**COURSE TITLE:** HUMAN RIGHTS

**COURSE CODE:** IRD 406

1. **WHAT ARE RIGHTS?**

Right is defined as something that one may legally or morally claim; a state of being entitled to a privilege. Accordingly, right is a combination of claim and duty. This means a right confers certain liberties or privileges and imposes duties upon individuals to exercise while claiming their rights. Rights may be broadly defined as 1) Moral rights; 2) Legal Rights; 3) Claim rights/Liberty Rights; 4) Positive Rights; 5) Negative Rights; 6) Individual/Group Rights.

Moral rights are derived from the idea of natural rights to life and rights to live in a free society as creation of God. The concept of Natural rights is closely associated with the philosophy or theory of Natural law. According to this theory, nature or God alone regulates the activities of men, and human as creations of God should enjoy their rights as instituted by God.

Legal rights mean rights that are guaranteed to citizens of a country by law to enjoy certain freedoms without any fear or favour. Legal rights also referred to as statutory rights, bestowed by a particular government to the governed and are relative to specific cultures and governments. These rights are enumerated or codified into legal statutes by a legislative body. These rights may differ from country to country depending upon the constitution and culture that they adopted. Legal rights arise whenever the operation of a pre-existing legal rule gives an individual an entitlement enforceable at law.

Claim rights means, the rights that impose an obligation on another person to respect the right of the other person. Liberty rights means, rights that are to be exercised at free will by the holder of rights, without any obligation on another person in exercise of his/her right. For example, a person has liberty to speak freely as he likes, is a liberty right. But at the same time, if it affects the rights or hurts the reputation of another person, then it turns into a claim right.

Negative rights impose an obligation on others not to interfere with the liberty or independence of another holder of rights. A “negative right” restrains other persons or governments by limiting their actions toward or against the right holder. In other words, it enables the right holder to be left alone in certain areas. For example, the right to be secure in one’s home requires that others refrain from trespassing or entering without permission. Negative rights normally impose a duty on every individual as a moral and legal obligation to refrain from causing injury to the exercise the right of other person. Right to freedom of speech and expression, right to life and liberty, right to equality, right to property, right to be heard right etc. are seen sometimes as negative rights that might interfere on others rights and it is difficult to claim.

Positive rights means, rights for which a person is expected to discharge some service or to do good independently or to the society as a whole. Positive rights essentially provide the right holder with a claim against another person or the state to provide some good, service, or treatment. Examples for Positive Rights: These rights normally impose duty either on the state or on society or a group of individuals in satisfying the claims of owners of rights, (for example) Right to Education, Right to Health, Social Security etc. Thus, a right to housing obligates someone, presumably, the state to provide the right holder with housing, typically via resources obtained from others. Many claims of rights emerging since America’s founding, such as rights to healthcare, housing, or standards of living, are considered “positive rights.”

Individual rights mean the rights that belong to an individual alone. These rights could be political, economic, or legal in nature. These rights can be exercisable by individuals to enjoy their life and liberty without any interference of anybody including the state. Group Rights means rights that are enjoyed by a group. For example, the rights of disabled persons are considered as group rights. They promote the rights of the disabled as a group. At the same time, an individual disabled person also could claim the rights independently of the group.

In summary, a right may be defined as something that one possess to exercise either naturally, legally, or socially with a moral/legal duty to act without violating the right of others.

**2. WHAT ARE HUMAN RIGHTS**

The concept of human rights is based on the idea that men and women have rights because they are human. Human rights are held by all persons equally and forever (as long as one lives and as long as one is a human being). Deep in the mind and spirit of human beings lies the conviction that each and every person has rights, including a right to freedom from oppression, freedom to make reasonable choices, and freedom from cruelty. Nearly everybody feels this way, instinctively, even if they do not believe such rights are easy to obtain. Attempts have been made to define and buttress human rights. The core of the concept is the same everywhere: Human rights are the rights that one has simply because one is human. They are universal and equal. Human rights are also inalienable. They may be suspended, rightly or wrongly, at various places and times, but the idea of inherent rights cannot be taken away.

• Human rights are universal: they are always the same for all human beings everywhere in the world. You do not have human rights because you are a citizen of any country but because you are a member of the human family. This means children have human rights as well as adults, and it is the same the world over

• Human rights are inalienable: you cannot lose these rights any more than you can cease to be a human being.

• Human rights are indivisible: no right is more important than the other; some human rights cannot be seen as ‘less important’ or ‘non-essential to other rights.

• Human rights are interdependent: together human rights form a complementary framework. For example, your ability to participate in local decision-making is directly affected by your right to express yourself, to associate with others, to get an education and even to obtain the necessities of life.

• Human rights reflect basic human needs. They establish basic standards without which people cannot live in dignity. To violate someone’s human rights is to treat that person as though he or she were not a human being. To advocate human rights is to demand that the human dignity of all people be respected.

• In claiming these human rights, everyone also accepts responsibilities: to respect the rights of others and to protect and support people whose rights are abