and Agriculture Organisation of the United Nations. (2004). Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security (127th Session, November 2004).

²⁶⁶ Saul, 2013

²⁶⁷ Birchfield, Lauren, and Jessica Corsi. "The Right to Life Is the Right to Food: People's Union for Civil Liberties v. Union of India & Others." *Human Rights Brief* 17, no. 3 (2010): 15-18.

²⁶⁸ Saul et al., 2014

²⁶⁹ *ibid.*

²⁷⁰ UN Economic and Social Council, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), E/C.12/2000/4, UN Committee on Economic, Social and Cultural Rights (CESCR), 11 August 2000, <https://www.refworld.org/legal/general/cescr/2000/en/36991>

²⁷¹ Saul et al., 2014

are all protected under the right as, according to the World Health Organisation, the health of the population does not solely related to the access to medical care, but it also comprises of the cultural, political, and social conditions of the individuals²⁷². Furthermore within this Article, the access to essential medicines has been a matter of great concern, and the CESCR has stated that State parties have an obligation to prevent unreasonably high costs for access to essential medicines²⁷³.

Article 13 and Article 14: The Right to Education

Education is protected under Articles 13 and 14, and General Comments 13 and 11 ought to be understood complementarily in this context. The importance of education is recognised throughout the UN system and the UN Educational, Scientific and Cultural Organisation (UNESCO) considers it as indispensable for the dignity of man²⁷⁴. The two articles form a foundational framework for the right to education. Article 13 outlines educational rights, including the right to a free and compulsory primary education, the necessity of non-discriminatory access, and the protection of academic freedom²⁷⁵. It mandates that education must be available, accessible, acceptable, and adaptable, ensuring that it fosters the full development of the human personality and respect for human rights²⁷⁶. States must also respect parental rights in choosing educational institutions, provided these meet established minimum standards²⁷⁷. Article 14 complements the article as it addresses the need for states that have not yet achieved free and compulsory primary education to adopt an efficient plan of action²⁷⁸. General Comment No. 13 elaborates on these

²⁷² World Health Organization. (2010). A conceptual framework for action on the social determinants of health. World Health Organization. <https://iris.who.int/handle/10665/44489>

²⁷³ UN Economic and Social Council, General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant), E/C.12/GC/17, UN Committee on Economic, Social and Cultural Rights (CESCR), 12 January 2006, <https://www.refworld.org/legal/general/cescr/2006/en/39826>

²⁷⁴ Saul et al., 2014

²⁷⁵ *ibid.*

²⁷⁶ UN Economic and Social Council, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), E/C.12/1999/10, UN Committee on Economic, Social and Cultural Rights (CESCR), 8 December 1999, <https://www.refworld.org/legal/general/cescr/1999/en/37937>

²⁷⁷ *ibid.*

²⁷⁸ ICESCR, 1966

obligations, saying that education must not only be available but also inclusive, non-discriminatory, and respectful of the rights of all children²⁷⁹. General Comment No. 11 builds on this by focusing specifically on the implementation of Article 14. The plan, which focuses on achieving free and accessible primary education, must be inclusive of all stakeholders and incorporate clear targets and timelines to track progress²⁸⁰.

Article 15: Cultural Rights

Article 15 protects the right of everyone to participate in cultural life, benefit from scientific progress, and protect their intellectual property²⁸¹. It mandates that states support the conservation, development, and dissemination of culture and science while respecting the essential freedom for scientific research and creative activities²⁸². States are also encouraged to foster international cooperation in these fields. This article is particularly relevant in the context of preservation of minorities and indigenous groups. General Comment no. 21 expressed the legal obligation to recognise and respect minority cultures as they are vital components of the national identity and ensure their development and inclusion the process of societal integration²⁸³. The cultural identities of migrants also ought to be protected under article 15²⁸⁴.

Articles 16 to 25: Reporting and Monitoring of the ICESCR

Articles 16 to 25 deal with the monitoring system of the Covenant. States that are parties to the Covenant are required to submit reports detailing the measures taken and progress made in ensuring the rights recognised in the Covenant²⁸⁵. These reports are submitted to the UN Secretary-

²⁷⁹ ECOSOC, 1999

²⁸⁰ UN Economic and Social Council, General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant), E/1992/23, UN Committee on Economic, Social and Cultural Rights (CESCR), 10 May 1999, <https://www.refworld.org/legal/general/cescr/1999/en/8359>

²⁸¹ ICESCR, 1966

²⁸² *ibid.*

²⁸³ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21, 21 December 2009, <https://www.refworld.org/legal/general/cescr/2009/en/83710>

²⁸⁴ *ibid.*

²⁸⁵ ICESCR, 1966

General, who forwards them to the Economic and Social Council (ECOSOC) and, where relevant, to specialised agencies, which are to receive progress reports and can forward these, along with State reports, to the Commission on Human Rights for further study and recommendations²⁸⁶. States and agencies can also comment on these recommendations. Additionally, ECOSOC may submit periodic reports with general recommendations to the UN General Assembly and highlight issues to other UN bodies to support effective implementation of the Covenant.²⁸⁷

Articles 26 to 31: Ratification and Accession

The last section of the ICESCR explains how states can sign, ratify, or accede to the Covenant. It enters into force three months after the 35th instrument of ratification or accession is deposited. Amendments can be proposed by any State Party and require approval by the UN General Assembly and a two-thirds majority to take effect. The Covenant applies uniformly across all parts of federal states²⁸⁸.

II.IV International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted in 1965 by the General Assembly as a result of the mounting international concern over racial discrimination²⁸⁹. It mandates state parties to outlaw racial discrimination and promote equality across political, economic, social, and cultural spheres. Thornberry's (2016) commentary thoroughly elaborates on the Convention.

Article 1: Definition of Racial Discrimination

This Article outlines the definition of racial discrimination that must be considered throughout the Convention. Since equality and non-discrimination are fundamental to human rights

²⁸⁶ *ibid.*

²⁸⁷ *ibid.*

²⁸⁸ *ibid.*

²⁸⁹ Office of the High Commissioner for Human Rights. *Background of the convention*. United Nations. Retrieved from <https://www.ohchr.org/en/treaty-bodies/cerd/background-convention>

law (as established by the UDHR), the CERD incorporates the definition of discrimination in its first article. This definition describes discrimination as an unjust distinction or exclusion against a person or group²⁹⁰. Discrimination can be intentional and may also be understood as indirect, according to the definition provided by EHR (2019). The Convention specifically refers to discrimination on the grounds of race, descent, and national or ethnic origin²⁹¹. It distinguishes between these two: discrimination based on race and discrimination based on descent, the latter of which may involve distinctions related to an individual's or group's social strata. Such distinctions can impair the full enjoyment of human rights for the affected individuals or groups²⁹².

Article 2: Obligations to Eliminate Racial Discrimination

This Article is fundamental as it sets out the obligations which State parties are to undertake in order to end racial discrimination. It calls State to not discriminate and specifically address the verticality of this obligation throughout all levels government, referring to state generated racial discrimination²⁹³. In light of this, the discrimination of any organs of State also extends to actors backed by the State, which aims to prevent individuals who are engaged in racial discrimination to get the official support of the State²⁹⁴. Furthermore, corporations, as considered legal persons, are also subject to this clause. As a matter of fact, as Thornberry (2016) mentions, corporations have been under scrupulous watch of the Committee on the Elimination on Racial Discrimination (CERD), especially on the matters of resource exploitation²⁹⁵. Additionally, reviewing legislation is also mentioned in the Article. As a matter of fact, state supported discrimination is often extended to law and this is to be subjected to review in order for it to align with the human rights law framework²⁹⁶. This provision therefore calls for not only a review of the current legislation but also

²⁹⁰ Thornberry, P. (2016). *The International Convention on the Elimination of All Forms of Racial Discrimination: A commentary*. Oxford University Press.

²⁹¹ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965, <https://www.refworld.org/legal/agreements/unga/1965/en/13974>

²⁹² Thornberry, 2016

²⁹³ *ibid.*

²⁹⁴ Lerner, Natan, *The UN Convention on the Elimination of All Forms of Discrimination* (Brill/Nijhoff, reprint revised by Natan Lerner, 2015). As per cited in *ibid.*

²⁹⁵ Thornberry, 2016

²⁹⁶ *ibid.*

the implementation of new law that combats racial discrimination. This may also take the form of non specific legislation, such as laws against defamatory statements, which covers racist statements²⁹⁷. Awareness campaigns and educational initiatives may be used to complement the legislation and further the efforts to combat racial discrimination.

Article 3: Segregation and Apartheid

Article 3 stands out as a critical provision in the human rights legal framework aimed at combating racial discrimination. The article prohibits any form of racial segregation and apartheid, marking them as contrary to the principles of equality and non-discrimination²⁹⁸. It represents a powerful statement against institutionalised racial segregation and apartheid, describing these practices as violations of fundamental human rights. The term *segregation* in Article 3 relates to both *de jure* and *de facto* practices that result in the separation of individuals based on race²⁹⁹, while *apartheid* refers specifically to the extreme, systematic racial segregation and oppression³⁰⁰, as is evident in South Africa's historical context. The article reflects the international community's condemnation of such practices and underscores the obligation of State parties to prevent and eliminate all forms of racial segregation and apartheid³⁰¹. This provision was elaborated in response to the South African apartheid regime and stands as a testament to the international consensus on the impermissibility of racially discriminatory practices³⁰².

Article 4: Racist Hate Speech

Article 4 serves as the core provision for addressing racist hate speech through penal measures. CERD interprets racist hate speech as a form of expression that undermines human

²⁹⁷ *ibid.*

²⁹⁸ *ibid.*

²⁹⁹ Legal Information Institute. *Segregation*. Cornell Law School. Retrieved August 22, 2024, from <https://www.law.cornell.edu/wex/segregation>

³⁰⁰ Baldwin, C. (2021, July 9). Human Rights Watch responds: Reflections on apartheid and persecution in international law. Blog of the European Journal of International Law. Human Rights Watch. <https://www.hrw.org/news/2021/07/09/human-rights-watch-responds-reflections-apartheid-and-persecution-international-law>

³⁰¹ ICERD, 1965

³⁰² Thornberry, 2016

dignity and equality, seeking to degrade the social standing of individuals or groups³⁰³. Article 4 mandates that States parties criminalise all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and acts of violence or incitement to such acts against any race or ethnic group. Additionally, it requires the prohibition of racist organisations³⁰⁴. General Recommendation 35 further elaborates on Article 4, recommending that States criminalise not only direct incitement to racial hatred and violence but also expressions of racial superiority or insults when they amount to incitement³⁰⁵. It is noted that criminalisation should be reserved for serious cases, with the principle of legality, proportionality, and necessity guiding the application of sanctions³⁰⁶. The recommendation also highlights the importance of contextual factors, such as the content and form of speech, the status of the speaker, and the potential impact on targeted groups, in determining the severity and criminality of hate speech³⁰⁷. While the suppression of hate speech is critical, GR 35 underscores that freedom of expression remains a human right, not only to articulate other rights but also to empower vulnerable groups and promote intercultural understanding³⁰⁸. Thus, Article 4 and related provisions within the Convention are not just about suppression but also about ensuring that freedom of expression serves to counterbalance hate speech and support the rights of those targeted by such speech³⁰⁹.

Article 5: Equality in Guarantee

Article 5 promotes for the guarantee of human rights to every individual regardless of their race, nationality, descent, or origin. This filters the enjoyment of the civil and political rights enshrined in the ICCPR and the economic, social and cultural rights promoted by the ICESCR. Although both Covenants were adopted one year after the Convention, the principles they support were already part of the broader international human rights framework being developed at the time,

³⁰³ UN Committee on the Elimination of Racial Discrimination (CERD), General recommendation No. 35 : Combating racist hate speech, CERD/C/GC/35, 26 September 2013, <https://www.refworld.org/legal/general/cerd/2013/en/101142>

³⁰⁴ Thornberry, 2016

³⁰⁵ CERD, 2013

³⁰⁶ *ibid*

³⁰⁷ *ibid.*

³⁰⁸ *ibid.*

³⁰⁹ Thornberry, 2016

through the Universal Declaration of Human Rights. ICERD's Article 5 therefore incorporates these principles within the specific context of combating racial discrimination and substantially support the international protection of human rights law.

Article 6 and 7: Protection against Discrimination

Article 6 mandates States parties to provide effective protection and remedies against racial discrimination through national tribunals and institutions, including the right to seek reparation for damages, while Article 7 mandates States Parties to adopt measures in education, culture, and information to combat racial prejudices and promote understanding among different racial and ethnic groups³¹⁰. The establishment, as well as the functions of the CERD are set out in the second section of the Convention, which also details its composition, election process, and other administrative matters. Furthermore, the third section addresses the procedural aspects of ICERD, including how states can become parties through signing, ratification, or accession, and sets the conditions for entry into force³¹¹. It regulates reservations, withdrawals, and dispute resolutions. The section also allows for revisions of the Convention and describes the administrative responsibilities of the UN Secretary-General in managing and communicating key actions related to the Convention³¹².

II.V Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The issue of the discrimination of women has long been an issue inherent to human rights. When in 1948 the UDHR was adopted, the responsibility for women's development was given to the Commission on the Status of Women (CSW) which was a separate body of the ECOSOC³¹³. CSW was of fundamental importance in ensuring equal rights between men and women and although the two Covenant had extensively mentioned gender equality, there was a need for an

³¹⁰ ICERD, 1965

³¹¹ Tanaka, A., Nagamine, Y., & van Boven, T. (2001). *The International Convention on the Elimination of All Forms of Racial Discrimination: A guide for NGOs*. Minority Rights Group International & International Movement Against All Forms of Discrimination and Racism.

³¹² *ibid*,

³¹³ Schulz, P., Halperin-Kaddari, R., Rudolf, B., & Freeman, M. A. (Eds.). (2023). *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A Commentary* (2nd ed.). Oxford University Press.

instrument that would identify and condemn the several cases of discrimination faced by women³¹⁴. The first step to tackle the issue was the *Declaration the Elimination of Discrimination against Women* of 1967, which gave way for the *UN Decade for Women* (1975-1985), which was characterised by world conferences concerned with the status of women worldwide. A culminating Conference was the Fourth World Conference on Women, held in Beijing in 1995 and chaired by Tanzanian former Secretary General Gertrude Mongella, which secured the equality for women in law and in practice³¹⁵. The adoption of the convention was simply a result of the intention of making the principles established by the Declaration into law. As a consequence, the drafting process resulted in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) being adopted in 1979³¹⁶.

The Convention comprises of a wide range of rights established from Articles 7 to 16, while the State obligations are dealt with in the first 6 Articles. The rest of the Convention deals with the Committee and the final provisions³¹⁷.

As Freeman et al. (2023) mention, the first five Articles ought to be understood together and interactively. As a matter of fact, Article 1 established the definition of discrimination against women that is used throughout the Convention, stating that it refers to any distinction on the basis of sex which impairs the enjoyment of human rights by women³¹⁸. Additionally, articles 2 and 24 indicate that State parties need to undertake the requisite measures at the national level to enforce the prohibition of all types of discrimination against women, elaborating with Article 3 that the steps that need to be taken need to aim at reaching the full development of women³¹⁹. Article 4 proposes a point that needs to be understood clearly. As a matter of fact, considering the disparity existing between men and women, any measures that are aimed at accelerating the equality between the two sexes shall not be considered discriminatory, and neither should any policies inherent to the facilitation of maternity³²⁰. Article 5 goes further by undermining the structural sexism propelled by

³¹⁴ *ibid.*

³¹⁵ United Nations, *The Beijing 1995 Conference on Women*. United Nations. <https://www.un.org/en/conferences/women/beijing1995>

³¹⁶ Schulz et al., 2023

³¹⁷ *ibid.*

³¹⁸ CEDAW, 1979

³¹⁹ Freeman et al., 2023

³²⁰ CEDAW, 1979

the patriarchy and calls all States parties to modify the cultural patterns that encourage prejudicial or customary beliefs that directly hurt the status of women³²¹.

Article 6: Trafficking and Exploitation of Prostitution

This Article refers to the prevention of trafficking of women and the exploitation of prostitution, with a specific, gendered assumption that women are extensively more subject to this form of human right violation. As for the interpretation of trafficking, the Committee has widely explained that by *trafficking*, although it firstly was assumed to refer solely to sexual trafficking, it is meant to comprise also of trafficking for non sexual purposes, such as exploitative domestic work and forced marriage³²². Concerning the exploitation of prostitution, it should be noted that the specific concept of prostitution varies by country, and the way it is penalised (or not) differs based on exactly that³²³. General Comment no. 19 of the Committee further elaborates on this point and mentions the several factors that lead to the trafficking of women. As a matter of fact, CEDAW mentions that poverty and unemployment, as well as wars and armed conflicts, further exacerbate gender based violence and places women at higher risk, given their vulnerable position in societies in which they may not have access to education or own financial means³²⁴. As formal and substantive equality is the goal, General Comment no. 19 further specified that both *de jure* and *de facto* discrimination supports the feminisation of migration, as more women look for job opportunities outside their own country, which places them in a more dangerous position to being trafficked³²⁵. The social stigma inherent to being trafficked may, in many countries, lead to many women not being recognised as a victim of a crime and may even be prosecuted for unauthorised departure³²⁶. The issue of trafficking and exploitation has been of great concern for the Committee and the Article aims to deal with it not only with an attempt to promote legislation that fights it, but

³²¹ *ibid.*

³²² Freeman et al., 2023

³²³ *ibid.*

³²⁴ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19: Violence against women, 1992, <https://www.refworld.org/legal/resolution/cedaw/1992/en/96542>

³²⁵ Freeman et al., 2023

³²⁶ *ibid.*

also reaching the substantive goal of socially recognising the vulnerability of the victims of such crimes, rather than demonising them.

Article 7 and Article 8: Women's Political Rights

Article 7 ensures that women have the right to participate in the political and public sphere of society, ensuring that they are given the right to vote in all elections, to participate in policy processes, as well as non-governmental organisations and associations concerned with the political and public life of the country³²⁷. This article stands as a landmark for the advancement of political rights of women and aims to fight the traditional dichotomy that exists and affirms gendered roles in society. As men have dominated the public and political spheres, substantive equality between men and women is needed, given the necessity to include a female voice to decision-making. This Article is extensive in nature as it comprises of all spheres of the political and public life, and specific matters like military service and leadership positions are subject of discussion. As for the latter, in fact, State parties need to ensure that women are included in these positions also, if needed, using temporary special measures³²⁸. Article 8 extends the right on an international level and ensures women's access to represent their government non an international level and participate in the work of international organisation³²⁹.

Article 9: The Right to Nationality

Article 9 calls States Parties to grant equal rights to women I. The matters concerning the choice and acquisition of their nationality, and ensuring that this is not dependent on the marital status of the woman³³⁰. Furthermore, the right to decide on the nationality of the child is given to the mother as it is equally given to the father³³¹. This is a clear reference to the ICCPR's provision of the right to citizenship and gives a specific provision for gender based discrimination on the matter.

³²⁷ CEDAW, 1979

³²⁸ Schulz et al., 2023

³²⁹ CEDAW, 1979

³³⁰ *ibid.*

³³¹ *ibid.*

Article 10: Right to Education

The right to education has been previously discussed in the dissertation and the article of the Convention specifies the equality needed in the sector. As a matter of fact, the article aims to include the requirement that education remains available in all areas of the State party³³². This is accompanied by the right to be examined equally to the same curricula and with the same standard³³³. The method of teaching is also discussed under the article, and aims for coeducation that will enable the fixation of the concept that men and women are equal and eliminate all stereotypical concepts relating to gender³³⁴. Equal access to scholarships and programmes of continuing education is protected under Article 10, and, importantly, 10(f) is fundamental as it calls States parties to reduce the dropout rates of women who leave schools prematurely³³⁵. This is included as a way to facilitate the return to education of women who had been forced to give up their education for external circumstances³³⁶.

Article 11: Right to Employment

The right to employment is discussed in article 11 and offers specific provisions to ensure equal employment opportunities to women as well as their choice of profession and equal remuneration³³⁷. This matter is relevant especially in countries in which the employment status of women may be disincentivised by pregnancy, or marital status³³⁸. The right to work is here defined as inalienable and purposely so, as the right to work, specifically to women in cultures in which this is not granted, gives them economic freedom³³⁹ and might prevent what has been previously discussed regarding the trafficking and exploitation of females. Full employment is therefore set as

³³² Schulz et al., 2023

³³³ CEDAW, 1979

³³⁴ *ibid.*

³³⁵ *ibid.*

³³⁶ Schulz et al., 2023

³³⁷ CEDAW, 1979

³³⁸ Schulz et al., 1979.

³³⁹ *ibid.*

a goal and in this specific context aims to reduce women's level of unemployment in societies³⁴⁰. Sexual harassment in the workplace is discussed in Schulz et al.'s (2023) commentary on the Convention and refers to the European Council's *Directive on the principle of equal treatment for men and women as regards access to employment (Directive 2002/73/EC*, now replaced by *Directive 2006/54/EC*). The Directive defines sexual harassment and discrimination on the grounds of sex³⁴¹, and, as relating to the Convention, mentions this issue as affecting wages and promotion as well as decisions on the dismissal of a person, inhibiting the full potential of an individual in the workplace³⁴². Intersectional discrimination to the right to employment is also a matter of concern for the Committee and mentions the higher percentage of poverty for older women, women of colour, aboriginal women, immigrant women, and women with disabilities³⁴³.

Article 12: The Right to Health Care

The elimination of discrimination of women in the field of healthcare is a specific objective that aims to reduce the inequalities that are persistent throughout the healthcare system worldwide. This provision includes treatment regarding sex specific health care needs as well as the recognition of a special need for reproductive rights³⁴⁴. The definition of health is fundamental in understanding the article and the Committee refers to the World Health Organisation in establishing that the term health does not just relate to the absence of illness, but rather a state of physical, mental, and social well-being³⁴⁵. What the provision comprises is a wide understanding of the right to health care. As a matter of fact, the access to health care services is demanded by the provision, which presupposes the availability of such services. Therefore, this would require the inclusion of sex specific services,

³⁴⁰ ibis.

³⁴¹ European Parliament and Council. (2002). Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. Official Journal of the European Communities. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0073>

³⁴² Schulz et al., 2023

³⁴³ Committee on the Elimination of Discrimination against Women. (2004). Concluding observations: Ethiopia, A/59/38, 30th Session. United Nations. <https://digitallibrary.un.org/record/735369?v=pdf>

³⁴⁴ Schulz et al., 2023

³⁴⁵ World Health Organization (WHO) (1946). Constitution of the World Health Organization. Basic Documents, Geneva: World Health Organization.

such as gynaecology, access to midwives, as well as general services³⁴⁶. Reproductive rights are also protected in the Article and the Convention explicitly requires States parties to establish a framework which will enable women to have access to family planning services³⁴⁷. This Article has been added to ensure the equal access to health, and also takes into the consideration the disparities that women may face in the field of healthcare, which may be worsened by social stigma and, from an intersectional perspective, said access may be even more limited for racial minorities³⁴⁸.

Article 13: Right to Economic and Social Life

This Article calls States parties to ensure that women have equal access to all areas inherent to the economic, social, and cultural life³⁴⁹. The life and the dignity of the individual are further ensured by the recognition of the rights protected under the ICESCR, and the CEDAW Committee elaborates on the provision in General Recommendation 28 by saying that every human being ought to be free to develop their personal abilities, pursue their professional careers and make choices without the limitations imposed by prejudices and social stereotypes³⁵⁰.

Article 14: Rural Women

Article 14 takes in to account the specific situation of rural women and ensures that they can live a life in adequate living conditions³⁵¹. The peculiarity of the situation of rural women is understood through data that shows that although they produce more than half of the food that is grown, they only receive one percent of all agricultural credit³⁵². The experiences of rural women is

³⁴⁶ Schulz et al., 2023

³⁴⁷ *ibid.*

³⁴⁸ Vohra-Gupta S, Petruzzi L, Jones C, Cubbin C. An Intersectional Approach to Understanding Barriers to Healthcare for Women. *J Community Health*. 2023 Feb;48(1):89-98. doi: 10.1007/s10900-022-01147-8. Epub 2022 Oct 23. PMID: 36273069; PMCID: PMC9589537

³⁴⁹ Schulz et al., 2023

³⁵⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, <https://www.refworld.org/legal/general/cedaw/2010/en/77255>

³⁵¹ CEDAW, 1979

³⁵² Food 2050, 'Women: The Linchpin to Food Security' online blog posted 9 November 2010 as per cited in Schulz et al., 2023

characterised by discrimination in accessing land, as they, on average, own two percent of land³⁵³, and implications on the enjoyment of the right to food³⁵⁴. The focus on women's right to participate in development is a key issue inherent to the provision, and FAO has been a great contributor in the institutional support given to this demographic³⁵⁵. The article mandates measures to ensure rural women's equal participation in access to healthcare, education, social security, and economic opportunities³⁵⁶.

Article 15 and Article 16: Equality before the Law

Articles 15 and 16 are connected, and ensure that women's rights are upheld in both public and private spheres. Article 15 affirms the principle of equality before the law, ensuring that women have the same legal capacity as men in civil matters. This includes the right to conclude contracts, administer property, and choose their domicile, without being subject to any legal restrictions that do not apply to men³⁵⁷. The importance of Article 15 lies in its explicit guarantee that women are equal under the law, providing them with the legal tools necessary to access justice, protect their rights, and participate fully in civil life. Furthermore, Article 15 also encompasses the concept of "equal protection of the law," which requires that laws and procedures themselves be non-discriminatory. In many countries, historical legal frameworks have imposed limitations on women's legal capacities, such as restrictions on their freedom of movement or the imposition of a husband's domicile on a wife³⁵⁸.

Article 15 is further amplified when considered with Article 16, which addresses equality in marriage and family relations. Article 16 ensures that women and men have the same rights and responsibilities in marriage, divorce, and as parents³⁵⁹. It prohibits child marriage and requires that states set a minimum age for marriage and ensure that all marriages are registered.³⁶⁰ These

³⁵³ *ibid.*

³⁵⁴ Schulz et al., 2023

³⁵⁵ *ibid.*

³⁵⁶ *ibid.*

³⁵⁷ *ibid.*

³⁵⁸ CEDAW, 1979

³⁵⁹ *ibid.*

³⁶⁰ *ibid.*

provisions are crucial because they address the deeply entrenched gender inequalities that often manifest within the family, affecting women's lives on a fundamental level³⁶¹. Article 16 also addresses the broader social and cultural contexts that influence women's rights within the family. The Committee has called for the elimination of discriminatory practices such as polygamy, child marriage, and unequal property rights, which disproportionately affect women and perpetuate gender inequality³⁶². The Committee has consistently recommended that states review and reform these laws to ensure that they comply with the standards of gender equality set out in CEDAW. This includes ensuring that women have the option to choose civil law over religious or customary law when it comes to family matters, protecting their rights and providing them with equal legal protections³⁶³.

Articles 17 to 30 of CEDAW focus on the structural and procedural aspects of the Convention, crucial for its implementation and monitoring. These articles establish the Committee on the Elimination of Discrimination against Women, which is responsible for overseeing the progress of the Convention's implementation by the states parties. They also outline the procedures for state parties to submit periodic reports on the measures they have taken to comply with the Convention's obligations. Additionally, these provisions address the Convention's entry into force, the process for amendments, and the mechanisms for resolving disputes between states regarding its interpretation or application.

II.VI Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was a result of the necessity to create a specialised human rights treaty in response to the systematic practice of torture that was practiced in Latin America and other regions

³⁶¹ Schulz et al., 2023

³⁶² UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 1994, <https://www.refworld.org/es/leg/coment/cedaw/1994/es/61456>; Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices

³⁶³ *ibid.*

in the world in the second half of the twentieth century³⁶⁴. The prohibition of torture is recognised as *jus cogens* and is non-derogable and the Convention, adopted in 1984, stands as a historical effort of the struggle against the inhuman and cruel practice³⁶⁵. As per the other Conventions, CAT is divided into different parts, the first dealing with the definition of torture and the obligations of the States parties, while the second and the third, as with the other treaties, deals with the establishment of the committee specific to the monitoring of the implementation of the CAT and the ratification process of the Convention itself. For the purposes of this dissertation, and as has been previously done and as will be successively be done, the first part will be the one analysed in detail.

Article 1: Definition of Torture

The legal definition of torture is expressed by the first Article of the Convention and gives a clear explanation of the term as will be used throughout the Convention. As a matter of fact, the Convention established that *torture* is any act that causes intentionally physical, sever pain or suffering for the purposes of obtaining information or a confession³⁶⁶. Nowak et al.'s (2019) commentary is useful in further understanding CAT and elaborates specifically on this provision specifying that this is the first Article in an international treaty that defines torture³⁶⁷. Any conduct that causes sever pain amounts to torture and constitutes an aggravated, inhuman, degrading treatment³⁶⁸. The purposes of torture, as per previously mentioned, may be related to punishment, discrimination, coercion, or to extract a confession³⁶⁹.

Article 2: Non-Derogability of the Prohibition of Torture

³⁶⁴ Nowak, M., Birk, M., & Monina, G. (Eds.). (2019). *The United Nations Convention Against Torture and its Optional Protocol: A Commentary* (2nd ed.). Oxford University Press.

³⁶⁵ *ibid.*

³⁶⁶ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations, Treaty Series, vol. 1465, p. 85, 10 December 1984, <https://www.refworld.org/legal/agreements/unga/1984/en/13941>

³⁶⁷ Novak et al., 2019

³⁶⁸ *ibid.*

³⁶⁹ CAT, 1984

This Article does not allow for any exceptions for the use of torture, which highlights the non derogable nature of the prohibition. The Article also calls for the implementation of legislative measures against torture and criminalise it under its criminal law³⁷⁰. However, legislative measures only are not considered sufficient as in many cases, although countries had in fact adopted administrative measures to comply with the provisions stated in the Convention, these were not effective (see UN Committee Against Torture (CAT), *Report of the Committee against Torture*, Supplement No. 44 (A/50/44), 1995)³⁷¹. The States parties are also obliged to impartially and effectively investigate any form of torture and ill treatment that may occur within its jurisdiction³⁷².

Article 3: Principle of Non-Refoulement

This article provides that the principle of non refoulement would not be overlooked in the context of the Convention. As a matter of fact, the principle of non refoulement is of fundamental importance in the context of torture as States parties shall not extradite or return a person in a country in which there would be substantial belief that they would be subjected to torture³⁷³. This clearly calls for an absolute protection against refoulement and in no circumstances, and regardless of the individual concerned, may this principle be disregarded³⁷⁴. The issue of indirect refoulement is also relevant in this Article. Evidently, the Committee defines it as the action of a State to send an individual to another state which may subsequently deport the individual to a third state where he may be subjected to torture³⁷⁵, this is referred to as *chain refoulement*. Furthermore, diplomatic assurances are a tool used to guarantee the safety of the transferee. Although torture is often characterised by secrecy, which would therefore make the post transferring monitoring difficult³⁷⁶,

³⁷⁰ Novak et al., 2019

³⁷¹ UN Committee Against Torture (CAT), *Report of the Committee against Torture*, Supplement No. 44 (A/50/44), 1995, <https://www.refworld.org/reference/annualreport/cat/1995/en/34905>

³⁷² Novak et al., 2023

³⁷³ CAT, 1984

³⁷⁴ Novak et al., 2019

³⁷⁵ Committee against Torture, General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, UN Committee Against Torture (CAT), 9 February 2018, <https://www.refworld.org/legal/general/cat/2018/en/120416>

³⁷⁶ Novak et al., 2023

diplomatic assurance can be a useful tool in ensuring the safety of the individual that is reinstated in a different country.

Article 4: Criminalisation of Torture

As per mentioned in Article 2, the criminalisation of torture is an obligation that all states parties must undertake to ensure that the practice is penalised under the domestic legislation. The CAT Committee has also advised that torture should be established as a distinct offence in domestic legislation, rather than merely being treated as an aggravating factor in sentencing. It emphasised that by defining and categorising torture as a separate crime in line with the Convention, and clearly differentiating it from other offences, States parties would more effectively promote the Convention's primary goal of preventing and punishing torture³⁷⁷. On this note, the Committee also called States to include a definition of torture when criminalising it that conforms with the one established in Article 1 CAT. As the prohibition of torture is non derogable, in the context of criminal law there shall be no exceptional circumstance in which the crime will not be prosecuted, hence immunity shall not be applied as it is a clear violation of the Article.

Article 5: Jurisdiction over the Offence of Torture

The Article takes further the criminalisation of torture by calling all States parties to establish its jurisdiction over the offences relating to the previous Article, meaning that the crime shall be prosecuted in any territory that is under the administration of the State party concerned³⁷⁸. This refers to not only the territorial administration within borders, but also calls for the prosecution of individuals that commit the crime of torture in any ship or aircraft registered to that State as well as the criminalisation of individuals who are nationals of the State³⁷⁹. The provision is thorough as it prevents any safe havens for torturers and applies to the individuals that may change their citizenship in order to circumvent prosecution³⁸⁰. The principle *ne bis in idem* is also relevant in the case the individual concerned has dual citizenship, and is not to be prosecuted twice for the same

³⁷⁷ UN Committee Against Torture (CAT), Observations finales du Comité contre la torture : Djibouti, CAT/C/DJI/CO/1, 22 December 2011, <https://www.refworld.org/policy/polrec/cat/2011/fr/124282>

³⁷⁸ CAT, 1984

³⁷⁹ *ibid.*

³⁸⁰ Novak et al., 2019

crime³⁸¹. In this context, the case of Hissène Habré is relevant as it relates to the provision. Habré was the former president of Chad from 1982 to 1990 and was responsible for the widespread acts of torture and murders committed to approximately 40,000 individuals³⁸². The legal proceedings for the arrest of the former leader were hampered as Senegal, country in which the trial had begun³⁸³, had not ratified the Convention Against Torture at the time of the trial³⁸⁴. Nonetheless, three Chadian exiles naturalised Belgian called for his arrest and, despite Senegal claiming again that it lacked the appropriate jurisdiction to do so, Habré was prosecuted under Universal jurisdiction³⁸⁵. Habré was sentenced to life imprisonment by the Extraordinary African Chambers³⁸⁶, a mechanism that was established to have Habré accountable for his actions³⁸⁷. Article 6

Articles 6, 7, 8, and 9: Universal Jurisdiction Principles

These four Articles ought to be understood complementarily as they all relate to the different aspects of the offence of tortures in accordance to territoriality, nationality, and most extensively to the principles of universal jurisdiction³⁸⁸. According to Article 6, if a state initiates criminal proceedings against the suspect, it must take the suspect into custody or implement other legal measures to ensure their presence³⁸⁹. This requirement is crucial when exercising universal jurisdiction under the Convention. The article also mandates that once the suspect is secured,

³⁸¹ *ibid.*

³⁸² Boring, N. (2015) African Union; Chad; Senegal: Former Chad Dictator Hissene Habre's Trial Opens in Dakar. [Web Page] Retrieved from the Library of Congress, <https://www.loc.gov/item/global-legal-monitor/2015-07-21/african-union-chad-senegal-former-chad-dictator-hissene-habres-trial-opens-in-dakar/>

³⁸³ The trial took place in Senegal, not Chad, because Habré had fled to Senegal and was therefore investigated in the new country of residence.

³⁸⁴ Novak et al., 2023

³⁸⁵ *ibid.*

³⁸⁶ Gall, Élise Le, 'The Habré Trial Judgment: A Summary of the First Instance Judgment of the EAC', in Sharon Weill, Kim Thuy Seelinger, and Kerstin Bree Carlson (eds), *The President on Trial: Prosecuting Hissène Habré* (Oxford, 2020; online edn, Oxford Academic, 18 June 2020), <https://doi.org/10.1093/oso/9780198858621.003.0020>

³⁸⁷ Sarah Williams, 'The Extraordinary African Chambers in the Senegalese Courts: An African Solution to an African Problem?', *Journal of International Criminal Justice*, Volume 11, Issue 5, December 2013, Pages 1139–1160, <https://doi.org/10.1093/jicj/mqt060>

³⁸⁸ The afore mentioned case of Habré is also relevant in this context.

³⁸⁹ CAT, 1984

authorities must conduct a preliminary investigation into the allegations and share the findings with other states that may have jurisdiction over the case, such as the state where the torture occurred or the states of the suspect's or victims' nationality³⁹⁰. If an individual is stateless, they are allowed to communicate with the representative of the State where he usually resides³⁹¹. Additionally, the suspect must be allowed to communicate with consular or diplomatic representatives from their home country³⁹². Article 7 states that if a suspected torturer is found within the territory of a State party, that state must submit the case to its competent authorities for prosecution, even if the only connection between the state and the suspect is the suspect's presence within its jurisdiction³⁹³. The state where the suspect is present, referred to as the forum state, has a duty to either prosecute the individual or, if another state requests it, to extradite the suspect (*aut dedere aut judicare*). This obligation applies even if the suspect is in the country for reasons like medical treatment, professional training, or asylum, as evident in cases like *Pinochet*, *Al-Duri*, *Almatov*, and *Zardad*³⁹⁴. Article 8 furthers the extradition of an offender by removing any possible obstacles that may arise during the extradition process. It clearly mentions that torture is an extraditable offence and is set as the legal basis for extradition in respect of the offence³⁹⁵. Finally, Article 9 establishes that States parties are to give mutual judicial assistance to one another in the process of criminalising the offence of torture, and therefore calls for the collaboration of all parties involved to prosecute the offender³⁹⁶. These four articles, when studied together, can be seen as a framework for the criminal procedures that need to be taken into account when criminalising torture and establishes a collaborative rapport between the States involved in the prosecution.

Article 10: Training of Personnel

This provision calls for the education of the military, medical, civil personnel or any other individual that may be involved in settings in which torture may happen. The article focuses on the

³⁹⁰ Novak et al., 2019

³⁹¹ CAT, 1984

³⁹² Novak et al., 2019

³⁹³ CAT, 1984

³⁹⁴ Novak et al., 2019

³⁹⁵ CAT, 1984

³⁹⁶ Novak et al., 2019

importance of human rights education, elaborating that such training is essential not only for ethical and legal reasons but also for practical and professional efficiency³⁹⁷. The goal is to prevent torture by instilling an understanding among officials that torture is both unethical and counterproductive, and by promoting non-coercive methods of investigation that respect human dignity³⁹⁸. This training is seen as a fundamental measure to prevent torture and ensure that states uphold their obligations under the CAT.

Article 11: Review Detention and Interrogation Rules

This Article establishes a formal obligation to review interrogation and detention settings to ensure that they are kept respectful of human rights and dignity. The provision calls States parties to establish a system that brings forth regular inspections of all places of detention to prevent torture.

Article 12: Investigating Allegations

Article 12 ensures that the existing impunity in the legal system is minimised and calls for a prompt investigation on the allegations of torture³⁹⁹. The Article is of great relevance when studied with the perspective that impunity usually comes from a strong feeling of trust and loyalty among police officers, which can consequently pose a conflict of interest for the investigators⁴⁰⁰. The importance of impartiality is therefore stressed in the Article as calls for *ex officio* investigations, meaning that authorities may initiate an investigation outside the context of the complaints procedure⁴⁰¹. Impartiality is of extreme importance throughout the investigation process and any investigation that is characterised by a desire to protect the suspected official is ineffective⁴⁰².

³⁹⁷ *ibid.*

³⁹⁸ *ibid.*

³⁹⁹ Birk, M. (2019). Article 12 Ex officio investigations. In M. Nowak, M. Birk, & G. Monina (Eds.), *The United Nations Convention Against Torture and its Optional Protocol: A Commentary* (2nd ed.). Oxford University Press.

⁴⁰⁰ *ibid.*

⁴⁰¹ European Commission. (n.d.). Ex officio investigations. Competition policy. Retrieved August 30, 2024, from https://competition-policy.ec.europa.eu/antitrust-and-cartels/ex-officio-investigations_en#:~:text=What%20are%20ex%20officio%20investigations,leniency%20programme%20or%20complaints%20procedure

⁴⁰² Herman Burgers and Hans Danelius, *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Martinus Nijhoff 1988) as cited in Birk, 2019

Article 13: Right to Complain

Article 13 requires States to ensure that any person alleging torture or ill-treatment can file a complaint that is investigated promptly and impartially⁴⁰³. This provision mandates that victims must be able to lodge complaints without fear of retaliation and that both complainants and witnesses are protected from intimidation⁴⁰⁴. The provision ensures that investigations are conducted in any territory under the State's jurisdiction, including all areas under its legal or *de facto* control⁴⁰⁵.

Article 14: Right to Reparations

Article 14 establishes the right of victims of torture to an adequate remedy and reparation. This provision aims to restore the dignity of victims and to prevent future violations by ensuring full redress⁴⁰⁶. It is closely related to several other articles of the Convention, including Articles 4 to 9, which address the prosecution of perpetrators, and Articles 12 and 13, which mandate prompt, effective, and impartial investigations and complaints mechanisms⁴⁰⁷. The Article calls for five forms of reparation: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition⁴⁰⁸. It mandates that reparation should be victim-centered, gender-sensitive, and non-discriminatory, and it must cater to the specific needs of the victims, which includes providing medical, psychological, and social support. General Comment No. 3 of the Committee elaborates on the Article and specifies the concepts of *satisfaction*. Satisfaction for torture victims relates to ensuring the cessation of violations, public disclosure of the truth, and efforts to locate and properly handle the remains of deceased victims⁴⁰⁹. This also includes official declarations to restore victims'

⁴⁰³ CAT, 1984

⁴⁰⁴ *ibid.*

⁴⁰⁵ Birk, 2019

⁴⁰⁶ Lober, J., & Schuechner, A. (2019). Right of torture victims to adequate remedy and reparation. In M. Nowak, M. Birk, & G. Monina (Eds.), *The United Nations Convention Against Torture and its Optional Protocol: A commentary* (2nd ed., pp. 370–416). Oxford University Press.

⁴⁰⁷ *ibid.*

⁴⁰⁸ *ibid.*

⁴⁰⁹ UN Committee Against Torture (CAT), General comment no. 3, 2012 : Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment : implementation of article 14 by States parties, 13 December 2012, <https://www.refworld.org/legal/general/cat/2012/en/101850>

dignity, public apologies, and commemorations. A State's failure to promptly address allegations of torture can be seen as denying redress and violating Article 14 of the Convention⁴¹⁰.

Article 15: Non-Admissibility of Evidence Obtained during Torture

Article 15 of the Convention Against Torture is an exclusionary clause that safeguards the integrity of judicial processes by prohibiting the use of any evidence obtained through torture in legal proceedings⁴¹¹. This prohibition ensures that confessions or witness statements extracted under duress are inadmissible, reflecting the principle that such evidence is inherently unreliable⁴¹². The provision upholds the right to a fair trial by preventing the coercion of individuals to testify against themselves and reinforces the principle of equality in criminal justice⁴¹³.

Article 16: Cruel, Inhuman, or Degrading Treatment

The final substantive Article of CAT extends the measures previously established against torture to acts of cruel, inhuman, and degrading treatment⁴¹⁴. The difference made between torture and such treatment relies on the context in which this happens. As a matter of fact, torture is characterised by a setting of detention or of direct control by the perpetrator, while inhuman treatment may not necessarily happen in this context. Both actions, however, inflict severe pain on the victim⁴¹⁵. The Committee has mentioned in several occasions the issue of corporal and capital punishment and, in this context has widely criticised practices like children imprisonment, hard labour, and solitary confinement⁴¹⁶

⁴¹⁰ *ibid.*

⁴¹¹ CAT, 1984

⁴¹² Monina, G. (2023). Article 15. Non-admissibility of evidence obtained by torture. In M. Nowak, M. Birk, & G. Monina (Eds.), *The United Nations Convention Against Torture and its Optional Protocol: A commentary* (2nd ed., pp. 417-440). Oxford University Press.

⁴¹³ *ibid.*

⁴¹⁴ CAT, 1984

⁴¹⁵ Zach, G., & Birk, M. (2023). Article 16. Cruel, inhuman or degrading treatment or punishment. In M. Nowak, M. Birk, & G. Monina (Eds.), *The United Nations Convention Against Torture and its Optional Protocol: A commentary* (2nd ed., pp. 441-472). Oxford University Press.

⁴¹⁶ UN Committee Against Torture (CAT), Concluding observations of the Committee against Torture : Bulgaria, CAT/C/BGR/CO/4-5, 14 December 2011, <https://www.refworld.org/policy/polrec/cat/2011/en/84784> as per cited in Zach, 2023

II.VII International Convention for the Protection of All Persons from Enforced Disappearance (CPED)

The International Convention for the Protection of All Persons from Enforced Disappearance (CPED) marks a substantial advancement in the field of international human rights law, particularly in its comprehensive approach to addressing enforced disappearances. It was adopted in 1992, entered into force in 2010 and, as of today (2024) it has been ratified by 75 States⁴¹⁷. One of the convention's most notable contributions is its establishment of a legally binding definition of enforced disappearance and the creation of a robust legal framework to combat it. Article 1 of the CPED firmly prohibits enforced disappearances under any circumstances, including war, political instability, or public emergencies, affirming that this prohibition is non-derogable and constitutes a norm of *jus cogens*⁴¹⁸. The CPED extends the protective scope established by the Convention Against Torture (CAT) by encompassing issues such as arbitrary and incommunicado detention, and it explicitly prohibits secret detention, an area previously only addressed through expansive interpretations of other human rights instruments⁴¹⁹. Article 16 of the CPED broadens the protection afforded by the CAT by including serious violations of international humanitarian law and patterns of gross, flagrant, or mass human rights violations, thus addressing gaps left by the CAT and ensuring a more comprehensive framework for preventing refoulement⁴²⁰. The convention also introduces a significant development with its provision on universal jurisdiction; Article 9(2) enables states to exercise jurisdiction over perpetrators of enforced disappearances found within their territory, which aims to close potential safe havens for offenders⁴²¹. Despite ongoing debates about the extent of this universal jurisdiction, its inclusion reflects a strong commitment to accountability. Article 24 of the CPED expands the concept of victimhood to include not only those directly subjected to enforced disappearance but also others

⁴¹⁷ Status of Ratification Dashboard; Retrieved From <https://indicators.ohchr.org/>

⁴¹⁸ Kyriakou, N. (2012). The “international convention” for the protection of all persons from enforced disappearance and its contributions to international human rights law, with specific reference to extraordinary rendition. *Melbourne Journal of International Law*, 13(1), [424]-[461]. <https://search.informit.org/doi/10.3316/informit.644299122371050>

⁴¹⁹ *ibid.*

⁴²⁰ *ibid.*

⁴²¹ UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, <https://www.refworld.org/legal/agreements/unga/2006/en/57490>

who suffer as a consequence, and introduces the *right to truth*, ensuring victims have the right to know the circumstances surrounding the disappearance and the fate of the disappeared⁴²².

II.VIII Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC) stands as an international effort to protect the children of the world and is a result of decades-long efforts to pursue the safeguarding of minors on an universal level. The CRC was adopted in 1989 as a consequence of the several reports of grave injustices suffered by children, such as infant mortality, limited education, and alarming accounts of abuse and exploitation⁴²³. The content of the CRC is understood as an extension of the civil, political, social and cultural rights to children, nonetheless, there are some important provisions that relate to the specificities of the development, the well-being, and the safeguarding of the child. On this note, these *specific* rights will be comprised in the analysis, which mainly refers to Tobin's (2019) commentary.

Article 1: Definition of a Child

The Definition of a Child is found in the first Article of the Convention and defines child as will be used throughout the Convention. As a matter of fact, every human that is below the age of eighteen years shall be considered a child⁴²⁴.

Article 8: The Right to Preservation of a Child's Identity

Article 8 protects the identity of the child by ensuring that States parties implement appropriate protections to it⁴²⁵. This is a further extension of the civil and political rights of the individual, and the Committee has recommended specific measures to preserve the identity of the

⁴²² *ibid.*

⁴²³ Committee on the Rights of the Child. (n.d.). Background to the Convention. United Nations Human Rights Office of the High Commissioner. <https://www.ohchr.org/en/treaty-bodies/crc/background-convention>

⁴²⁴ UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989, <https://www.refworld.org/legal/agreements/unga/1989/en/18815>

⁴²⁵ *ibid.*

child⁴²⁶. Birth registration, prohibition of anonymous births and provision of identity documents are all examples. As for birth registration, the Committee stresses the importance of an effective system of birth registration as a way to secure the identity of the child⁴²⁷. This is particularly important in contexts of poverty and rural areas, which face significantly more cases of absence of birth registration, which has grave consequences in the access of basic services⁴²⁸. The same case relates to the provision of identity documents. The right to a name, which is specific in Article 7 CRC, promotes the recognition of the legal identity of the child and is a right that is widely recognised in international jurisprudence⁴²⁹.

Article 9: The Right to Not be Separated from Parents

Article 9 can easily be defined as one of the rights that aim to preserve the family unity⁴³⁰. The provision is a novelty as it takes into consideration the consent of the child, making it relevant in the context of family separation and advancing their safeguarding. Nonetheless, there are circumstances in which separation is permitted against the will of the subjects concerned, which needs to happen through a competent authority and be subject to judicial review⁴³¹. The relevance of this exception stands in prioritising the *best interest of the child*, which is the leit motif of the whole Convention. As a matter of fact, the best interest of the child is always taken into consideration and is the standard set when making any decision in which a child is included⁴³². The right of the family to keep in contact with one another after separation is protected under the Article⁴³³, and is supported by the succeeding Article (10), which relates to the right to family reunification.

⁴²⁶ Tobin, J., & Todres, J. (2019). Art. 8 The right to preservation of a child's identity. In J. Tobin (Ed.), *The UN Convention on the Rights of the Child: A Commentary* (pp. 281-306). Oxford University Press.

⁴²⁷ *ibid.*

⁴²⁸ Selim, L. (2019, December 10). What is birth registration and why does it matter? UNICEF. <https://www.unicef.org/stories/what-birth-registration-and-why-does-it-matter>

⁴²⁹ Todres, 2019

⁴³⁰ Tobin, J., & Cashmore, J. (2019). Art. 9 The right not to be separated from parents. In J. Tobin (Ed.), *The UN Convention on the Rights of the Child: A Commentary* (pp. 307-342). Oxford University Press.

⁴³¹ *ibid.*

⁴³² CRC, Art. 3, 1989

⁴³³ Cashmore, 2019

Article 19: The Right to be Protected from all Forms of Violence

Article 19 CRC is a fundamental measure that aims to ensure the protection of children from all forms of violence, namely physical and mental violence, as well as injury, abuse, and neglect⁴³⁴. Although the Article stands as a broad protection from violence, the Committee has expressed concern over acts of negligent mistreatment, exploitation, and sexual abuse of children⁴³⁵. Concerning neglect, the CRC has included all forms of it, meaning that physical neglect, psychological neglect, educational neglect, and abandonment all fall into the category of negligent mistreatment⁴³⁶. The issue of exploitation is also examined. This definition also includes sexual abuse, but this will be soon analysed in a more specific manner. The Committee refers to child labour as a form of exploitation, and the WHO's Report of the Consultation on Child Abuse Prevention has defined this activity as detrimental to the mental and physical health of the child⁴³⁷. Sexual abuse has been an issue of severe concern for the CRC Committee, which offers a comprehensive definition of it. As a matter of fact, sexual abuse is the inducement of a child to engage in any unlawful or harmful sexual activity, entailing commercial sexual exploitation, use of children in visual images of sexual abuse, and sexual slavery⁴³⁸. The WHO Report on Child Abuse Prevention gives a similar explanation, defining child sexual abuse as an activity between a child and an adult or another child who, by age or development, is in a relationship of responsibility, trust of power, the activity being intended to gratify the needs of the other person⁴³⁹.

Article 22: Refugee Children

⁴³⁴ CRC, Art. 19, 1989

⁴³⁵ Cashmore, 2019

⁴³⁶ UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): The right of the child to freedom from all forms of violence, CRC/C/GC/13, 18 April 2011, <https://www.refworld.org/legal/general/crc/2011/en/82269>

⁴³⁷ Consultation on Child Abuse Prevention (1999: Geneva, Switzerland), World Health Organization. Violence and Injury Prevention Team & Global Forum for Health Research. (1999). Report of the Consultation on Child Abuse Prevention, 29-31 March 1999, WHO, Geneva. World Health Organization. <https://iris.who.int/handle/10665/65900>

⁴³⁸ CRC, GC No. 13, 2011

⁴³⁹ WHO, 1999

The peculiarities of a refugee child are understood and protected by the Convention. As a matter of fact, refugee children are entitled to special protection and State parties need to ensure the application of a mechanisms that supports said protection⁴⁴⁰. The definition of a refugee child is *en accord* with the definition of the term *refugee* according to the refugee convention, with the additional requirement of being under the eighteen years of age⁴⁴¹. The appropriate protection and humanitarian assistance clause means that the states are requires to take into consideration the age and the vulnerabilities of the child, protecting unaccompanied and accompanied children⁴⁴². The Article also calls States parties to promote cooperation with regards of family reunification and , if this is not possible, protect the child according to the mechanisms set forth by the Convention⁴⁴³.

Article 24: The Right to Health, to Clean Drinking Water, and Nutritious Food

This Article is of great relevance in the context of disease and malnutrition as a consequence of lack of access to nutritious food and clean drinking water, as well as environmental pollution⁴⁴⁴. The Obligation of a State is to reach the highest attainable standard of health, which ought to maximise the potential of a child to develop⁴⁴⁵. Access to health care, as per the other conventions previously mentioned, is extended to the child and is to aim the access to child specific health services⁴⁴⁶. The issue of child mortality is a matter of concern for the CRC Committee and the Article stands as a provision with the objective of reducing it. This also extends to the provision of adequate and nutritious foods and clean drinking water⁴⁴⁷. As for the former, Sates parties are called to implement a national nutritional policy that are able to conform with the nutritional needs of children⁴⁴⁸. This can be achieved through easier access to markets and the promotion of healthy

⁴⁴⁰ Pobjoy, J. M. (2019). Art. 22 Refugee children. In J. Tobin (Ed.), *The UN Convention on the Rights of the Child: A Commentary* (pp. 717-750). Oxford University Press.

⁴⁴¹ *ibid.*

⁴⁴² *ibid.*

⁴⁴³ CRC, 1989

⁴⁴⁴ *ibid.*

⁴⁴⁵ Tobin, 2019

⁴⁴⁶ *ibid.*

⁴⁴⁷ CRC, 1989

⁴⁴⁸ Tobin, 2019

feeding practices⁴⁴⁹. Clean drinking water is essential to the achievement of the best development of the child as well as in the reduction of child mortality. The right is to be ensured by universal access to safe drinking water and the expansion of water infrastructure⁴⁵⁰. This right is clearly connected to the succeeding one, which related to the right to an adequate standard of living, which extends to access to clothing and housing⁴⁵¹ in order to ensure their development. This elaboration is important as it does not just refer to the material welfare of children, but rather encompasses their mental, spiritual, moral, and social development⁴⁵².

Article 28: The Right to Education

This right has been widely accepted and recognised by the international community aims to provide accessibility to all grades of education, ensuring that primary education is compulsory and free^{453 454} (ref. above ICESCR section *Article 13 and Article 14: The Right to Education*).

Article 31: The Right to Rest, Leisure, and Play

This Article is a result of the extensive work of the labor rights movement and has been already mentioned above in reference to the Economic rights. The reason as to why this provision is of relevance in the context of the Rights of the Child is linked to the specific need of rest of children. The right to leisure, as defined by the ICESCR as the opportunity for the individual to cultivate his mind and interests⁴⁵⁵, is prescribed in the provision, as is the right to engage in play. The latter is considered of utmost importance, especially in the context of childhood. This is

⁴⁴⁹ Concluding Observations: Philippines, CRC/C/15/Add.259 21 September 2005, Retrieved from <https://documents.un.org/doc/undoc/gen/g05/440/53/pdf/g0544053.pdf> as per cited in Tobin, 2019

⁴⁵⁰ Observations Finales: Viet Nam, CRC/C/15/Add.200 18 mars 2003, Retrieved from: <https://documents.un.org/doc/undoc/gen/g03/408/70/pdf/g0340870.pdf> as per cited in Tobin, 2019

⁴⁵¹ CRC, Art. 27, 1989

⁴⁵² Nolan, A. (2019). Art. 27 The right to a standard of living adequate for the child's development. In J. Tobin (Ed.), *The UN Convention on the Rights of the Child: A Commentary* (pp. 1021-1055). Oxford University Press.

⁴⁵³ CRC, Art. 28, 1989

⁴⁵⁴ Courtis, C. (2019). Art.28 The Right to Education. In J. Tobin (Ed.), *The UN Convention on the Rights of the Child: A Commentary* (pp. 1056-1115). Oxford University Press.

⁴⁵⁵ Göran Melander, 'Article 24' in Asbjørn Eide and others (eds), *The Universal Declaration of Human Rights: A Commentary* (Scandinavian University Press Oslo 1992) as per cited in Courtis (2019)

supported by contemporary research indicating that the positive effects of engaging in play are instrumental to the development of the child as well as their identity⁴⁵⁶.

II.IX International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) was adopted in 1990 and is the consequence of thirty years of discussions about the protection of migrant workers⁴⁵⁷. Reading the Convention, it can be easily noticed that most of the rights relate to the extension of the ICESCR and ICCPR to migrant workers and their families. Despite not many countries having ratified the Convention, the ICRMW offers added value in the safeguarding of the migrant workers population. Cholewinski et al. (2009) elaborate on this point and provide guidance in understanding the Convention.

The peculiarity of the ICRMW apart is its inclusive approach, ensuring that the rights of all migrants, regardless of their legal status, are safeguarded, particularly those of undocumented migrants who are often the most vulnerable and marginalised. The Convention is structured into nine parts, beginning with clear definitions and a general non-discrimination clause, followed by a detailed enumeration of rights that apply to all migrants, including the right to life, freedom from torture, and equality before the law⁴⁵⁸. This coverage extends to specific rights for regular migrants, obligations for states, and mechanisms for the Convention's application. Despite its comprehensive nature, the ICRMW has not achieved widespread ratification, with only a small number of states adopting it⁴⁵⁹. This limited ratification is often due to a combination of low awareness and the belief among many states that existing human rights conventions already provide adequate protection for migrants, hence rendering the ICRMW unnecessary in their view. However, this overlooks the Convention's unique contribution, particularly its explicit protection of undocumented migrants and its focus on labor rights, ensuring that even those in irregular situations are not deprived of fair

⁴⁵⁶ Courtis, 2019

⁴⁵⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR). (2005). Fact Sheet No. 24 (Rev. 1): The International Convention on Migrant Workers and Its Committee. <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-24-rev-1-international-convention-migrant-workers-and-its>

⁴⁵⁸ De Guchteneire, P., & Pécoud, A. (2009). Introduction: The UN Convention on Migrant Workers' Rights. In R. Cholewinski, P. De Guchteneire, & A. Pécoud (Eds.), *Migration and human rights: The United Nations Convention on Migrant Workers' Rights* (pp. 1-46). Cambridge University Press.

⁴⁵⁹ *ibid.*

working conditions and equal treatment⁴⁶⁰. Given the Convention's broad scope and the relatively few states that have ratified it, an article-by-article analysis is not feasible in this context.

II.X Convention on the Rights of Persons with Disabilities (CRPD)

The Convention on the Rights of Persons With Disabilities (CRDP) was adopted in 2006 and was a result of the growing relevance of the importance of addressing more comprehensively the challenges faces by persons with disabilities in their everyday social, political, economic, and cultural life⁴⁶¹. As a matter of fact, the provisions established in this convention are mostly an extension of the previous conventions to the disabled community worldwide. Nonetheless, the CRPD stands as a unique treaty for the protection of specific rights and the humanising of the disabled population, granting them rights and special provisions, the latter which will be explored in this section. Della Fina et al.'s (2017) commentary elaborates further on the Convention and offers several insights to its history and its implications.

Article 1: Purpose of the Convention

Article 1 established that the Convention aims to promote, protect and ensure the full and equal enjoyment of human rights to all persons with disabilities⁴⁶². The provision stands as fundamental as it encompasses the objectives of the Convention widely. As Della Fina (2017) mentions, the very *raison d'être* of the Convention is its first Article⁴⁶³.

Article 8: Awareness Raising

⁴⁶⁰Slinckx, I. (2009). Migrants' rights in UN human rights conventions. In R. Cholewinski, P. De Guchteneire, & A. Pécoud (Eds.), *Migration and human rights: The United Nations Convention on Migrant Workers' Rights* (pp. 122-149). Cambridge University Press.

⁴⁶¹ United Nations. (2014). *The Convention on the Rights of Persons with Disabilities: Training guide* (Professional Training Series No. 19). United Nations. <https://hrite.co/wp-content/uploads/2020/06/The-Convention-on-the-Rights-of-Persons-with-Disabilities-Training-Guide.pdf>

⁴⁶² UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, A/RES/61/106, 24 January 2007*, <https://www.refworld.org/legal/resolution/unga/2007/en/49751>

⁴⁶³ Della Fina, V., Cera, R., & Palmisano, G. (Eds.). (2017). *The United Nations Convention on the Rights of Persons with Disabilities: A commentary*. Springer International Publishing.

This Article wants to promote awareness raising throughout society in order to foster respect for the rights and dignity of persons with disabilities and fight the stereotypes and prejudices that are harmful to them⁴⁶⁴. The importance of Article 8 is stands as a need to fight the societal barriers that persons with disabilities may face, and the implications that an ongoing stigma may have on their safety and the preservation of their dignity⁴⁶⁵. What is understood is also that stereotypes and prejudices are not equal across all forms of disability⁴⁶⁶ and several *invisible disabilities*, like mental health issues, learning disabilities, memory disabilities, are widely more subject to less comprehension and therefore less likely to be emphasized with⁴⁶⁷. Another example that is relevant in the context of the dissertation is the ongoing persecution of people affected with Albinism in Africa⁴⁶⁸. As a matter of fact, many of these individuals are killed due to beliefs that their body parts can bring prosperity⁴⁶⁹.

Article 9: Accessibility

This Article is a fundamental provision of the Convention as it aims to ensure that all persons with disability are able to live a life where they do not face obstacles related to their disabilities in all the spheres of life⁴⁷⁰. The goal of this Article is evident as it ensure equality in the access of services, and therefore calls all States parties to adopt appropriate systems (e.g. communication systems like Braille) to ensure that this goal is achieved⁴⁷¹. This can be achieved

⁴⁶⁴ CRPD, Art. 8, 2006

⁴⁶⁵ Della Fina et al., 2017

⁴⁶⁶ Aiden H, McCarthy A (2014) Current Attitudes Towards Disabled People, Scope, UK. <http://www.scope.org.uk/Scope/media/Images/Publication%20Directory/Current-attitudes-towards-disabled-people.pdf> as per cited in Della Fina et al., 2017

⁴⁶⁷ Della Fina et al., 2017

⁴⁶⁸ Cruz-Inigo AE, Ladizinski B, Sethi A (2011) Albinism in Africa: stigma, slaughter and awareness campaigns. *Dermatol Clin* 29(1):79–87. doi:[10.1016/j.det.2010.08.015](https://doi.org/10.1016/j.det.2010.08.015) as per cited in Della Fina., 2017

⁴⁶⁹ *ibid.*

⁴⁷⁰ CRPD, Art. 9, 2006

⁴⁷¹ Seatzu, F. (2019). Article 9 (Accessibility). In Della Fina, V., Cera, R., & Palmisano, G. (Eds.). (2017). *The United Nations Convention on the Rights of Persons with Disabilities: A commentary.* (pp. 225-242) Springer International Publishing.

through the investment of financial resources in elaborating direct accessibility and enacting legislation that will ensure commitment to the Article⁴⁷².

Article 26: Habilitation and Rehabilitation

Habilitation and Rehabilitation is provided for in Article 26 of the Convention and aims to ensure full independence and participation of persons with disabilities in society, as well as inclusion in the community⁴⁷³. In this context, the UN Standard Rules on the Equalisation of Opportunities for Persons With Disabilities of 1993 is relevant. Despite it not legally binding, the rules provide States parties with recommendations to refer to when implementing rehabilitation programs and encourage the participation of individuals with disabilities^{474 475}.

Article 27: Work and Employment

Article 27 affirms the right of individuals with disabilities to work on an equal footing with others. It mandates that states ensure an inclusive and accessible labor market, free from discrimination⁴⁷⁶. This includes equal opportunities in hiring, employment conditions, career advancement, and protection from harassment⁴⁷⁷. The article also emphasises the importance of access to vocational training, employment support, and opportunities for self-employment, ensuring that persons with disabilities can fully participate in the workforce and achieve economic independence⁴⁷⁸. As noted in the 2012 Thematic Study by the United Nations High Commissioner for Human Rights, less than half of working-age persons with disabilities are economically active,

⁴⁷² *ibid.*

⁴⁷³ CRPD, Art. 26, 2006

⁴⁷⁴ UN General Assembly (48th sess. : 1993-1994), Standard rules on the equalization of opportunities for persons with disabilities : resolution / adopted by the General Assembly, A/RES/48/96, UN General Assembly, 20 December 1993, <https://www.refworld.org/legal/resolution/unga/1993/en/30167>

⁴⁷⁵ Pavone I. R. (2019). Article 26 (Habilitation and Rehabilitation). In Della Fina, V., Cera, R., & Palmisano, G. (Eds.). (2017). *The United Nations Convention on the Rights of Persons with Disabilities: A commentary*. (pp. 487-496) Springer International Publishing as per cited in Pavone, 2019

⁴⁷⁶ CRPD, Art. 27, 2006

⁴⁷⁷ *ibid.*

⁴⁷⁸ *ibid.*

which shows the significant barriers they face in accessing employment⁴⁷⁹. The CRPD advocates for an inclusive labor market where discrimination is prohibited and equality of opportunities is promoted⁴⁸⁰. Article 27 specifically mandates that States parties must ban discrimination on the basis of disability across all forms of employment, from recruitment to career advancement⁴⁸¹. The full realisation of an inclusive labor market is to happen gradually, but the prohibition of discrimination based on disability is an immediate civil and political right and calls for urgent action from States Parties⁴⁸².

Chapter III: The African Charter of Human and Peoples' Rights (ACHPR)

III.I Regional Protection of Human Rights

After decolonisation and the rise of many new independent states, the universality of human rights became a point of contention, particularly between Western nations and newly formed states⁴⁸³. The debate extended beyond human rights to include customary international norms, which these new states often rejected, as they had been created during a time when they were excluded from the global community. Human rights, declared universal in the 1948 Declaration, were increasingly criticised by non-Western nations, who saw them as products of Western Enlightenment thought and Christian values⁴⁸⁴. The issue was not just political but also cultural, with Western views focused on individualism, while many African and other non-Western cultures emphasised the importance of the group in its various forms. On this note, Mutua Makau argues that the human rights framework often presents itself as an objective and universal guarantor of eternal

⁴⁷⁹ Office of the High Commissioner for Human Rights, *Thematic study of the Office of the United Nations High Commissioner for Human Rights on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures*, A/HRC/19/33, 12 January 2012, <https://www.ohchr.org/en/documents/thematic-reports/ahrc1933-thematic-study-office-united-nations-high-commissioner-human>

⁴⁸⁰ Liisberg M. V. (2019). Article 27 (Work and Employment). In Della Fina, V., Cera, R., & Palmisano, G. (Eds.). (2017). *The United Nations Convention on the Rights of Persons with Disabilities: A commentary*. (pp. 497-508) Springer International Publishing.

⁴⁸¹ *ibid.*

⁴⁸² CRPD, 2006; Liisberg, 2019

⁴⁸³ Zanghi, 1979

⁴⁸⁴ *ibid.*

truths essential for human civilisation⁴⁸⁵. However, he contends that this framework is predominantly Eurocentric and imposes culturally biased norms and practices on non-Western societies⁴⁸⁶. According to Mutua, while the human rights corpus is well-intentioned, it reflects Western values and perspectives, thus overlooking or undermining the diverse cultural contexts and traditions of different societies⁴⁸⁷. This cultural divide fostered the regionalisation of human rights, allowing for different interpretations while aiming to uphold universal principles.

Zanghì (1979) explains that the priority given to economic, social, and cultural rights often outweighs that of civil and political rights, which are more relevant to societies where the survival of the group is no longer at risk and a modern state structure has been established⁴⁸⁸. This division between civil and political rights on one hand, and economic, social, and cultural rights on the other, has historically mirrored the divide between Western nations and newly independent states⁴⁸⁹. Prioritising economic and social rights could have been used as a tool to deny civil and political freedoms, however, this issue was addressed during the 1993 Vienna Conference on Human Rights⁴⁹⁰. The final declaration emphasised the equal importance of all rights and the responsibility of states to promote and protect them, regardless of their political or economic systems⁴⁹¹.

Burns et al. (2021) elaborate on regional human rights regimes, mentioning that despite there being some criticism towards the regionalisation of human rights due to the preoccupation that this would result in a detracting from their universal character, this concern is extinguished by several reasons in support of the development of regional human rights systems⁴⁹². First, the tendency towards homogeneity of the countries part of a region facilitates the protection of human rights as there is a facilitation of the debates regarding the substance of the rights to be protected⁴⁹³.

⁴⁸⁵ Mutua, M. (2002). *Human Rights: A Political and Cultural Critique*. University of Pennsylvania Press. <http://www.jstor.org/stable/j.ctt3fhtq0>

⁴⁸⁶ *ibid.*

⁴⁸⁷ *ibid.*

⁴⁸⁸ *ibid.*

⁴⁸⁹ Sewpaul, V. The West and the Rest Divide: Human Rights, Culture and Social Work. *J. Hum. Rights Soc. Work* 1, 30–39 (2016). <https://doi.org/10.1007/s41134-016-0003-2>

⁴⁹⁰ Zanghì, 1979

⁴⁹¹ *ibid.*

⁴⁹² Burns H. Weston, Robin A. Lukes, and Kelly M. Hnatt, Regional Human Rights Regimes: A Comparison and Appraisal, *20 V anderbilt Law Review* 585 (2021). Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol20/iss4/1>

⁴⁹³ *ibid.*

This is accompanied by the geographic proximity and cultural propinquity, which generally is characterised by socioeconomic, environmental, and security interdependence, which calls for further cooperation between the states and the development of human rights mechanisms⁴⁹⁴. Finally, regional human rights systems enhance the protection and enjoyment of human rights by incorporating regional factors, including common customs, values, cultures, and practices specific to the area⁴⁹⁵.

III.II Background of the ACHPR

In 1977, the United Nations General Assembly adopted Resolution 32/127, urging states outside existing regional human rights frameworks to consider establishing their own regional mechanisms for the promotion and protection of human rights. This reinforced the importance of developing localised human rights regimes⁴⁹⁶. In response, the Organisation of African Unity (OAU) took significant steps towards this goal. In 1979, the Assembly of Heads of State and Government of the OAU tasked its Secretary-General with drafting an *African Charter on Human and Peoples' Rights*. This was the beginning of the regionalisation of human rights systems in Africa⁴⁹⁷.

In 1981, after decades of advocacy by the United Nations Commission on Human Rights, NGOs, and various states, the African Charter on Human and Peoples' Rights was adopted during the Eighteenth Assembly of Heads of State and Government of the Organisation of African Unity (OAU)⁴⁹⁸. Commonly known as the *Banjul Charter*, this document, which entered into force in 1986, was a significant step in the regionalisation of human rights regimes in Africa⁴⁹⁹. By 1986, thirty-one of the fifty OAU member states had ratified the Charter, ensuring the beginning of

⁴⁹⁴ *ibid.*

⁴⁹⁵ Right to Education Initiative. (n.d.). Regional human rights mechanisms. <https://www.right-to-education.org/page/regional-human-rights-mechanisms>

⁴⁹⁶ Burns et al., 2021

⁴⁹⁷ *ibid.*

⁴⁹⁸ Odinkalu, C. A. (2013). From Architecture to Geometry: The Relationship Between the African Commission on Human and Peoples' Rights and Organs of the African Union. *Human Rights Quarterly*, 35(4), 850–869. <http://www.jstor.org/stable/24518037>

⁴⁹⁹ Burns et al., 2021

African human rights protection⁵⁰⁰. The Charter mirrors elements of its European and Inter-American counterparts by safeguarding both "first generation" rights (civil and political) and "second generation" rights (economic, social, and cultural)⁵⁰¹. It also prohibits discrimination of any kind, affirming equality before the law regardless of race, ethnicity, gender, religion, or other statuses. However, the Charter is peculiar to its kind as it recognises collective, "third generation" or solidarity rights, which include the rights of peoples to self-determination, control over natural resources, and a satisfactory environment for development⁵⁰². Such recognition is grounded in the communal feeling prevalent in African traditions, as noted by scholars like Josiah Cobbah, who emphasise the collective nature of human dignity in African societies⁵⁰³. Additionally, the Charter focuses on the duties individuals owe to their families, communities, and the state, further reinforcing the collective orientation of rights in the African context. The African Commission on Human and Peoples' Rights oversees the promotion and protection of these rights⁵⁰⁴.

III.III Legal Analysis

The African Charter on Human and Peoples' Rights provides a comprehensive legal framework for the protection of both civil and economic rights, mirroring many of the principles found in international instruments like the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the other conventions discussed in the previous chapter. However, as mentioned earlier, the Charter stands out for its unique inclusion of collective rights, which reflect the communal values inherent to the African tradition. These rights, such as the right to self-determination and the right for peoples to control their natural resources, though recognised under universal human rights law, carry particular significance in the African context. They address the historical and ongoing struggles of African peoples against colonialism, resource exploitation, and external domination, which emphasises the importance of these rights in the regional human rights landscape. This communal feeling enlightened in the Charter makes us comprehend its commitment to protect not

⁵⁰⁰ *ibid.*

⁵⁰¹ *ibid.*

⁵⁰² *ibid.*

⁵⁰³ Josiah A. M. Cobbah. (1987). African Values and the Human Rights Debate: An African Perspective. *Human Rights Quarterly*, 9(3), 309–331. <https://doi.org/10.2307/761878> as per cited in Burns et al., 2021

⁵⁰⁴ Amnesty International. (2006). A guide to the African Charter on Human and Peoples' Rights. <https://www.amnesty.org/en/wp-content/uploads/2021/08/ior630052006en.pdf>

only individual freedoms but also the collective well-being of African societies. For the purposes of this dissertation, an analysis will be done in order to understand these peculiar rights. Murray's (2019) commentary provides guidance in comprehending the Charter.

Article 20: Peoples' Right to Existence and Self-Determination

Article 20 of the ACHPR protects the fundamental rights of peoples to existence and self-determination, positioning it as a landmark for the protection of collective rights within the African human rights regime. This article grants all peoples the inalienable right to freely determine their political status and pursue economic and social development in line with policies of their own choosing⁵⁰⁵. Originally, this provision was interpreted within the context of decolonisation, as many African states were emerging from colonial rule⁵⁰⁶. It further protects the right of colonised or oppressed peoples to free themselves from domination, whether political, economic, or cultural, through any means recognised by the international community⁵⁰⁷. While decolonisation has often been treated as an historical phenomenon Article 20 remains relevant in matters of internal forms of self-determination⁵⁰⁸.

Article 20 also protects the right to existence, which has been interpreted to extend beyond protection against genocide⁵⁰⁹, war crimes, crimes against humanity, and ethnic cleansing. This interpretation has been applied in several cases, such as in the crises of Darfur, Somalia, Chad, and the Democratic Republic of the Congo. Despite this, the right to existence, as mentioned in Article 20, has been cited sparingly by African bodies, as much of the discourse surrounding the article has instead centred on the right to self-determination⁵¹⁰. As a matter of fact, the provision of the right to self-determination is directly linked to the decolonisation process in Africa, and it allows the colonised peoples to assert independence and establish their own political systems free from foreign

⁵⁰⁵ African Union. (1981). African Charter on Human and Peoples' Rights. African Union

⁵⁰⁶ Murray, Rachel, *The African Charter on Human and Peoples' Rights: A Commentary*, Oxford Commentaries on International Law (2019; online edn, Oxford Academic), <https://doi.org/10.1093/law/9780198810582.001.0001>

⁵⁰⁷ *ibid.*

⁵⁰⁸ *ibid.*

⁵⁰⁹ F. Ouguergouz, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*, Martinus Nijhoff Publishers, 2003

⁵¹⁰ Murray, 2019

domination⁵¹¹. However, in modern times, the principle of self-determination under Article 20 is relevant within the existing national borders⁵¹². A key element of internal self-determination is the right to full political participation, including indigenous peoples, are empowered to engage in decision-making processes that affect their lives⁵¹³. This includes not only political representation but also involvement in managing local affairs and governance⁵¹⁴.

Although initially elaborated in the historical context of decolonisation, this provision aims to protect groups facing other types of domination, such as apartheid or severe human rights violations⁵¹⁵. For the provision to be invoked, certain conditions must be met. First, the violations must be so extreme that the people are unable to determine their political and social future⁵¹⁶. Second, if the state refuses to address these wrongs, external intervention might be justified. The Article allows for assistance from other states and that such support should follow international norms and aim to uphold justice for oppressed communities⁵¹⁷.

Article 21: Disposal of Wealth and Natural Resources

This Article is a fundamental protection in the context of the African continent and ensures that all people shall freely dispose of their wealth, natural resources without prejudice, with a view of strengthening African unity and solidarity⁵¹⁸. Foreign exploitation has been a matter of concern and on this matter, the case of oil exploitation in Ogoniland (Nigeria) is relevant. As a matter of fact, oil giant Shell and the national oil company had failed to engage with the Ogoni community, which didn't have any say in the treatment of the affected land⁵¹⁹. By *wealth and natural resources* is meant not only the items such as coffee, livestock, and other material possessions, but rather

⁵¹¹ ACHPR, 1981

⁵¹² Murray, 2019

⁵¹³ *ibid.*

⁵¹⁴ *ibid.*

⁵¹⁵ Ouguergouz, 2003

⁵¹⁶ Murray, 2019

⁵¹⁷ ACHPR, 1981

⁵¹⁸ *ibid.*

⁵¹⁹ Murray, 2019

essential things that sustain life, such as access to clean water, sanitation, and food⁵²⁰. The issue of spoliation is also given due consideration under the article. By definition, it is the stripping of wealth and natural resources. Post-independence, the focus shifted towards ending this resource drain in cases where profits from natural resources continued to flow exclusively to foreign entities or concession holders⁵²¹. In the case *Democratic Republic of Congo v Burundi, Rwanda, Uganda*, the African Commission defined spoliation as the "illegal exploitation or looting" of resources⁵²². It referenced a UN Panel of Experts' report on the DRC, which documented how armies from Burundi, Rwanda, and Uganda looted vast stockpiles of minerals, coffee, wood, livestock, and money from territories they occupied⁵²³. These resources were either transferred to their home countries or sold on international markets, while other forms of economic control, like forced monopolies and price-fixing, exacerbated the exploitation⁵²⁴.

A number of measures has been proposed as a way to diminish the exploitation of wealth and natural resources and in order to uphold the freedoms established in the article. Monitoring mechanisms are mentioned in the provisions that ought to be implemented as well as cooperative measures between the African states⁵²⁵. Another method that is advised using is taxation on foreign companies in order to avoid that they exploit the resources of African countries and to reduce capital flight⁵²⁶. The impact of corruption on natural resources has been a matter of great concern for the Commission, which calls on States to reduce it by implementing laws that would ensure the criminalisation and prosecution of it⁵²⁷.

Article 22: The Right to Development

⁵²⁰ Resolution on a Human Rights-Based Approach to Natural Resources Governance, ACHPR/Res.224, 2 May 2012

⁵²¹ Ouguergouz, 2003

⁵²² Communication 227/99, *Democratic Republic of Congo v Burundi, Rwanda, Uganda*, 29 May 2003

⁵²³ *ibid.*

⁵²⁴ *ibid.*; Murray, 2019

⁵²⁵ Murray, 2019

⁵²⁶ Resolution on Illicit Capital Flight from Africa, ACHPR/Res.236, 23 April 2013; *ibid.*

⁵²⁷ ACHPR, 2012

The right to development emphasises the collective right of all peoples to pursue their economic, social, and cultural development with respect to their freedom, identity, and equal enjoyment of humanity's common heritage⁵²⁸. This right, both individual and collective, imposes a duty on states, whether acting individually or in collaboration, to ensure its realisation⁵²⁹. This principle aimed to empower newly independent African nations to control their natural resources and promote an equitable global economic order⁵³⁰. The 1986 UN Declaration on the Right to Development and initiatives like the African Union's Agenda 2063 further extend Africa's vision for growth, sustainable development, and shared prosperity. As a matter of fact, Agenda 2063 plans to ensure that the continent of Africa is prosperous and able to provide a high quality of life, a high standard of living, and have accelerated economic growth⁵³¹.

The African Commission has upheld this right in several cases, like in the case of the people of Darfur and the Ogiek community in Kenya being recognised as distinct collectives entitled to development⁵³². The concept of "development" is fundamentally about improving the quality of life and upholding human dignity. Development, in this sense, should ensure that every person is able to flourish within their community, with respect for their rights, freedoms, and cultural heritage⁵³³. In the *Endorois* case, the African Commission elaborated on the understanding of development⁵³⁴. The complaint was filed by the Centre for Minority Rights Development and Minority Rights Group International on behalf of the Endorois community, a group indigenous to Kenya⁵³⁵. The Kenyan government forcibly removed the Endorois from their ancestral lands near Lake Bogoria to create a game reserve without adequate consultation or compensation⁵³⁶. This displacement disrupted the

⁵²⁸ AHCPR, 1981

⁵²⁹ *ibid.*

⁵³⁰ Murray, 2019

⁵³¹ African Union, Agenda 2063: The Vision For 2063

⁵³² Amnesty International. (2023, June 23). Ogiek case: Protection of an Indigenous community in Kenya. <https://www.amnesty.org/en/latest/campaigns/2023/06/ogiek-case-protection-of-an-indigenous-community-in-kenya/>

⁵³³ Murray, 2019

⁵³⁴ *ibid.*

⁵³⁵ Sergon, P. J., Akoth, S. O., & Dzinekou, J. Y. (2022). The role of Indigenous knowledge: practices and values in promoting socio-economic well-being and equity among Endorois community of Kenya. *AlterNative: An International Journal of Indigenous Peoples*, 18(1), 37-45.

⁵³⁶ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010, <https://www.refworld.org/jurisprudence/caselaw/achpr/2010/en/71724>

community's pastoral livelihood and violated their rights to practice their religion and culture. The complainants argued that these actions not only infringed upon the community's property rights but also violated their right to development. Despite the Kenyan High Court's dismissal of their collective claims, the African Commission affirmed that the government's actions breached several rights, including the right to development, which requires respect for indigenous peoples' control over their resources and participation in decisions affecting their livelihoods⁵³⁷. The Endorois' exclusion from their ancestral land and the granting of concessions for ruby mining further worsened their marginalisation and underdevelopment⁵³⁸.

Articles 27 to 29: The Duties of individuals Towards Community

Articles 27, 28, and 29 are often analysed together because they collectively address the relationship between individual rights and societal responsibilities. Article 27 outlines the broad duties individuals owe to various entities, including their family, society, and the state, framing the exercise of individual rights within the context of collective well-being and morality⁵³⁹. Article 28 focuses specifically on the principle of mutual respect and tolerance, emphasising how individuals should interact with others to promote societal harmony⁵⁴⁰. Article 29 then details specific duties, including family obligations, national service, and cultural preservation, stating how personal responsibilities contribute to national and communal development⁵⁴¹. This concept of *collective* duties reflects traditional African values where individual responsibilities are viewed as integral to community and family.⁵⁴² This approach aligns with Leopold Senghor's notion of integrating individual rights within a communal framework and challenges the Western tendency to view rights and duties as separate⁵⁴³.

⁵³⁷ *ibid.*

⁵³⁸ *ibid.*

⁵³⁹ AHCPR, 1981

⁵⁴⁰ *ibid.*

⁵⁴¹ *ibid.*

⁵⁴² Murray, 2019

⁵⁴³ Address delivered by Leopold Sedar Senghor, President of the Republic of Senegal, Address delivered at the opening of the Meeting of African Experts preparing the draft African Charter in Dakar, Senegal 28 November–8 December 1979. Reprinted in I. G. Shivji *The concept of Human Rights in Africa* (1989) as cited in Murray, 2019

Article 27 is often viewed as more of a *framework provision* due to its general nature. Ouguergouz suggests that the broad language of the Article limits its legal impact⁵⁴⁴, but the provision has been invoked in State reports, such as Kenya's, where it is interpreted to require individuals to uphold national values, including patriotism, human dignity, equality, and human rights when applying the constitution or making public policy decisions⁵⁴⁵. Article 27(2) is more frequently cited in jurisprudence, particularly regarding its role in interpreting limitations on other rights⁵⁴⁶. The provision has been used to assess whether certain limitations to rights are lawful, ensuring that such restrictions are necessary, proportionate, and justified in a democratic society. In line with international human rights standards, the African Commission has consistently affirmed that rights limitations should not render the right itself illusory⁵⁴⁷. Limitations must meet several criteria: they must be provided by law, serve a legitimate purpose such as protecting national security or public order, and be non-discriminatory⁵⁴⁸.

Article 28 calls on individuals to respect and consider others without discrimination, and to promote mutual respect and tolerance⁵⁴⁹. Although some commentators view this provision as a general code of conduct lacking significant legal impact, it establishes a moral and ethical standard for societal relations⁵⁵⁰. The African Commission has interpreted this duty as both a negative obligation to avoid discrimination and a positive one to promote respectful and tolerant relations⁵⁵¹. Article 28 was introduced during the 1979 Dakar Meeting of Experts and later adopted without amendment by the 1981 Banjul Ministerial Meeting⁵⁵². This provision is parallel to broader international standards like the ones set by the ICCPR on individual responsibility in promoting

⁵⁴⁴ Ouguergouz, 2003

⁵⁴⁵ Republic of Kenya, Combined 8th–11th Periodic Report on the African Charter on Human and Peoples' Rights, November 2014

⁵⁴⁶ Murray, 2019

⁵⁴⁷ *ibid.*

⁵⁴⁸ Communication 255/02, Garreth Anver Prince v South Africa, 7 December 2004

⁵⁴⁹ ACHPR, 1981

⁵⁵⁰ Murray, 2019

⁵⁵¹ Commission Africaine des Droits de l'Homme & des Peuples. (1989, April 14). *Directives générales pour les rapports périodiques nationaux*. <https://achpr.au.int/index.php/en/documents/1989-04-14/guidelines-national-periodic-reports>

⁵⁵² Rubner, N. (2023). *The African Charter on Human and Peoples' Rights: Volume 2: The Political Process*. James Currey.

human rights⁵⁵³. Additionally, the article shares common ground with the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, specifically in the obligations to counter racial discrimination⁵⁵⁴.

Article 29 stands as the most comprehensive provision of the individual duties block. As a matter of fact, it comprises of the responsibilities that the individual has towards their family, their national community, social solidarity, national independence, as well as the duty to strengthen African cultural values and promote, to the best of their ability, African Unity⁵⁵⁵. As Murray (2019) cites in the commentary, Quashigah (2011) offers a comprehensive analysis of the article by dividing it into the different sections it deals with. As for the family, which is a leit-motif of the Charter as a whole, the duties that the individual has towards it are specific to the role one has in the family system itself. As a matter of fact, the Article extends not only to the responsibility parents have to their children, but also the latter are expected to have duties towards the former. Concerning the parental responsibility, the case *Okpeitcha v Okpeitcha* is of great relevance. According to the Constitutional Court of Benin, the case involves the actions of Mathieu Okpeitcha, a former member of the armed forces, who was found to have violated Article 29 of the African Charter on Human and Peoples' Rights by neglecting his duties towards his family⁵⁵⁶. Okpeitcha suddenly and inexplicably stopped fulfilling his financial responsibilities, particularly in covering the educational expenses of his six children, three of whom were minors⁵⁵⁷. As a result of his failure to provide support, the two eldest children were forced to drop out of school, and the entire family, led by their mother, was plunged into poverty⁵⁵⁸. The court found that Okpeitcha's behavior constituted a clear violation of Article 29 of the Charter⁵⁵⁹. On the matter of the responsibilities that children have towards the family, this matter is better understood through various state reports, such as Mali's combined periodic reports from 2001 to 2011⁵⁶⁰. As a matter of fact, the State reports explains that

⁵⁵³ *ibid.*

⁵⁵⁴ *ibid.*

⁵⁵⁵ ACHPR, Art. 29, 1981

⁵⁵⁶ *Okpeitcha v Okpeitcha*. (2001). Décision DCC01-082 du 17 août 2001. Cour Constitutionnelle du Benin

⁵⁵⁷ *ibid.*

⁵⁵⁸ *ibid.*

⁵⁵⁹ *ibid.*

⁵⁶⁰ Murray, 2019

children have a responsibility to foster family unity, show respect to their parents, elders, and superiors in all situations, and offer them assistance when needed⁵⁶¹.

The obligations that one has towards society and the state are also expressed in Article 29. Specifically, Article 29(2) mandates that individuals contribute to their national community by applying their physical and intellectual abilities for its benefit⁵⁶². Additionally, there is an emphasis on the importance of preserving cultural values through interactions with others in a spirit of tolerance, dialogue, and consultation. There is, however, some ambiguity about how the provision should be specifically fulfilled⁵⁶³. The responsibilities towards the State refer to the duty of individuals to refrain from actions that could compromise state security⁵⁶⁴. This duty is relevant to both nationals and non-nationals⁵⁶⁵.

A peculiar addition to the Article is the responsibilities that the individual has to promote African unity. As a matter of fact, Article 29 (8) mentions that there is a duty to achieve for continental unity that resides in all individuals⁵⁶⁶. In order to best understand this, Murray (2019) refers to various principles which are sourced in several addresses of political figures and institutions. For instance, xenophobia, according to the former Director for Political Affairs of the African Union Dr. Khabele Matlosa, xenophobia undermines African unity and continental integration⁵⁶⁷. Relevantly, Govender's article on this issue is pertinent. He explains that xenophobia is a significant barrier to achieving African unity and is a phenomenon which is often rooted in intolerance, misplaced nationalism, and scapegoating, where foreign nationals are blamed for broader societal issues⁵⁶⁸. In the context of political interests and economic difficulties, xenophobic sentiments are propelled by the perception that migrants are taking resources or opportunities from

⁵⁶¹ African Commission on Human and Peoples' Rights. (2011, December). *Mali: 2nd, 3rd, 4th, 5th, 6th & 7th combined periodic report, 2001-2011*. African Union. <https://achpr.au.int/en/state-reports/mali-2nd-3rd-4th-5th-6th-7th-combined-periodic-report-2001-2011>

⁵⁶² Murray, 2019

⁵⁶³ *ibid.*

⁵⁶⁴ ACHPR, Art. 29 (3), 1981

⁵⁶⁵ Murray, 2019

⁵⁶⁶ ACHPR, Art. 29 (8), 1981

⁵⁶⁷ Opening Statement by the Director for Political Affairs of the African Union Commission, Dr. Khabele Matlosa, 56th Ordinary Session of the African Commission on Human and Peoples' Rights, 8 May 2015

⁵⁶⁸ Govender, K. (2023, June 29). Xenophobia – a threat to the unity of African peoples. ACCORD. <https://www.accord.org.za/analysis/xenophobia-a-threat-to-the-unity-of-african-peoples/#:~:text=Traces%20of%20xenophobic%20sentiment%20and.the%20aspiration%20of%20African%20unity>

local populations⁵⁶⁹. This sentiment fosters division and distrust among the African communities, and some governmental actions slow down the reaching of the goal of African unity. For instance, in 2013, the Tanzanian government expelled about 20,600 undocumented foreign nationals from Burundi, Rwanda, and Uganda⁵⁷⁰, under the guise of reducing crime⁵⁷¹. This action presented issues of xenophobia, where foreigners were made scapegoats for domestic problems⁵⁷². The affirmation of the principle of non aggression is also evident in this context, as per mentioned by the Republic of Burundi⁵⁷³. On this note, the *African Union Non-Aggression and Common Defence Pact* becomes relevant. The Pact aims to promote peaceful coexistence across Africa, prevent both inter-State and intra-State conflicts, and ensure that disputes are resolved through peaceful means⁵⁷⁴. Peace operations led by African Union have been instrumental in this. These operations have addressed threats and improved collaboration between regional security forces⁵⁷⁵ and have shown leadership in responding to atrocities, as well as stepped in where traditional peacekeeping mechanisms fell short⁵⁷⁶. The African Union has been the most active proponent, while other regional organisations, such as the Economic Community of West African States and the Economic Community of Central African States, have also played significant roles⁵⁷⁷.

Chapter IV: Human Rights Violations in East and Horn of Africa

The legislative framework of human rights law, as mentioned in the previous chapters, is extensive and covers numerous aspects of fundamental human rights in modern society. However,

⁵⁶⁹ *ibid.*

⁵⁷⁰ International Organization for Migration. (2013, August 30). Undocumented migrants expelled from Tanzania to receive humanitarian aid. <https://www.iom.int/news/undocumented-migrants-expelled-tanzania-receive-humanitarian-aid>

⁵⁷¹ Govender, 2023

⁵⁷² *ibid.*

⁵⁷³ Republic of Burundi African Charter on Human and Peoples' Rights, First Implementation Report, Bujumbura, September 2010.

⁵⁷⁴ African Union. (2005, January 31). African Union Non-Aggression and Common Defence Pact. <https://au.int/en/treaties/african-union-non-aggression-and-common-defence-pact>

⁵⁷⁵ Allen, N. D. F. (2023, August 9). African-led peace operations: A crucial tool for peace and security. Africa Center for Strategic Studies. <https://africacenter.org/wp-content/uploads/2024/05/African-Led-Peace-Operations.pdf>

⁵⁷⁶ *ibid.*

⁵⁷⁷ *ibid.*

whether universal or regional, legal provisions often struggle to translate into real-world application. While various conventions, declarations, covenants, and charters are founded on the recognition of the need to protect individuals from injustice and affirm their natural rights, a clear gap exists between *de jure* and *de facto*. This gap is evident in the widespread human rights violations observed globally, like in the East and Horn of Africa, which is the region that this dissertation focuses on. This region, historically subjected to European colonisation and still plagued by corruption, conflict, and social unrest, faces ongoing human rights challenges.

It is important to clarify that this chapter does not seek to criticise the region, nor does it intend to impose external perspectives. I believe it is of great relevance to cite the International Commission of Jurists, which noted that *que ce qui serait indéfendable dans une société évoluée et prospère, peut devenir admissible dans une société qui s'efforce de lutter contre la faim*⁵⁷⁸. The analysis presented here stems from an understanding of the region's historical context, aiming to provide constructive insights. The analysis of human rights violations (HRV) will refer to several sources, namely, DefendDefender, an NGO that provides reports on HRV's in the region concerned, and Freedom House, which offers an indication on the extension to which political rights and civil liberties are respected. Concluding observations by the specialised UN Committees will be extensively used throughout the chapter.

IV.I Horn of Africa

Djibouti

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Status of Ratification of the Nine Core Human Rights Treaties

ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

⁵⁷⁸ Commission Internationale de Juristes. (1966). *Réunion plénière de la Commission Internationale de Juristes*. Bulletin de la Commission Internationale de Juristes, (28). <https://www.icj.org/wp-content/uploads/1966/12/ICJ-Bulletin-28-1966-fra.pdf>

⁵⁷⁹ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

In Djibouti, the government continues to restrict fundamental rights, including freedoms of association, peaceful assembly, and expression⁵⁸⁰. Independent media is silenced, and citizens face intimidation⁵⁸¹. Djibouti's human rights record was reviewed by the Human Rights Council as part of its Universal Periodic Review (UPR), which remains one of the few platforms to spotlight Djibouti's human rights situation⁵⁸². The case of Kadar Abdi Ibrahim is relevant. Ibrahim has been unable to leave the country since 2018 after his passport was revoked following his advocacy in Geneva⁵⁸³ for human rights. In April 2018, Kadar Abdi Ibrahim's home was raided by agents from the *Service de Documentation et de Sécurité*, Djibouti's intelligence service⁵⁸⁴. During the raid, his passport was confiscated. Despite the UN Assistant-Secretary-General identifying his case as a clear act of reprisal and raising it before the Human Rights Council in 2018 and 2019, the SDS has yet to return his passport⁵⁸⁵. As a result, Kadar has been unable to leave Djibouti⁵⁸⁶. In March 2024, during the adoption of Djibouti's fourth UPR report, Ibrahim called for an end to state-sponsored reprisals against him⁵⁸⁷.

The country's politics is dominated by President Ismail Omar Guelleh, who has been in power since 1999⁵⁸⁸. His most recent election in April 2021, which saw him win 97 percent of the vote with an 80 percent turnout according to official figures, was described as allegedly unfair⁵⁸⁹. Opposition parties claimed that the process was neither free nor transparent⁵⁹⁰. The electoral laws and their implementation are reportedly biased, with significant advantages given to the ruling party

⁵⁸⁰ DefendDefenders. (2024). *Bi-annual report to the ACHPR: October 2023-April 2024*. Report submitted ahead of the 79th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia.

⁵⁸¹ *ibid.*

⁵⁸² *ibid.*

⁵⁸³ *ibid.*

⁵⁸⁴ DefendDefenders. (2020, March 31). Human rights defender of the month: Kadar Abdi Ibrahim. <https://defenddefenders.org/human-rights-defender-of-the-month-kadar-abdi-ibrahim/>

⁵⁸⁵ *ibid.*

⁵⁸⁶ *ibid.*

⁵⁸⁷ DefendDefenders, 2024

⁵⁸⁸ Freedom House. (2024). *Djibouti: Freedom in the world 2024*. <https://freedomhouse.org/country/djibouti/freedom-world/2024>

⁵⁸⁹ Reuters. (2021, April 10). Djibouti's President Guelleh wins fifth term with 97% of votes. <https://www.reuters.com/world/djiboutis-president-guelleh-wins-fifth-term-with-97-votes-2021-04-10/>

⁵⁹⁰ *ibid.*

and political pluralism being severely constrained⁵⁹¹. While the country formally operates a multiparty system, the government exerts substantial control over political activities⁵⁹². Many opposition parties face denial of legal recognition and harassment of their members⁵⁹³. In July 2023, for example, several leaders of the Rally for Democratic Action and Ecological Development (RADDE) were arrested under dubious charges⁵⁹⁴. Civil liberties are further undermined by the lack of genuine freedom of assembly. Although the constitution guarantees this right, in practice, public gatherings require permits, and unauthorised protests are often met with police violence⁵⁹⁵. The judiciary in Djibouti lacks independence and is often influenced by political considerations⁵⁹⁶. Judges are appointed by the president and his party, and there is widespread corruption within the judicial system⁵⁹⁷.

The situation of women in Djibouti reflects some progress, however, the Committee on the Elimination of Discrimination Against Women expresses, with its most recent Concluding Observations (as of 2024), concerns over some issues. A clear problem persists in gender inequality, especially in reference to rural women, which are not made aware of their rights⁵⁹⁸. This is accompanied by the reducing but still prevalent issue of female genital mutilation and child marriage, the latter which still continues to be common for women between 16 and 18 years of age⁵⁹⁹. Domestic violence remains prevalent and the CEDAW calls for a change in the legal definition of rape, which the Djiboutian legal code relates it to force rather than lack of consent⁶⁰⁰.

⁵⁹¹ Freedom House, 2024

⁵⁹² *ibid.*

⁵⁹³ *ibid.*

⁵⁹⁴ *ibid.*

⁵⁹⁵ Article 19. (2020, June 24). Djibouti: Intimidation of protesters and journalists must end. <https://www.article19.org/resources/djibouti-intimidation-of-protesters/>

⁵⁹⁶ Freedom House, 2024

⁵⁹⁷ *ibid.*

⁵⁹⁸ UN Committee on the Elimination of Discrimination against Women. (2024). Concluding observations on the combined 4th and 5th periodic reports of Djibouti (CEDAW/C/DJI/CO/4-5). <https://digitallibrary.un.org/record/4040178?ln=en&v=pdf>

⁵⁹⁹ *ibid.*

⁶⁰⁰ *ibid.*

Marital rape, underreporting of these violations, and infrequent prosecutions are corollaries of this⁶⁰¹.

Concerning children, Djibouti has been a subject of concern for the Committee of the Rights of the Child. The main areas of concern refer to the many situations in which children lack birth certificate, particularly among refugee children or migrant children⁶⁰². Corporal punishment is a matter of serious concerns as it is not prohibited by law and many forms of discipline are violent⁶⁰³. Furthermore, many children are deprived of a family environment due to the upscaling poverty existent in the country, as well as several cases of parental abandonment or death⁶⁰⁴.

Eritrea

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ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

Eritrea is responsible for severe human rights restrictions and political abuses. The authoritarian rule present starting from the country's independence in 1993 continues to this day and doesn't legally recognise any opposition groups, which operate from abroad⁶⁰⁶. Media suppression is widespread and continues to be a grave issue throughout the country⁶⁰⁷. As a matter of fact, Eritrea is ranked the worst jailer of journalists in the African continent⁶⁰⁸, sixteen journalists are

⁶⁰¹ *ibid.*

⁶⁰² UN Committee on the Rights of the Child. (2022). Concluding observations on the combined third to fifth periodic reports of Djibouti (CRC/C/DJI/CO/3-5). <https://digitallibrary.un.org/record/3978329?ln=en&v=pdf>

⁶⁰³ *ibid.*

⁶⁰⁴ *ibid.*

⁶⁰⁵ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

⁶⁰⁶ Freedom House (2024). Eritrea: Freedom in the world 2024. <https://freedomhouse.org/country/eritrea/freedom-world/2024>

⁶⁰⁷ *ibid.*

⁶⁰⁸ CIVICUS. (2024, April 30). Eritrea ranked worst jailer of journalists in Africa. <https://monitor.civicus.org/explore/eritrea-ranked-worst-jailer-of-journalists-in-africa/>

detained and have never been formally charged⁶⁰⁹. The 1997 Constitution, intended to provide a democratic foundation and safeguard human rights, remains unimplemented, and no alternative has been put in place⁶¹⁰. Additionally, the government fails to incorporate international human rights norms into national law, denying citizens access to justice and protection⁶¹¹. A critical issue is the lack of access to effective remedies for victims of human rights violations, as the government does not enforce decisions by international human rights bodies⁶¹². The case of journalist Dawit Isaak is here relevant. Isaak, co-owner of the independent newspaper *Setit*, was arrested by Eritrean authorities on 23 September 2001⁶¹³. His arrest occurred in the context of a broader crackdown on independent media and political dissent, which saw the closure of eight newspapers and the detention of numerous journalists and political figures⁶¹⁴. Isaak has been detained incommunicado ever since, held at an undisclosed location without formal charges, a trial, or access to legal representation⁶¹⁵. By 2010, Isaak was reportedly in solitary confinement, kept in a small, windowless cell, and his physical and mental health had deteriorated significantly⁶¹⁶. Despite international pressure and calls for his release, the Eritrean government has provided no substantive evidence to justify his arrest, nor have they clarified the reasons for his continued detention⁶¹⁷. His case was brought before the African Commission on Human and Peoples' Rights by his legal representatives, who cited violations of his fundamental rights under the African Charter on Human and Peoples' Rights, which Eritrea ratified in 1999⁶¹⁸.

⁶⁰⁹ African Centre For Media Excellence, “CPJ’s annual prison census reveals alarming trends in global press freedom”, 19 January 2024, <https://acme-ug.org/2024/01/19/cpjs-annual-prison-census-reveals-alarming-trends-in-global-press-freedom/> as cited in DD, 2024

⁶¹⁰ UN Human Rights Committee (2019). *Concluding observations on Eritrea in the absence of its initial report* (CCPR/C/ERI/CO/1)

⁶¹¹ *ibid.*

⁶¹² *ibid.*

⁶¹³ *Dawit Isaak v Republic of Eritrea*. African Commission on Human and Peoples' Rights. (2016). Communication 428/12. Retrieved from <https://caselaw.ihrda.org/entity/owfm9fdnjj?file=1549555174755jt89oqr7ll.pdf&page=1>

⁶¹⁴ *ibid.*

⁶¹⁵ *ibid.*

⁶¹⁶ Aldrich, M. (2016, May 26). Free Dawit Isaak. The Gad About Town. <https://thegadabouttown.com/2016/05/26/free-dawit-isaak/>

⁶¹⁷ ACHPR on Isaak case, 2016

⁶¹⁸ *ibid.*

The absence of a national human rights institution to monitor abuses and hold violators accountable is also a further matter of concern for the Human Rights Committee⁶¹⁹. Extrajudicial killings, enforced disappearances, torture, and sexual violence, particularly against political dissidents, religious minorities, and women, persists without prosecution⁶²⁰. Prisons, known for harsh conditions, sometimes include underground cells and shipping containers, with reports of numerous deaths in custody that go uninvestigated⁶²¹. Freedom of movement is severely restricted, with citizens facing arbitrary arrest, detention, or even death for attempting to leave the country illegally, while religious freedom is constrained⁶²². Women in Eritrea face significant challenges, as many are forcibly recruited into national service for indefinite periods under harsh conditions, often equating to forced labor⁶²³. Sexual violence, including rape, is prevalent, and perpetrators, especially male officers and recruits, act with impunity⁶²⁴. This environment has consequences on women, which take measures to avoid recruitment, such as dropping out of school, getting pregnant, entering child marriages, or fleeing the country, and those attempting to escape often face violence, including being shot at the border or falling victim to traffickers who subject them to abuse⁶²⁵. Children are forced to undergo military training at the Sawa training centre, and reports of forced underage recruitment and violence against children, including sexual abuse, are alarming⁶²⁶.

Ethiopia

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ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

⁶¹⁹ CCPR, *CO Eritrea*, 2019

⁶²⁰ *ibid.*

⁶²¹ *ibid.*

⁶²² *ibid.*

⁶²³ UN Committee on the Elimination of Discrimination against Women (2020). *Concluding observations on the sixth periodic report of Eritrea* (CEDAW/C/ERI/CO/6)

⁶²⁴ *ibid.*

⁶²⁵ *ibid.*

⁶²⁶ CCPR, *CO Eritrea*, 2019

⁶²⁷ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

The protection of human rights in Ethiopia in unstable and, like in the previous cases, sees clear violations of the fundamental rights to which everyone is entitled to. The DefendDefenders (2024) report elaborates on these HRVs, like limitations to freedom of opinion and expressions, with the reporting of detention of journalists associated with the *Adwa barefoot project*, as a way to commemorate the resistance against Italian colonialism⁶²⁸. Another relevant case is the one of journalist Muhiyadin Mohamed Abdullahi⁶²⁹, who was detained to two years in prison for speaking out about safety concerns in the country⁶³⁰. Muhiyadin was detained incommunicado for six days before being transferred to a local police station, despite Ethiopian legislation requiring for a jailed individual to be produced in court within 48 hours of arrest⁶³¹.

The Human Rights Committee and the Committee against Torture offer further insights on the human rights situation in Ethiopia. The 2022 Concluding Observations on the country by the HRC note several concerns about the respect for the provisions set by the ICCPR and are further exacerbated by the existing conflict in the Tigray Region⁶³². The Committee notes an absence of a comprehensive non-discrimination law, which permits for an ethnic profiling and arbitrary detention of political opponents and the closing down of private activities of ethnic Tigrayans⁶³³. This discrimination extends to a criminalisation of same sex relationships in the country, a problem which is consistent throughout the region concerned⁶³⁴. The violence against women is of serious concern in the country, as the armed conflict is fertile ground for rape, gang rape, sexual slavery and intentional transmissions of sexually transmitted disease, especially HIV, as a method of warfare⁶³⁵. This lack of protection of women is further worsened by the legal protection of marital rape on the

⁶²⁸ DefendDefenders, 2024

⁶²⁹ *ibid.*

⁶³⁰ Committee to Protect Journalists. (2024, May 3). Ethiopian journalist Muhiyadin Mohamed Abdullahi sentenced to 2 years in prison. <https://cpj.org/2024/05/ethiopian-journalist-muhiyadin-mohamed-abdullahi-sentenced-to-2-years-in-prison/>

⁶³¹ *ibid.*

⁶³² United Nations Human Rights Committee. (2022, December 7). *Concluding observations on the second periodic report of Ethiopia* (CCPR/C/ETH/CO/2). United Nations Digital Library. <https://digitallibrary.un.org/record/3996646>

⁶³³ *ibid.*

⁶³⁴ *ibid.*

⁶³⁵ *ibid.*

basis of the obligation to engage in sexual relationships with the spouse in marriage⁶³⁶. The Committee against Torture expresses further concern for the issues relating to its Convention. As a matter of fact, the main areas of concern regard the several allegations of crimes against humanity in the context of armed conflict⁶³⁷. It has been reported that there have been several violations in the regions of Tigray, Amhara and Afar in matters of unofficial places of detention, where many individuals are jailed incommunicado in unknown facilities, while many others face pretrial detention⁶³⁸. While the CAT commends the country for the establishment of an Ethiopian Human Rights Commission, it remains concerned for the lack of resources and the consequential ineffective work that it aims to do⁶³⁹. The death penalty is present in the country and is used extensively for matters far from what it is usually designed for (i.e. murders)⁶⁴⁰. As a matter of fact, capital punishment is also used for damage to property and damage to natural resources⁶⁴¹. The lack of access to appropriate redress and compensation for victims of these violations remains a serious concern⁶⁴².

An issue peculiar to the country of Ethiopia is the soi-disant *Southern Route*, a phenomenon explored by the International Organisation for Migrants. The several human rights violations and the conflict perpetuated in the country, as well as the major economic development of South Africa compared to Ethiopia, sets out an important flux of migration through the Southern Route. Ethiopian migration to South Africa started in the 1990s when the apartheid regime collapsed in the latter and ethnic conflicts were exacerbated in the former⁶⁴³. The many opportunities existing in South Africa as well as the country's welcoming of Ethiopian refugees, who consider it as a land of opportunity but also a transit point to the global North, cause the often dangerous migration through

⁶³⁶ *ibid.*

⁶³⁷ United Nations Committee against Torture. (2023, June 7). Concluding observations on the second periodic report of Ethiopia (CAT/C/ETH/CO/2). United Nations Digital Library. <https://digitallibrary.un.org/record/4012733>

⁶³⁸ *ibid.*

⁶³⁹ *ibid.*

⁶⁴⁰ HRC, *CO Ethiopia, 2022*

⁶⁴¹ *ibid.*

⁶⁴² *ibid.*

⁶⁴³ International Organization for Migration. (2023, April). The Southern Dream: Exploring migration dynamics from the Horn of Africa to South Africa along the Southern Route. IOM Regional Data Hub for the East and Horn of Africa. International Organization for Migration

irregular routes with the help of smugglers⁶⁴⁴. The *southern route* goes through Kenya, which, thanks to the bilateral agreement between the two countries, facilitates the movement of Ethiopians, and the United Republic of Tanzania, which has more stringent measures and it is in fact here where most migrants face difficulties, as many are jailed or are abandoned by their smugglers⁶⁴⁵. The most concerning issue about the route is the several missing migrants and migrant deaths that occur throughout the travel, which is an evident lack of protection of these individuals which, as an exacerbating issue, are sometimes not registered at birth or do not carry identification with them. This is a serious matter of concern, as many of the disappeared or dead individuals cannot be identified and, the many families with migrating member, could never be informed about the whereabouts or the living status of their loved ones.

Somalia

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ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

Somalia has consistently been ranked as one of Africa's, and the world's, deadliest countries for journalists and media workers⁶⁴⁷. In addition to this, other several grave human rights violations are present in the country. On March, 2024, Somalia passed a constitutional amendment which lowered the age of maturity from the global standard of 18 to 15. This gravely affects the safety of girls and heightens the risk of child marriage⁶⁴⁸. This is in clear contrast with the Convention on the Rights of the Child and has extremely negative consequences on children's access to education,

⁶⁴⁴ *ibid.*

⁶⁴⁵ *ibid.*

⁶⁴⁶ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

⁶⁴⁷ CPJ, "Somaliland journalist Mohamed Abdi Sheikh detained after discussing diplomatic row", <https://cpj.org/2024/01/somaliland-journalist-mohamed-abdi-sheikh-detained-after-discussing-diplomatic-row/> as cited in DefendDefenders, 2024

⁶⁴⁸ Public Interest Law Alliance. (2024, April 10). Somalian constitutional change lowers the age of maturity, leaving children potentially vulnerable. <https://www.pila.ie/resources/bulletin/2024/04/10/somalian-constitutional-change-lowers-the-age-of-maturity-leaving-children-potentially-vulnerable>

health, and protection from abuse⁶⁴⁹. Other violations of the CRC are found in authorities treating boys being allegedly affiliated with Islamist group *Al-Shabab* as adults and some cases report the use of torture in custody⁶⁵⁰. Female circumcision and female genital mutilation are also matters of great concerns for the international community⁶⁵¹. The HRC is concerned about the several incidents of peaceful protesters being killed or assaulted by the country's security forces and condemns the lack of access to redress mechanisms for the victims⁶⁵². Further preoccupations refer to the lack of protection of the freedom of conscience as any religion other than Islam is criminally punishable, which puts at risk the religious minorities in the country⁶⁵³.

Further concerns relate to the lack of protection of persons with disabilities. On this note, the Committee on the Rights of Persons with Disabilities expressed its areas of concerns. Many of the preoccupations relate to the national legislation being discriminatory towards persons with disabilities and does not sufficiently protect their social, economic and cultural rights⁶⁵⁴. This is further exacerbated by a discriminatory definition and concepts inherent to disabilities in laws and policies⁶⁵⁵. The stigmatisation, the negative stereotypes and cultural beliefs against persons with disabilities, such as individuals with albinism, are a matter of sever concern for the CRPD⁶⁵⁶. This is evidenced by the lack of accessibility for many disabled persons to areas like information and technology, and is further worsened by the lack of services that enable persons with disabilities to become fully independent in society, which is propelled by the guardianship regime that exists within the country⁶⁵⁷.

South Sudan

⁶⁴⁹ Human Rights Watch. (2024, March 29). Somalia: Constitutional proposals put children at risk. <https://www.hrw.org/news/2024/03/29/somalia-constitutional-proposals-put-children-risk>

⁶⁵⁰ *ibid.*

⁶⁵¹ *ibid.*

⁶⁵² United Nations Human Rights Committee. (2024). Concluding observations on the initial report of Somalia (CCPR/C/SOM/CO/1). United Nations Digital Library. <https://digitallibrary.un.org/record/4046158>

⁶⁵³ *ibid.*

⁶⁵⁴ United Nations Committee on the Rights of Persons with Disabilities. (2021). Concluding observations on the initial report of Djibouti (CRPD/C/DJI/CO/1). United Nations Digital Library. <https://digitallibrary.un.org/record/3949024>

⁶⁵⁵ *ibid.*

⁶⁵⁶ *ibid.*

⁶⁵⁷ *ibid.*

ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

Upcoming elections are scheduled for December of this year (as of 2024). Violations of human rights are frequently reported, including and not limited to abuses by armed forces⁶⁵⁹. A recent, concerning development in the legislation in South Sudan related to the inability to protect the freedom of expression and of opinion. Human Rights Watch published an article that explains that the approval of the new amendment to the National Security Service law, which already used to establish a regime of censorship and abusive interference, will further undermine these abuses and will permit the arrest of individuals without a warrant⁶⁶⁰. The South Sudanese government has long used national legislation to restrict freedoms on the basis of *national security*, as acknowledged by the government⁶⁶¹. The situation is worsened by the fact that several individuals, including foreign citizens, are jailed incommunicado⁶⁶².

The situation for women in South Sudan is severely concerning and the concluding observations on the CEDAW Committee elaborate further on the violations of the fundamental rights to which South Sudanese women are entitled to. The internal conflict in the country has heightened cases of gender based violence and forced displacement of many women⁶⁶³. The case of the Terrain Hotel regarding to the sexual offences against women and girls by 10 soldiers in Jaba has been treated with widespread impunity and, as reported by Amnesty International (2019), a missing case file has blocked the appeals in the seek for justice or the rapes and murder that

⁶⁵⁸ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

⁶⁵⁹ DefendDefenders, 2024

⁶⁶⁰ Human Rights Watch. (2024, July 4). *South Sudan: Damaging Security Law Revisions Adopted*. <https://www.hrw.org/news/2024/07/04/south-sudan-damaging-security-law-revisions-adopted>

⁶⁶¹ DefendDefenders, 2024; HRW, 2024

⁶⁶² HRW, *NSS Amendment*, 2024

⁶⁶³ UN Committee on the Elimination of All Forms of Discrimination Against Women. (2021) Concluding observations on the initial report of South Sudan (CEDAW/C/SSD/CO/1). United Nations Digital Library. <https://digitallibrary.un.org/record/3951741?ln=en&v=pdf>

happened in the capital⁶⁶⁴. Furthermore, women's access to justice is limited as they are often discouraged to file complaints and are not afforded protection measures⁶⁶⁵. This is exacerbated by the gender bias within the justice system of South Sudan and, of utmost concern, many women that are victims of sexual violence are often required to marry the rapist⁶⁶⁶, and many of the women who are already married and are victims of rape are sometimes abandoned by their partners and family members⁶⁶⁷. Of further concern is the trafficking of women, which is not specifically criminalised and child recruitment continues without impunity⁶⁶⁸. This has grave consequences for girls, as they are often obliged to give up on their education and, as the social expectations between men and women are different, parents tend to prioritise the education of their sons rather than equally doing so with their daughters⁶⁶⁹.

In the context of the protection of children, the CRC expresses concerns over grave human rights abuses. The persistence of discrimination of children in marginalised situation is aggravated, and South Sudan stands as the country with the lowest indicator of health for girls⁶⁷⁰. The principle of the *best interest of the child* has been reported to be lacking in legislations, while the right to life is threatened by the resorting to the death penalty and high rates of malnutrition⁶⁷¹. Several other issues relating to the lack of protection of children in South Sudan refer to the severely low birth registration and issuance of birth certificates, which increases the risk of statelessness of the child⁶⁷². A consequence of the South Sudanese penal code, which criminalises *carnal intercourse against the order of nature*⁶⁷³ (i.e. homosexual intercourse), deters many boys from reporting acts of

⁶⁶⁴ Amnesty International. (2019). *South Sudan: Missing file blocks justice for Terrain hotel rapes and murder*. Retrieved from <https://www.amnesty.org/en/latest/press-release/2019/09/south-sudan-missing-file-blocks-justice-for-terrain-hotel-rapes-murder/>

⁶⁶⁵ CEDAW, *CO South Sudan*, 2021

⁶⁶⁶ *ibid.*

⁶⁶⁷ UN News. (2022). *South Sudan: 'hellish existence' for women and girls, new UN report reveals*. Retrieved from: <https://news.un.org/en/story/2022/03/1114312>

⁶⁶⁸ CEDAW, *CO South Sudan*, 2021

⁶⁶⁹ *ibid.*

⁶⁷⁰ UN Convention on the Rights of the Child. (2022). Concluding observations on the initial report of South Sudan (CRC/C/SSD/CO/1). United Nations Digital Library. <https://digitallibrary.un.org/record/3992526?ln=en&v=pdf>

⁶⁷¹ *ibid.*

⁶⁷² *ibid.*

⁶⁷³ Penal Code Act, §248. (2008). Government of South Sudan. <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/ss/ss014en.html>

sexual violence perpetrated against them for fear of prosecution⁶⁷⁴. The issue of child sexual abuse continues to be perpetrated by military and humanitarian actors, and violence against women continues to be normalised⁶⁷⁵.

A commendable effort in the country is the recent approval of the transitional justice laws in order to advance the accountability mechanisms against the abusers who committed violations since the start of the armed conflict in 2013⁶⁷⁶. This transitional justice bills is the result of many pressures from activists and victims of these abuses, and aims to provide reparations to the individuals who have suffered loss throughout the conflict⁶⁷⁷.

IV.II East Africa

Kenya

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ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

The human rights situation in Kenya is characterised by persistent cases of femicide and oppression of freedom of opinion and expression⁶⁷⁹. Political turmoil is accompanied by violence, and governmental agencies oppress critical voices⁶⁸⁰. 2024 started off with the killing of several women, and gender roles, which stay highly relevant in the case of femicide, are deeply rooted in Kenyan culture⁶⁸¹. The economic disparities, lack of access to education, healthcare, and employment are all factors that play into the realisation of femicide, which is accompanied by a

⁶⁷⁴ CRC, *CO South Sudan*, 2022

⁶⁷⁵ *ibid.*

⁶⁷⁶ Human Rights Watch. (2024, September 9). *South Sudan: Parliament Approves Transitional Justice Laws*. <https://www.hrw.org/news/2024/09/09/south-sudan-parliament-approves-transitional-justice-laws>

⁶⁷⁷ *ibid.*

⁶⁷⁸ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

⁶⁷⁹ DefendDefenders, 2024

⁶⁸⁰ *ibid.*

⁶⁸¹ Grade Ndanu. (2024, March 14). *Femicide in Kenya: A Silent Crisis*. UAB Institute of Human Rights Blog. <https://sites.uab.edu/humanrights/2024/03/14/femicide-in-kenya-a-silent-crisis/>

normalisation of violence against women⁶⁸². A demonstration held in the country in January of this year (2024) was a commendable effort by women to voice their anger on the issue and raise awareness on this problem⁶⁸³. Many of the abuses go unreported⁶⁸⁴, which evidences a lack of trust to the justice system.

A relevant case in the context of human rights is the case of Osinde Obare, a media correspondent who exposed a bribery that took place in Kipsam, where officers from the Ethics and Anti-Corruption Commission assaulted him⁶⁸⁵. Obare claims to have received threats following his coverage and has gone into hiding after being assaulted again⁶⁸⁶. Freedom of opinion and expression continues to be threatened as authorities found the body of political activist Muthiani, who was strangled and thrown into a river⁶⁸⁷. Muthiani was actively involved in last year's General Elections and gave extensive political commentary⁶⁸⁸.

The Human Rights Committee expresses concerns on the lack of prosecution of the many human rights violations that occurred in the country from the moment it gained independence from the United Kingdom to 2008⁶⁸⁹. This concern is heightened as the many victims cannot yet access reparations, which is accompanied by an impaired progress of the remedial mechanisms of the country, especially in reference to the violations which happened after the 2017 elections⁶⁹⁰. As a matter of fact, security forces used excessive forces and at least 12 people were killed by police⁶⁹¹. The lack of comprehensive legislation against anti discrimination continues to be a concern, especially in matters of impairment of the liberty and the security of the person, which is

⁶⁸² *ibid.*

⁶⁸³ AlJazeera (2024, January 27). '*Stop killing us!*': Thousands march to protest against femicide in Kenya. <https://www.aljazeera.com/gallery/2024/1/27/stop-killing-us-thousands-march-to-protest-against-femicide-in-kenya>

⁶⁸⁴ *ibid.*; DD Report, 2024

⁶⁸⁵ DD Report, 2024

⁶⁸⁶ Kenyans. (2024, March 28). *KTN Journalist Goes Into Hiding Over Threats for Covering Chaos in Trans Nzoia Burial*. Retrieved from <https://www.kenyans.co.ke/news/99102-ktn-journalist-goes-hiding-over-threats-covering-chaos-transnzoia-burial>

⁶⁸⁷ DD Report, 2024

⁶⁸⁸ Nation. (2023). *Who is Daniel Muthiani? All about missing Meru blogger*

⁶⁸⁹ UN Human Rights Committee. (2021). *Concluding Observations on the 4th periodic report of Kenya (CCPR/C/KEN/CO/4)*. United Nations Library <https://digitallibrary.un.org/record/3925702?ln=en&v=pdf>

⁶⁹⁰ *ibid.*

⁶⁹¹ Human Rights Watch. (2018, February 20). *Kenya Elections 2017*. Retrieved from <https://www.hrw.org/blog-feed/kenya-elections-2017>

characterised by arbitrary arrests and detentions of several civil society representatives, some of which are gay, lesbian, bisexual, transgender, or intersex⁶⁹². Another issue that the HRC expresses as a matter of concern, despite the commendable efforts, is the condition of prisoners, especially in reference to overcrowding⁶⁹³. The Borgen Project describes the prison system as one of the worst in the world⁶⁹⁴, especially when looking at the miserable unhygienic conditions in which prisoners are forced to live in⁶⁹⁵. On this note, the Committee against Torture expresses further concerns on the conditions of detention. Not only is lack of ventilation, which is worsened by the overcrowding up to 400%, a severe issue, but the Committee also reports insufficient quantity of water and food, as well as lack of recreational activities for the detainees⁶⁹⁶. Many other issues continue to be a matter of concern, like the limited access to healthcare and medical staff, while many children remain to be detained with adults⁶⁹⁷. Inter-prisoner violence and sexual abuse, as well as violence perpetrated by the prison staff, continues to be a severe problem⁶⁹⁸. There are reports of cases of lynchings which go unpunished, like the case of an elderly woman who was accused of witchcraft⁶⁹⁹.

The Committee on the Elimination of Racial Discrimination has reported alarming concerns for the situations of indigenous people in Kenya. The Endorois community is subject to attacks and forced evictions, which is a violation of the high court decision in the case *Joseph Letuya and others v. The Attorney General*⁷⁰⁰. In the case the applicants represent the Ogiek community, accusing that Kenya infringed their livelihood through the deprivation and eviction of their land⁷⁰¹. The

⁶⁹² HRC, *CO Kenya*, 2021

⁶⁹³ *ibid.*

⁶⁹⁴ The Borgen Project (2023, January 4). *Prison Conditions in Kenya*. Retrieved from <https://borgenproject.org/prison-conditions-in-kenya/#:~:text=The%20prison%20system%20in%20Kenya.common%20throughout%20prisons%20in%20Kenya>

⁶⁹⁵ *ibid.*

⁶⁹⁶ UN Committee against Torture. (2022). *Concluding Observations on the 3rd periodic report of Kenya (CAT/C/KEN/CO/3)*. United Nations Digital Library <https://digitallibrary.un.org/record/3980977?ln=en&v=pdf>

⁶⁹⁷ *ibid.*

⁶⁹⁸ *ibid.*

⁶⁹⁹ *ibid.*

⁷⁰⁰ UN Committee on the Elimination of Racial Discrimination (2017). *Concluding Observations on the 5th and 7th periodic reports of Kenya (CERD/C/KEN/CO/5-7)*. United Nations Digital Library <https://digitallibrary.un.org/record/1311171?ln=en&v=pdf>

⁷⁰¹ *Joseph Letuya and others v. The Attorney General*. (ELC Civil Suit No. 821 of 2012). InforMEA (2014) <https://www.informea.org/en/court-decision/joseph-letuya-21-others-v-attorney-general-5-others>

Court declared the right to life, to dignity and social and economic rights has been contravened and ensures that the land was identified for the settlement of the Ogiek community⁷⁰². The case remains highly relevant to this day in reference to indigenous people's rights. A further concern expressed is the persecution of people with albinism⁷⁰³, which continue to be trafficked for the use of their body parts⁷⁰⁴.

A recent, severely concerning case about the safety of women in Kenya is the one of Rebecca Cheptegei, the Ugandan long distance olympic athlete who was recently set on fire while alive by her former boyfriend Dickson Marangach⁷⁰⁵. The pair had been fighting over the land in which the house was built⁷⁰⁶. This tragic murder stems as a representation of Kenya's failure to protect women, as 34% of women experiences violence since the age of 15⁷⁰⁷. The underreporting of victims and the lack of prosecution continues to be a concern for the Committee against the Discrimination of Women⁷⁰⁸. This is accompanied by the several cases of trafficking of women and girls for sexual exploitation and the abuse of prostitution, as sex workers run a bigger risk of being murdered, gang raped, extorted, or forced to practice sex without the use of condoms⁷⁰⁹.

Uganda

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ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

⁷⁰² *ibid.*

⁷⁰³ CERD, *CO Kenya, 2017*

⁷⁰⁴ CCPR, *CO Kenya, 2021*

⁷⁰⁵ The Guardian (2024, September 5). *Rebecca Cheptegei's family demand justice after death of runner set on fire by former partner*. Retrieved from <https://www.theguardian.com/sport/article/2024/sep/05/ugandan-runner-rebecca-cheptegei-dies-from-injuries-after-being-set-on-fire>

⁷⁰⁶ *ibid.*

⁷⁰⁷ *ibid.*

⁷⁰⁸ UN Committee on the Elimination of Discrimination Against Women (2017, November 22). *Concluding Observations on the eight periodic report of Kenya* (CEDAW/C/KEN/CO/8). <https://digitallibrary.un.org/record/3843254?ln=en&v=pdf>

⁷⁰⁹ *ibid.*

⁷¹⁰ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

The Human Rights Committee has reported several cases of human rights violations and expresses concern over them. A first concerns the *Anti Homosexuality Act* of 2023, which criminalises acts of homosexual sexual activity and punishes it with lengthy prison sentences on the basis of *promoting homosexuality*, while the death penalty is reserved for non consensual homosexual activity⁷¹¹. This is accompanied by arbitrary arrests of LGBTI persons⁷¹². The lack of protection for gay people is further evidenced in the DefendDefenders 2024 Report, which outlined the stabbing of LGBT+ activist Steven Kabuye⁷¹³, which is an indirect consequence of the Anti Homosexuality Act as it promotes hate and intolerance against LGBTQ individuals⁷¹⁴. Organisations like *Sexual Minorities Uganda* (SMUG), which advocates for LGBT+ rights, was rejected registration⁷¹⁵, violating freedom of association and expression and therefore impairing the organisation to operate legally⁷¹⁶. Further concerns are reported by the HRC in the context of gender equality, as several women are deprived of their land and property rights, especially widowers, who are stripped of their land from the family of their late husbands⁷¹⁷. Another issue of HRVs in Uganda is enforced disappearances, as individuals continued to be detained in unknown jails⁷¹⁸. The CAT further elaborates on the treatment of prisoners and detainees as it is severely concerned about the excessive use of force and violence and the lack of access for victims to prosecute any case of torture⁷¹⁹. A further gap in the Ugandan judicial system is revealed by the limited accessibility of habeas corpus procedures⁷²⁰, which effectively impairs the fairness of the justice system in the country. The right to privacy is also violated, as warrantless searches in the

⁷¹¹ UN Human Rights Committee. (2023) *Concluding observations on the 2nd periodic report of Uganda* (CCPR/C/UGA/CO/2). <https://digitallibrary.un.org/record/4020398?ln=en&v=pdf>

⁷¹² *ibid.*

⁷¹³ DD 2024 Report

⁷¹⁴ Kenya Human Rights Commission. (2024) *Attack on LGBTQ activist Kabuye underscores urgency to repeal Uganda's Homosexuality Act*. <https://khrc.or.ke/press-release/attack-on-lgbtq-activist-kabuye-underscores-urgency-to-repeal-ugandas-anti-homosexuality-act/>

⁷¹⁵ DD 2024 Report

⁷¹⁶ Human Rights Watch. (2024, March 21). *Ugandan Appeals Court Shuttters LGBT Rights Group*. <https://www.hrw.org/news/2024/03/21/ugandan-appeals-court-shuttters-lgbt-rights-group>

⁷¹⁷ *ibid.*

⁷¹⁸ *ibid.*

⁷¹⁹ UN Committee Against Torture. (2022). *Concluding observations on the 2nd periodic report of Uganda* (CAT/C/UGA/CO/2). <https://digitallibrary.un.org/record/3996556?ln=en&v=pdf>

⁷²⁰ *ibid.*

homes of political opponents and human rights defenders continue⁷²¹. Furthermore, several individuals are compulsorily tested for disclosure of HIV status without consent⁷²².

Other issues regard the climate and the right to a healthy environment. The Annual Report from Amnesty International elaborates on the development of a 1443 km pipeline (known as EACOP) that would go from Kabaale to Tanzania’s Tanga Port⁷²³. The pipeline would pass human settlements as well as wildlife areas and water sources, which threatens the right to a clean and sustainable environment⁷²⁴. The violation of the right to a healthy environment is accompanied by the devastation of thousands of people’s livelihoods as land acquisition and displacement is documented⁷²⁵.

Rwanda

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ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

The prosecutions and enforced disappearances of critical individual of public affairs in Rwanda continue, and unexplained deaths have been reported⁷²⁷. The impairment of the freedom of expression extends to abroad living nationals as they report that they are scared of reprisals and therefore practice self censorship⁷²⁸. The case of Niyonsenga is relevant in this context. Niyonsenga was a human rights defender who reported commentary on Rwandan politics and was arrested after reporting on the COVID-19 guidelines and was accused of forgery⁷²⁹. During his hearing at the

⁷²¹ CCPR, *CO Uganda*, 2023

⁷²² *ibid.*

⁷²³ Amnesty International (April 2024). *Republic of Uganda in The State of the World’s Human Rights*. Retrieved from <https://www.amnesty.org/en/documents/pol10/7200/2024/en/>

⁷²⁴ *ibid.*

⁷²⁵ Human Rights Watch. (2023, July 10). *Uganda: Oil Pipeline Project Impoverishes Thousands*. <https://www.hrw.org/news/2023/07/10/uganda-oil-pipeline-project-impoverishes-thousands>

⁷²⁶ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

⁷²⁷ DD Report, 2024

⁷²⁸ Human Rights Watch (2023, October 10), *Global Playbook of Abuse to Silence Critics*. <https://www.hrw.org/news/2023/10/10/rwanda-global-playbook-abuse-silence-critics>

⁷²⁹ DD Report, 2024

court of appeal in Kigali, the reported claims that he was subject to inhumane conditions as he was frequently beaten and untreated for medical care that he needed⁷³⁰.

The protection of children in Rwanda is best understood through the concluding observations of the Committee on the Rights of the Child, which is concerned about reports of arbitrary detention, as well as the lack of implementation of the best interest of the child principle into national legislation⁷³¹. The view of the child in matters such as divorce and custody is not heard, while reports of violence against children continues, especially in reference to corporal punishment in schools and in the home⁷³². Public tolerance of sexual violence against girls and the underreporting of abuse are a matter of severe concern for the Committee and many teenage pregnancies in the country are a result of this abuse⁷³³.

Rwanda is one of the few countries in the region that ratified the International Protection of the Rights of All Migrant Workers and Members of Their Families. While commendable efforts have been made by the country, the Committee expresses some concerns over the implementation of the Convention. Many of the preoccupations refer to the lack of awareness if the ICRMW itself, as the CMRW elaborates on the absence of cases and appeals by migrant workers to be a sign of this⁷³⁴. Strict administrative penalties, including fines for visa overstays and the possibility of expulsion, place a heavy burden on migrants, especially those in irregular situations⁷³⁵. The criminalisation of assistance to irregular migrants further isolates them, as individuals who might offer help risk legal repercussions⁷³⁶. The absence of laws prohibiting child labor exposes migrant children to exploitation in hazardous work, while migrant girls in domestic work are particularly at risk of abuse due to informal employment and a lack of protective measures⁷³⁷.

⁷³⁰ CPJ. (2024) *Rwandan journalist Dieudonné Niyonsenga says he was beaten, detained in 'hole'*. <https://cpj.org/2024/01/rwandan-journalist-dieudonne-niyonsenga-says-he-was-beaten-detained-in-hole/>

⁷³¹ UN Committee on the Rights of the Child. (2020). *Concluding observations on the combined 5th and 6th periodic reports on Rwanda*. Retrieved from <https://digitallibrary.un.org/record/3862645?ln=en&v=pdf>

⁷³² *ibid.*

⁷³³ *ibid.*

⁷³⁴ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. (2021). *Concluding Observations on the 2nd periodic report on Rwanda*. Retrieved from <https://digitallibrary.un.org/record/3945306?ln=en&v=pdf>

⁷³⁵ *ibid.*

⁷³⁶ *ibid.*

⁷³⁷ *ibid.*

The Committee on the Elimination of Discrimination against Women expresses several concerns in the context of protection of women’s rights in Rwanda. Namely, the CEDAW elaborates on the obstacles women and girls face when accessing justice, which impairs prosecution when women are victims of human rights violations⁷³⁸. This is particularly problematic in reference to Batwa women, women refugees, which have limited knowledge on legal aid services as they have limited access to such information⁷³⁹. The persistence of patriarchal attitudes in society undermines the educational opportunities and career ones within women, while high prevalence of violence against women remains a severe concern, especially in reference to the normalisation of these practices⁷⁴⁰. Furthermore, the penalty for marital rape, which is worryingly underreported, is not harmonised with the penalty of rape⁷⁴¹. Commendable efforts in advancing women’s rights is the high representation of women in politics, as it has the world’s highest proportion of females in government positions⁷⁴².

Burundi

743

ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

The recent DefendDefenders Report clearly states that there are some several violations and attacks against human rights in Burundi. As a matter of fact, gender based violence, torture, kidnappings, and violations of the right to life have been documented⁷⁴⁴. A case relating to the violation of the freedom of association is the one of Pascal Ndereyimana, who is affiliated with the

⁷³⁸ UN Committee on the Elimination of Discrimination against Women. (2024). *Concluding observations on the 10th periodic report of Rwanda*. Retrieved from <https://digitallibrary.un.org/record/4053473?ln=en&v=pdf>

⁷³⁹ *ibid.*

⁷⁴⁰ *ibid.*

⁷⁴¹ *ibid.*

⁷⁴² UN Women Africa. *Where we are: Rwanda*. Retrieved from: <https://africa.unwomen.org/en/where-we-are/eastern-and-southern-africa/rwanda>

⁷⁴³ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

⁷⁴⁴ DD Report, 2024

opposition party and was brutally attacked⁷⁴⁵, leaving him unconscious⁷⁴⁶. Three Imbonerakure, a militant, partisan group of Burundi⁷⁴⁷, remain free and unprosecuted⁷⁴⁸. Further human rights violations and Burundi's failure to protect women is evidenced by the case of Emilienne Sibomana, who denounced the school director for sexual abused and sentenced to five years of prison for slanderous denunciation⁷⁴⁹. Father Léonard Ntakarutimana, the man accused of said abuse, remained he head of the school in which he allegedly abused female pupils⁷⁵⁰.

The Human Rights Committee's most recent concluding observations help elaborate on a list of concerns regarding HRVs. Firstly, discrimination on the grounds of sexual orientation continues to be a matter of serious concern as it criminalises *homosexual practices*, like in the case of the prosecution of 24 individuals who took part in an event regarding HIV in Gitega⁷⁵¹. This is an issue that persists within the country and promotes the stigmatisation of sexual minorities, which impairs their basic access to basic services, like housing, health care, and education⁷⁵². Anti corruption efforts remain inefficient as several levels of government remain corrupted, most worryingly in sectors inherent to resource exploitation⁷⁵³.

The Committee against Torture also expressed deep concerns about the excessive use of force and enforced disappearances of political nature. As a matter of fact, many are the allegations that regard consistent reports of disappearing young men that are member of the political opposition, while some are victims of the excessive use of force, sometimes lethal, to suppress demonstrations⁷⁵⁴. The conditions of detention, which are characterised by overcrowding, lack of

⁷⁴⁵ *ibid.*

⁷⁴⁶ SOS Torture Burundi (2023, December 31). *SOS-Torture Burundi Report No. 420*. https://sostortureburundi.org/wp-content/uploads/2023/12/Weekly-report_no_420.pdf

⁷⁴⁷ The New Humanitarian. (2015, April 28). *Who are the Imbonerakure and is Burundi unravelling?* <https://www.thenewhumanitarian.org/news/2015/04/28/who-are-imbonerakure-and-burundi-unravelling>

⁷⁴⁸ SOS Torture, *Report No. 420*, 2023

⁷⁴⁹ DD Report, 2024

⁷⁵⁰ SOS Media Burundi. (2024, July 4). *Gitega : Emilienne Sibomana acquitted by the Court of Appeal*. <https://www.sosmediasburundi.org/en/2024/07/04/gitega-emilienne-sibomana-acquitted-by-the-court-of-appeal/>

⁷⁵¹ UN Human Rights Committee. (2023). *Concluding observations on the 3rd periodic report of Burundi (CCPR/C/BDI/CO/3)*. <https://digitallibrary.un.org/record/4023213?ln=en&v=pdf>

⁷⁵² *ibid.*

⁷⁵³ *ibid.*,

⁷⁵⁴ UN Committee against Torture. (2023). *Concluding observations on the 3rd periodic report of Burundi (CAT/C/BDI/CO/3)*. <https://digitallibrary.un.org/record/4035220?ln=en&v=pdf>

hygiene and poor access to food and water, continues to be a reason of preoccupation for the CAT, as several individual also die in custody⁷⁵⁵. Both the HRC and the CAT report the violation of women’s rights as sexual violence is widely used as a form of political oppression⁷⁵⁶. As a matter of fact, gang rape and other forms of sexual violence continue to be practiced by governmental entities against opposing views, while impunity remains worryingly enjoyed by the perpetrators⁷⁵⁷. Furthermore, reproductive rights are threatened by Burundi, as it criminalises the voluntary termination of pregnancy, which makes women choose more dangerous, unsafer options, which risks them permanent damage to their health⁷⁵⁸.

Tanzania

759

ICCPR	ICESCR	ICERD	CEDAW	CAT	CPED	CRC	ICRMW	CRPD
ACHPR								

The human rights violations in Tanzania are characterised by cases of corruption, limited access to safe water, and the infringement of the land rights of the Masaai population. Although no recent concluding observations have been brought about by the specialised committees, several reports help elaborate on the country’s protection of human rights.

Firstly, water supply remains limited in Tanzania, especially in rural areas where sanitation services, safe drinking water, and basic hygiene continues to be mostly inaccessible⁷⁶⁰. Many individuals resort to practices such as "bucket showering" or rely on contaminated water sources,

⁷⁵⁵ *ibid.*

⁷⁵⁶ HRC, *CO Burundi*, 2023; CAT, *CO Burundi*, 2023

⁷⁵⁷ HRC, *CO Burundi*

⁷⁵⁸ *ibid.*

⁷⁵⁹ Office of the High Commissioner for Human Rights. Status of ratification interactive dashboard. United Nations. <https://indicators.ohchr.org>

⁷⁶⁰ World Bank Group. (2023, November 28). *Expanded Access to Water Supply, Sanitation, and Hygiene Services in Tanzania*. Retrieved from <https://www.worldbank.org/en/results/2023/11/20/expanded-access-to-water-supply-sanitation-and-hygiene-services-in-tanzania>

which pose significant risks of waterborne diseases, like cholera, typhoid, malaria, and amoebas⁷⁶¹. Worsening the situation is the limited access to healthcare and the lack of resources which leads to a weak healthcare system⁷⁶². The World Health Organization's 2023 Country Disease Outlook evidences the consequences of poor access to healthcare services, elaborating on the fact that malaria and HIV, despite the latter being increasingly treated in the country, still remain a matter of concern in reference to the right to health⁷⁶³.

While the leadership position held by the United Republic of Tanzania's female President Samia Suluhu Hassan may be considered as a commendable advancement of women's access in politics, there are some concerns over the respect of women's integrity in the private sphere. According to a UN Women's article, 30.5% of women were married before the age of 18, while several women report to have been subject to physical and sexual violence⁷⁶⁴. A tragic, recent case that intersects with the rights of the child is a severe violation of the daughter of Damas Stephano, who sexually assaulted his six month old child in the region of Dodoma, causing her death⁷⁶⁵.

The stripping of land of the Maasai community in Tanzania continues to be a matter of concern for human rights defenders. According to a recent Human Rights Watch, the government of the United Republic of Tanzania is relocating the indigenous Maasai population from their ancestral lands in Ngorongoro⁷⁶⁶ for tourism and conservation purposes. The inadequate free, prior and informed consent, which is a component of the universal right to self determination, worsens the violation as Maasai were not consulted with the authorities prior to the relocation plan⁷⁶⁷. The plan

⁷⁶¹ Maji Safi Group. (2023, December 1). *Causes of Water pollution in Tanzania*. Retrieved from <https://majisafigroup.org/causes-of-water-pollution-in-tanzania/#:~:text=In%20rural%20Tanzania%2C%20water%20contamination,%2C%20chronic%20diarrhea%2C%20and%20malaria>

⁷⁶² International trade Administration. (2022, December 14). *Tanzania - Country Commercial Guide: Healthcare*. Retrieved from <https://www.trade.gov/country-commercial-guides/tanzania-healthcare>

⁷⁶³ World Health Organization (August 2023). *Country Disease Outlook: Tanzania*. Retrieved from <https://www.afro.who.int/sites/default/files/2023-08/Tanzania.pdf>

⁷⁶⁴ UN Women Data Hub (2018). *United Republic of Tanzania*. Retrieved from <https://data.unwomen.org/country/united-republic-of-tanzania>

⁷⁶⁵ The Citizen Tanzania. (2024, September 2). *Man accused of defiling his 6-month-old-baby to death*. Retrieved from the newspaper's official instagram page https://www.instagram.com/p/C_bNB6voL27/

⁷⁶⁶ Human Rights Watch. (2024, July 31). *Tanzania: Indigenous Maasai Being Forcibly Relocated*. Retrieved from <https://www.hrw.org/news/2024/07/31/tanzania-indigenous-maasai-being-forcibly-relocated>

⁷⁶⁷ Human Rights Watch. (2024, July 31). *"It's Like Killing Culture": Human Rights Impacts of Relocating Tanzania's Maasai*. Retrieved from <https://www.hrw.org/report/2024/07/31/its-killing-culture/human-rights-impacts-relocating-tanzanias-maasai>

also has an impact on the right to education, as the undermined school conditions and the defunding of the Pastoral Council impairs the access to education of several students⁷⁶⁸. This is evidenced by the delays in disbursement of funds, which creates difficulties in the payment of higher education⁷⁶⁹. Furthermore, access to pasture, water, and cultural sites is evidently undermined, which is worrying as the Maasai population's livelihood depends on them⁷⁷⁰. As for the access to cultural sites, the indigenous community is not allowed to ritual sites like the Ngorongoro Crater, the Olmoti Crater, and Mbakai, as Maasai get arrested for doing so⁷⁷¹.

The human rights violations continue as evidenced by the joint statement by the European Union Head of Mission, the British High Commission, the Canadian High Commission, and the Embassies of Norway and Switzerland, which urges the government of Tanzania to protect the political opposition and guard the fundamental rights of the people⁷⁷². This was the consequence of the abduction and murder of an opposition political party member⁷⁷³. The joint statement was not, however, received with great pleasure by the leader of Tanzania, President Samia Suluhu Hassan (also referred to as *Mama Samia*). As a matter of fact, she recently warned foreign ambassadors that they should not tell people how to run their country (*wasituelekeze nini cha kufanya*, literally 'do not direct us on what to do' directly translated from Swahili)⁷⁷⁴. Reports on violations of freedom of opinion and expression are supported by testimonies of individuals who work in the journalism sector, like in the case of the Director of Al Jazeera, who lamented that twelve of his colleagues were shot⁷⁷⁵.

⁷⁶⁸ *ibid.*

⁷⁶⁹ *ibid.*

⁷⁷⁰ *ibid.*

⁷⁷¹ Human Rights Watch interview with Lemarti O., traditional leader, Mto wa Mbu, June 21, 2023 as cited in *It's Like Killing Culture* (2024)

⁷⁷² EEAS, (2024, September 10), *Joint Statement by European Union Heads of Mission, the British High Commission, the Canadian High Commission, and the Embassies of Norway and Switzerland on Recent Events in Tanzania*. Retrieved from <https://www.eeas.europa.eu/delegations/tanzania/joint-statement-european-union-heads-mission-british-high-commission-canadian-high-commission-and-en?s=124>

⁷⁷³ The Citizen Tanzania. (2024) *European embassies concerned about disappearances and deaths of political and human rights activists in Tanzania*. <http://www.thecitizen.co.tz>

⁷⁷⁴ The Citizen Tanzania (2024). *We are not here to be told how to run our country*. <http://www.thecitizen.co.tz>

⁷⁷⁵ International Federation of journalists. (2023) *ACPLHR, FAJ hold side event on 'challenges of media freedom and the safety of journalists'*. Retrieved from <https://www.ifj.org/media-centre/news/detail/category/africa/article/tanzania-acplhr-faj-hold-side-event-on-challenges-of-media-freedom-and-the-safety-of-journalists>

Chapter V: The Road Ahead

The previous chapters have attempted to thoroughly analyse the legislative framework of human rights law, both at the universal and regional level, to then elaborate on the violations of the fundamental rights and the consequential lack of protection of the humans that compose the region concerned. While the reported HRVs are several, there are some commendable efforts that are advanced by diplomatic representations and international organisations, while the evident presence of track two diplomacy supports the upholding for human rights, making these efforts a multi-entity common endeavour that aims for the betterment of this world. This final chapter has two objectives: providing examples of what these entities are doing in the support of the protection of human rights, and, secondly, what is there to be done to continue the work for the accomplishment for such endeavour.

La Diplomatie

The role of diplomatic representations in the East and Horn of Africa is characterised by a commendable collaboration between the several countries that deploy diplomatic missions in the region. A first example, which supports the right to development and the economic rights can be evidenced by the relations with Italy and its foreign policy in Africa epitomised by the *Mattei Plan* (Piano Mattei), and the upholding of the relationships that the country has throughout the continent. The Plan is a diplomatic, cooperative project for the development of various sectors, such as health, education, agriculture, water, energy and infrastructure⁷⁷⁶. Kenya and Ethiopia are two strategic countries of the plan⁷⁷⁷. In reference to this, the *Italy Africa Summit*, a meeting held at the beginning of this year (as of 2024) that was held at Palazzo Madama, Rome, stands as a commendable action towards the cooperation between the African nations and Italy⁷⁷⁸. The *Istituto Affari Internazionali* reports on the Summit describing it as the first occasion to truly discuss the Mattei Plan⁷⁷⁹. The

⁷⁷⁶ Ministero dell'Università e della Ricerca. *Piano Mattei Ricerca e Alta Formazione*. <https://www.mur.gov.it/it/piano-mattei-ricerca-e-alta-formazione#:~:text=Cos'%C3%A8%20il%20piano%20Mattei,i%20legami%20con%20il%20continente>

⁷⁷⁷ *ibid.*

⁷⁷⁸ Presidency of the Council of Ministers (2024). *Italia-Africa. A bridge for common growth*. Retrieved from <https://www.governo.it/en/articolo/italia-africa-bridge-common-growth/24853>

⁷⁷⁹ Simonelli F., Fantappié M. L., Goretti L. (2024). *The Italy-Africa Summit 2024 and the Mattei Plan: Towards Cooperation Between Equals?*. Istituto Affari Internazionali

expectations coming from the meeting are high, with the aims to improve the economic partnerships and opening new trade channels⁷⁸⁰. The fundamental part of the cooperative action is equality, as the President of the Council of Ministers Meloni describes as needing to be different from the past predatory approach, which she affirms to be having been part of the causes of the impairment of the African nations' prosperity⁷⁸¹. On this note, the President of the African Union Commission, Moussa Faki, delivers a speech that evidences the cooperation policies of the Continent, stating that they need to be characterised by the principle of equality and common interests. As a matter of fact, Faki affirms that Africa does not come empty handed, and surely not as a beggar, and prioritises several challenges inherent to security, the environment, health, development and integration⁷⁸². As Faki reiterates, the Mattei Plan is consistent with these priorities⁷⁸³. This collaboration reflects a significant step toward advancing human rights, particularly the right to development and economic rights. The emphasis on equality, mutual interests, and respect for sovereignty, as evidenced by both African and European leaders, aligns with human rights goals.

The presence of diplomatic missions in the region signifies a support in the upholding of human rights throughout the East and Horn of Africa. This is evidenced by the various functions that the Embassies and Consulates have in promoting the right to education, supporting non governmental organisations and providing for consular services in the area. The issuance of student visas to students coming from all kinds of background in the East and Horn of Africa, is a clear advancement of the right to education, as it opens doors for students to attend institutions abroad and contribute to the exchange of knowledge. This access helps individuals improve their educational prospects and gain qualifications that can positively impact their future careers, personal development, and ability to contribute to their home countries' growth. Similarly, one relevant case on the role of diplomatic representations in advancing the right to education within East Africa is the one relating to the Kenyan refugee education crisis, where the United States and the EU Delegations to Kenya, with the help and consultation of UNHCR and UNICEF, have helped mobilise resources to support education in the refugee camps of Dadaab and Kakuma⁷⁸⁴.

⁷⁸⁰ *ibid.*

⁷⁸¹ Meloni, G. (2024, 29 January). "Italia-Africa. Un ponte per una crescita comune". *Intervento conclusivo del Presidente Meloni*. <https://www.governo.it/it/articolo/italia-africa-un-ponte-una-crescita-comune/24851>

⁷⁸² African Union, *Speech by H.E. Moussa Faki Mahamat, Chairperson of the African Union Commission*, at the Italy – Africa Summit: A Bridge for Common Growth, 29 January 2024, <https://au.int/en/node/43449>

⁷⁸³ *ibid.*

⁷⁸⁴ US Committee for Refugees and Immigrants (2023, December 14). *Recovering Childhood: Access to Education in Kenya*. Retrieved from <https://refugees.org/recovering-childhood-access-to-education-protection-for-children-in-kenyas-refugee-camps/>

Every individual has the right to contact diplomatic representatives from their home country⁷⁸⁵. International mobility is increasing and the need for consular assistance increases with it. The Embassies need to ensure that their countrymen have their human rights protected, and the provision of services such as birth registration, issuance of passports and access to justice are all contributors of this protection⁷⁸⁶. The case of Andargachew Tsege evidences the fundamental role of consular assistance in the Horn of Africa. Tsege, an Ethiopian British man and prominent figure of the Ethiopian opposition politics, was abducted under the orders of Ethiopian authorities and condemned to the death penalty for reasons undisclosed to him⁷⁸⁷. Tsege was unable to access a lawyer and the UK Ambassador to Ethiopia was able to speak to him after fifty days from the abduction, but as Ethiopian authorities were present, Tsege could not express himself freely⁷⁸⁸. The British government played a fundamental role in the release of the man, as it pressured Ethiopia to end his detention. As a matter of fact, the then Secretary of State for Foreign, Commonwealth and Development Affairs Philip Hammond, had expressed deep concern and disappointment over the confinement of Tsege, urging for the granting of his access to the consular support, which had been denied despite prior agreements between the UK and Ethiopia⁷⁸⁹. Finally, thanks to the UN Working Group, which reported the several breaches of the fundamental rights of the Tsege, the British Ethiopian political opponent was released from prison in 2018⁷⁹⁰.

The role of cultural diplomacy in the promotion of human rights is evident. The advocacy of principles like freedom, dignity, and equality is encouraged by cultural diplomacy, which supports the collective promotion of human rights throughout the recognition and conservation of the cultural peculiarity of each nation⁷⁹¹. France stands as a leader in the dissemination of cultural services around the world⁷⁹², and has outreach in the East and Horn of Africa. In this context, the

⁷⁸⁵ Novak et al., 2019

⁷⁸⁶ IOM (August 2021). *IML Information Note on Consular Assistance*. https://migrationnetwork.un.org/system/files/resources_files/iml_consular_assistance1.pdf

⁷⁸⁷ Redress. *Andargachew 'Andy' Tsege*. <https://redress.org/casework/andy-tsege/>

⁷⁸⁸ *ibid.*

⁷⁸⁹ Bowcott, O. (2015, June 25). *Philip Hammond warns Ethiopia over treatment of Briton on death row*. <https://www.theguardian.com/world/2015/jun/25/philip-hammond-ethiopia-warning-death-row-andargachew-tsege>

⁷⁹⁰ *ibid.*

⁷⁹¹ Best Diplomats (2024, June 20). *The Significance of Cultural Diplomacy in 21st Century*. <https://www.linkedin.com/pulse/significance-cultural-diplomacy-21st-century-bestdiplomats-21egf/>

⁷⁹² Ministère de l'Europe et des Affaires Étrangères. *Diplomatie culturelle*. <https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/diplomatie-culturelle/>

Alliances Françaises play a highly significant role as cultural centres that enhance not only the right to education by offering language courses, skills development and cultural programming throughout the region⁷⁹³, but also by being a leading promoter of the right to culture through regular art exhibitions, cultural programs, and concerts that advance several local artists. Although the *Alliances Françaises* are not government entities and operate independently of embassies⁷⁹⁴, they play a fundamental role in cultural diplomacy. A clear evidence of this is the weekly meeting at the Alliance Française centre in Dar Es Salaam, Tanzania, known as *Jumatano Groove* (literally *Wednesday Groove*, translated from Swahili), that showcases musicians from around the East African region⁷⁹⁵ and promoting Swahili culture. This is an efficient, dynamic, and fundamental way of advancing the human right to culture and the freedom of artistic expression.

International Organisations

The wide presence of International Organisations has strongly contributed to the promotion of human rights in the East and Horn of Africa region. The African Union, the United Nations and its specialised agencies have supported projects and planned agendas for the development of these nations. A few examples will be provided in order to elaborate on this point. Nonetheless, the examples herein reported are exactly just that, examples, and the dissertation does not mean to purposely exclude the extraordinary work that is being done by several other organisations and UN agencies.

The African Union has developed a vision for the continent, which takes the name of *Agenda 2063*. The agenda, interestingly enough, sets six aspirations for *the Africa we want*⁷⁹⁶. Here, the ideals set out by Pan-Africanism, which has been analysed in the first chapter of this dissertation, are clear and evidently inherent to the entire document. The Agenda begins with the words *we, the people of Africa and her Diaspora*⁷⁹⁷, and continues by stating the appreciation that is felt to all Pan-Africanists and calls for the union of all Africans to *realise its Renaissance*⁷⁹⁸. In the context of human rights, the document is clearly oriented towards the respect of the legislative

⁷⁹³ Alliance Française. *Discover Alliance Française*. <https://af-france.fr/discover-alliance-francaise/>

⁷⁹⁴ MEAE, *Diplomatie Culturelle*

⁷⁹⁵ Music in Africa (2024). *Jumatano Groove*. <https://www.musicinafrica.net/gig-guide/jumatano-groove-0>

⁷⁹⁶ African Union. (2015). *Agenda 2063: The Africa We Want*. Retrieved from: https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf

⁷⁹⁷ *ibid.*

⁷⁹⁸ *ibid.*

framework set out to respect them, and throughout all of the six *aspirations*, the Agenda aims for the respect and advancement of the fundamental human rights. More specifically, the right to development is referred to in the first point, as it calls for the eradication of poverty and the ability of the continent to prosper and drive its own development⁷⁹⁹. A direct reference to human rights is, nonetheless, found in the third and fourth points. As a matter of fact, the African Union recognises that a united and prosperous continent can only be achieved if the respect for human rights is achieved, as it is a pre-condition for a peaceful Africa⁸⁰⁰. Therefore, the implementation of the universal principles of human rights, the timely and fair access to justice, and freedom from corruption, shall be a priority for the African nations⁸⁰¹. This vision for the continent is a clear effort in the advancement of human rights in the East and Horn of Africa region. An international organisation like the African Union is the ideal leader for such endeavour, not only because it comes from a Pan-African tradition, but also because it comes from its own leadership, emphasising the need to find *African solutions to Africa's problems*⁸⁰².

The presence of the United Nations in the East and Horn of Africa is greatly contributing to the respect of human rights and the protection of humanity in the region. Commendable examples of this is the role that the International Organisation for Migration (IOM) plays. The Regional Office for East and Horn of Africa is in Nairobi, Kenya and responds to the growing humanitarian needs and displacement caused by the conflicts, food insecurity, and the climate crisis in the area⁸⁰³. According to IOM, around 45 millions people are in need of assistance⁸⁰⁴, and the UN agency (the leading entity for migration issues), protects and assists the communities in recovering⁸⁰⁵. IOM initiated operations in the region in 1984 and works closely with the East African Community to coordinate dialogue on migration⁸⁰⁶. Commendable efforts in advancing human rights are evidenced by the IOM Country Office in Tanzania, which has an extensive presence throughout the country and operates the Makere Processing Centre, which is a health assessment facility, a Capacity

⁷⁹⁹ AU, *Agenda 2063*, Aspiration 1

⁸⁰⁰ AU, *Agenda 2063*, Aspiration 4

⁸⁰¹ AU, *Agenda 2063*, Aspiration 3

⁸⁰² Mayamba, J. (2024, February 8) Where are African solutions to Africa problems? GC Human Rights Preparedness. <https://gchumanrights.org/gc-preparedness/preparedness-democracy/article-detail/where-are-african-solutions-to-africa-problems.html>

⁸⁰³ IOM UN Migration. *Crisis Response*. Retrieved from: <https://eastandhornofafrica.iom.int/crisis-response>

⁸⁰⁴ *ibid.*

⁸⁰⁵ *ibid.*

⁸⁰⁶ IOM Tanzania (2022). *Country Office Strategy: The United Republic of Tanzania 2022-2027*. This copy was kindly provided by the IOM Country Office in Dar Es Salaam, Tanzania

Building Centre⁸⁰⁷ and, in collaboration with the government, the Country Office launched a migrant registration operation in Kigoma, where several irregular Burundian, Rwandan, and Ugandan migrants regularised their status in Tanzania⁸⁰⁸. Another recent, commendable action of the Country Office, in collaboration with the US and Tanzanian Governments, was the development of a project to support victims of human trafficking⁸⁰⁹. The project, called *Enhancing Protection of Victims of Trafficking in Tanzania through Provision of Comprehensive Services*, aims to strengthen and provide shelter for the victims who need physical and psychological support, as well as legal assistance to the ones who suffered the crime of trafficking⁸¹⁰. Human trafficking is a severe human rights violation, and the project is an evident effort in protecting the survivors by equipping them with the tools to reintegrate into society⁸¹¹.

The Food and Agriculture Organization has been a leading organisation in the field of food security, land tenure, and practices that promote a healthy, sustainable livelihood for the populations present in the East and Horn of Africa. This is in line with the several human rights provisions that have been discussed in the previous chapters, specifically (but not exclusively) in reference to the right to an adequate standard of living and the right to food and health (Article 11 and 12 ICESCR), the provisions for rural women (Article 14 CEDAW), and the rights of individuals belonging to minorities (Article 27 ICCPR, especially in reference to land rights). Relevantly, FAO and the European Union have recently signed a 47 million euro programme to enhance food security for pastoralists in Eastern Africa, a programme that will directly benefit numerous households across Ethiopia, Kenya, Somalia, South Sudan, Uganda, and Tanzania⁸¹². This plan, known as PLACE (Pastoralism and Livestock Adaptation to Climate Change in Eastern Africa Programme) aims to support the economic and social dimensions of pastoralism in the context of climate change by enhancing a sustainable development system⁸¹³. This is a response to the necessary action against

⁸⁰⁷ *ibid.*

⁸⁰⁸ IOM, (2014). *IOM Tanzania Launches Migrant Registration Exercise in Kigoma*. <https://www.iom.int/news/iom-tanzania-launches-migrant-registration-exercise-kigoma>

⁸⁰⁹ IOM Tanzania. (2024, August 5). *IOM, Government of Tanzania, and U.S. Department of State Collaborate on Project Supporting Victims of Human Trafficking* <https://tanzania.iom.int/news/iom-government-tanzania-and-us-department-state-collaborate-project-supporting-victims-human-trafficking>

⁸¹⁰ *ibid.*

⁸¹¹ *ibid.*

⁸¹² Food and Agriculture Organization. (2024, July 30). *FAO and EU sign 47 million euro programme to enhance resilience and food security for pastoralists in Eastern Africa*. Retrieved from <https://www.fao.org/newsroom/detail/fao-and-eu-sign-47-million-euro-programme-to-enhance-resilience-and-food-security-for-pastoralists-in-eastern-africa/en>

⁸¹³ *ibid.*

the droughts that have badly hit the region and devastated rangelands, and it calls for a strengthening of systems of land tenure, economic growth, as well as the preservation of biodiversity and natural resources⁸¹⁴. The programme will conduct an assessment of policies, legal and institutional frameworks on land tenure to assess barriers and enablers that align to climate resilience, and will integrate land tenure management with other pastoral development interventions⁸¹⁵. Furthermore, FAO calls for an improved management and training to propagate resilient grass species for sustaining livestock⁸¹⁶. This programme is only an example of the other several efforts brought on by FAO that directly relate to human rights as it helps communities to realise their rights. Land tenure systems and the support of sustainable practices enhances food security, defends the environment, and, most relevantly, promotes the fundamental rights of the humans directly affected by ensuring they can sustain their livelihoods and adapt to changing climatic conditions.

Directly relevant to the promotion of human rights in the region is, evidently, the UN Office of the High Commissioner for Human Rights. The East African Regional Office (EARO) established in Addis Ababa consistently communicates with the AU and the EAC to engage in the development of human rights, working closely with country teams in Ethiopia, Tanzania, Djibouti and Eritrea⁸¹⁷. The recent activities of EARO mainly refer to awareness raising campaigns, which is a fundamental part in the advancement of human rights as it protects people by providing the knowledge of the rights that they have so that they may advocate for their entitlements. Specifically, in August of this year (as of 2024), EARO and the Federal Supreme Court of Ethiopia organised a seminar for the Federal Judiciary on public remedies for victims of human rights violations⁸¹⁸. Another initiative was the consultative workshop on the development of the second National Action Plan (NAP) for persons with disabilities⁸¹⁹. The participants, coming mainly from organisations of

⁸¹⁴ *ibid.*

⁸¹⁵ Food and Agriculture Organization. (July 2024). *Regional Programme in Livestock and Pastoralism for Climate Change Adaptation in Eastern/Horn of Africa* (GCP/INT/1051/EC).

⁸¹⁶ *ibid.*

⁸¹⁷ Office of the High Commissioner for Human Rights (2009). *The East Africa Regional Office in Addis Ababa*. <https://eastafrica.ohchr.org/>

⁸¹⁸ OHCHR East African Regional Office (2024, August 23). *Seminar in Addis Ababa for the Federal Judiciary on public remedies for victims*. Office's official Facebook page. <https://www.facebook.com/UNHumanRightsEARO/>

⁸¹⁹ OHCHR East African Regional Office (2024, September 4). *Consultative Workshop on the development of the 2nd National Action Plan (NAP) for Persons with Disabilities(2023-2032) in Addis Ababa, Ethiopia*. Office's official Facebook page. <https://www.facebook.com/UNHumanRightsEARO/>

persons with disabilities, provided inputs on the drafting of the NAP⁸²⁰. These recent endeavours are merely exemplary of the extensive work done by the High Commissioner, and engaging with marginalised groups, like in the last example, demonstrate the continued efforts of the OHCHR in the promotion and protection of human rights.

Evidently, International Organisations in East and the Horn of Africa are playing an essential role in promoting and safeguarding human rights. Their initiatives focus on working closely with local communities, governments, and other stakeholders to facilitate an environment where human rights can thrive. What can be noticed through this section dedicated to IOs is that the struggle for the protection of human rights is more complex than one might think. Numerous rights call for numerous protection, and, as the several entities have their specific focus, it can be concluded that the action towards the safeguarding of these rights is broad and many-sided.

Humans for Humans

The role of humans in the advancement of human rights cannot be overstated. Although the institutional practices of diplomatic representations and international organisations are of fundamental importance in the protection of human rights through the establishment of legal frameworks, institutional interventions and, evidently, through the great exert of influence that they have, the role played by private citizens is just as important, if not even of utmost relevance in the specific context of human rights. As a matter of fact, caring about the safeguarding of the fundamental rights of humanity is the first step to advancing them, and the several projects, some of which will be discusses here, are exemplary of the beauty of a humanity that cares.

The Foundation for Human Rights Initiative (FHRI) was founded in Kampala, Uganda and works through capacity building and civic empowerment projects with the Civic Education Unit⁸²¹. This unit's activities aim to increase public understanding of fundamental rights, values, and responsibilities, as well as promote discussions on protecting and upholding various human rights⁸²². This enhances awareness of these essential freedoms and rights, and supports community-based human rights organisations in monitoring and reporting violations⁸²³. The unit emerged in response to the challenges faced by an uninformed population, which struggles to hold the state

⁸²⁰ *ibid.*

⁸²¹ Foundation for Human Rights Initiative. *Civic Education*. <https://fhri.or.ug/civic-education/>

⁸²² *ibid.*

⁸²³ *ibid.*

accountable due to a lack of understanding of rights, legal processes, and governmental procedures⁸²⁴.

South Sudanese young entrepreneur Daniel Deng, a former refugee in the Kakuma Camp, now an advocate for peace through education in South Sudan, exemplifies the impact that education can have on human rights and societal development⁸²⁵. Deng experienced firsthand the devastation of South Sudan's civil war, as it displaced him and shattered his family⁸²⁶. His personal goal to overcome adversity led him to pursue education as a means of personal and communal uplifting⁸²⁷. Deng's initiative, Peace Power South Sudan, aligns with his belief that education is a foundation for peace and development⁸²⁸. He organises peace camps that bring together youth from various ethnic and social backgrounds, and promotes dialogue and mutual understanding, which is of extreme importance given the polarisation in South Sudan⁸²⁹. His program provides educational opportunities and empowers young South Sudanese to become leaders who advocate for reconciliation and progress⁸³⁰. Deng's work, building a foundation for long-term peace and prosperity in South Sudan, greatly contributes in the advancement of human rights and social cohesion.

Kakenya's Dream is an organisation that has the mission of preventing girls and women from experiencing Female Genital Mutilation (FGM) and was founded by Kakenya Ntaiya, a global educator and activist at the University of Pittsburgh⁸³¹. The organisation invests in the education and health of rural girls from Kenya through support programs, boarding schools, and leadership initiatives⁸³². FGM remains a serious matter of concern in Kenya, as well as in several other African nations, and the way Kakenya's Dream contributes to the fight against this cruel, violent practice is commendable. The organisation focuses on the importance of bringing up the youth, as they have a

⁸²⁴ *ibid.*

⁸²⁵ LaunchX. *Daniel Deng uses Education to Bring Peace to South Sudan*. <https://www.launchx.com/command-post/articles/how-daniel-deng-is-bringing-peace-to-south-sudan-through-education>

⁸²⁶ *ibid.*

⁸²⁷ *ibid.*

⁸²⁸ Resolution Project. *Daniel Deng*. <https://resolutionproject.org/fellows/daniel-deng-2/#::~:~:text=Since%20high%20school%2C%20Daniel%20has,generation%20of%20South%20Sudanese%20leaders>

⁸²⁹ *ibid.*

⁸³⁰ LaunchX, *Daniel Deng*

⁸³¹ University of Pittsburgh. (2023, June 22) *How Pitt alumna Kakenya Ntaiya fights for the rights of women and girls in rural Kenya*. <https://www.pitt.edu/pittwire/features-articles/kakenya-ntaiya-kakenyas-dream>

⁸³² *ibid.*

crucial role in the development of the social, political, and human rights landscapes⁸³³. As a matter of fact, the organisation is dedicated to bridging the educational gaps in their community by providing essential instruction on life skills, leadership, human rights, and issues such as sexual and reproductive health and gender-based violence⁸³⁴. The organisation addresses the scarcity of resources through workshops that incorporate discussions that engage participants and challenge harmful practices like female genital mutilation and child marriage⁸³⁵. It helps debunking myths and enhance understanding of human rights by empowering students with knowledge and encouraging them to become active advocates⁸³⁶. The organisation also opened the *Kakenya Health and Wellness Center*, which is a youth friendly health clinic that offers essential services to the young people who often face stigma and discrimination in relation to their reproductive and sexual health⁸³⁷. Kakenya's Dream is nurturing a generation of young leaders who are effecting positive change in their communities and the organisation represents an important contribution to the advancement of human rights, specifically education, gender equality, and the right to health.

Continuing the Pursuit

The struggle for the protection of human rights has been characterised by many efforts to tackle the issues present in the region, cause by what it may be history, culture, or lack of effective leadership. The several violations of fundamental rights in the East an Horn of Africa might make one believe that the populations there is ill fated. In fact, it has been shown with numerous examples that the respect for human rights has seemed to be far from reality. Nonetheless, these violations are not completely not accounted for. The many-sided, commendable actions of diplomats and private citizens in the area are a ripple of hope that make us more confident about the future of these dynamic, yet so complex nations. What this last section aims to do is to give a perspective on what the future might (and ought to) look like if the wellbeing of the East and Horn of Africa, and the continent as a whole, is to be prioritised.

⁸³³ Kakenya's Dream (2019). *Youth Stand Up For Human Rights*. <https://kakenyasdream.org/2019-12-10-youth-stand-up-for-human-rights/>

⁸³⁴ *ibid.*

⁸³⁵ *ibid.*

⁸³⁶ *ibid.*

⁸³⁷ Kakenya's Dream (2024, July 8). *Press Release: Kakenya's Dream Celebrates The Grand Opening Of Community's First Health Clinic In Rural Kenya*. <https://kakenyasdream.org/kakenyas-dream-celebrates-grand-opening-of-health-clinic/>

The future of Africa is promising. On this note, what is of great relevance is the work of Senegalese author, Felwine Sarr. Sarr has dedicated his academic life for the reimagination of the African continent and, relevantly to the dissertation, his essay, *Afrotopia*, stands as a fundamental book in understanding the framework that the continent ought to refer to when looking at the future. The key idea of the essay is the need for a dialogue between economy and culture, with a focus on reintegrating culture into the framework of the economy, rather than the other way around⁸³⁸. This shift allows for the recovery of the political dimension in its highest sense⁸³⁹. Sarr suggests that Africa's cultural heritage, which has endured for millennia but was marginalised during colonialism, should once again become a central reference point for the continent's emerging economy⁸⁴⁰. This is a fundamental part to understand if we are to comprehend how the development and the pride of an identity can be intersected in the wider framework of the protection of the fundamental rights. The importance of reclaiming a past is that can help reinvent the future, especially by addressing the deep wound of identity alienation⁸⁴¹. This alienation, first caused by the transatlantic slave trade and the deportation of millions of Africans, and later by nearly a century of colonial marginalisation, is a central theme in Pan-African discourse, which has been deal with in the first chapter. Sarr calls for moving beyond an Euro-centric view⁸⁴². Sarr emphasises the role of music, religion, and writing as channeling, analytical practices that can guide Africa's restoration of its full humanity⁸⁴³. In this context, Pan-Africanism resolves the issue of the need for a restoration of an identity. Alice Mogwe, the President of the International Federation for Human Rights of Botswana, works toward effective equality before the law, and she does so, as explained by herself, with a leadership that is deeply entrenched with her knowledge of the self, and Africa's Botho values⁸⁴⁴. Botho values affirm that humanity is linked to each and every person in this world, and that everyone has a right to be treated

⁸³⁸ Riva, S. (2018). "*Black to the future*": *Progettualità di un'utopia attiva in Afrotopia di Felwine Sarr*. Università degli Studi di Milano.

⁸³⁹ *ibid.*

⁸⁴⁰ *ibid.*

⁸⁴¹ *ibid.*

⁸⁴² Sarr, F., Burk, D. S., & Jones-Boardman, S. (2019). *Afrotopia*. University of Minnesota Press. <https://doi.org/10.5749/j.ctv105bb1g>

⁸⁴³ Riva, 2018; Sarr, 2019

⁸⁴⁴ Alice, M. (2017). *My Leadership Philosophy is guided by Africa's Value of Botho*. <https://www.youtube.com/watch?v=oOAD-Xc9fgM>

with dignity⁸⁴⁵. Moreover, the power of music in asserting African identity, as seen in the work of artists like Miriam Makeba, reinforces this cultural revival by singing in Xhosa, Zulu, Swahili⁸⁴⁶. The progress done until now relating to the affirmation of the upholding of African culture and African Unity has been of great influence in the region of the East and Horn of Africa. The above mentioned Agenda 2063 is just one example of the pronouncement of Pan Africanism and deeply relates to what was just discussed. The African Charter on Human and Peoples' Rights, to which there is a dedicated chapter in this thesis, exemplifies the cultural values of communality, intercultural dialogue, and unity. Affirming identity through culture becomes the first foundation for human rights advancement in the East and Horn of Africa.

Another point that requires to be emphasised is education. Investing in education is of crucial importance for the region as it will shape the next generation of leaders. On this note, it is quite relevant to mention Fred Swaniker, a Ghanaian entrepreneur that dedicated his life's work to the creation of the African Leadership Academy⁸⁴⁷ and the betterment of the African continent. Swaniker (2014) has emphasised that the opportunities for good leadership in Africa are more plausible than ever before⁸⁴⁸. He supports this statement by mentioning that the weak institutions that are present in the continent leave freer room for a political leader to act in a freer way, and although this freedom has usually been the cause of crippling corruption and ineffective leadership, this same freedom can be used to leave a good impact⁸⁴⁹. Of course, this would be the case if we invest on the upbringing and education of the African youth. Swaniker continues by saying that the evolution of African leadership shows some progress and refers to Rwanda's president Kagame as an example of this⁸⁵⁰. He elaborates that though not perfect by any means, the *stabilising* character of such leader is exemplary of an evolution of a leading generation to come, especially when compared to the one previous to Kagame, namely the one represented by Somali former President

⁸⁴⁵ *ibid.*

⁸⁴⁶ Quintina Carter-Ényì & Aaron Carter-Ényì (2019) Decolonizing the Mind Through Song, *Performance Research*, 24:1, 58-65, DOI: 10.1080/13528165.2019.1593737

⁸⁴⁷ African Leadership Academy. Fred Swaniker. https://www.africanleadershipacademy.org/ala_board/fred-swaniker/

⁸⁴⁸ Fred Swaniker (2014). *The leaders who ruined Africa, and the generation who can fix it*. TED <https://www.youtube.com/watch?v=kcEIsbOOivA>

⁸⁴⁹ *ibid.*

⁸⁵⁰ *ibid.*

Siad Barre and Ugandan former president Amin Dada⁸⁵¹. Investing in education will create a domino effect, driving the advancement of human rights in East Africa. This is supported by a recent report from the Center for Strategic and International Studies (CSIS), which highlights that equal access to education is a key contributor for peace and stability⁸⁵². It also contributes to an empowered workforce⁸⁵³, which in turn strengthens leadership. An educated and empowered populace can create prosperity and stabilise the once weak institutions⁸⁵⁴, and reduce the risks of coups and corruption. Most importantly, an educated population not only understands human rights but also respects and upholds them.

Conclusion

While *sheria lacunae* are present in the East and Horn of Africa, one should not be discouraged to think that the region is not progressing in the protection of human rights law. This is what the dissertation has tried to do throughout its pages. The analysis of the legal frameworks of human rights, both universal and regional, has been followed by the country cases where the gaps between *de jure* and *de facto* clearly exist. The dissertation has demonstrated that the root causes of these lacunae are deeply connected to the legacy of colonialism and ongoing institutional fragility. However, the thesis continues by explaining that it is important to focus on the factors that are driving positive changes, namely diplomacy and the belief in human potential. As elaborated in the final chapter, various initiatives are addressing human rights violations and contributing to great improvements. Notable are the projects designed to support victims of human rights abuses, the strengthening of diplomatic relations between the countries of the region and international actors, and the extensive involvement of international organisations in promoting human rights. This nurtures a culture of respect for human dignity. Finally, the investments in education, peace, and common values promise for a future where the East and Horn of Africa can not only inspire, but guide other countries towards the full realisation of universal human rights.

⁸⁵¹ *ibid.*

⁸⁵² Daniel F. Runde, Romina Bandura, Madelein McLean (2023). *Investing in Quality Education for Economic Development, Peace, and Stability*. Center for Strategic and International Studies <https://www.csis.org/analysis/investing-quality-education-economic-development-peace-and-stability>

⁸⁵³ *ibid.*

⁸⁵⁴ Swaniker, 2014

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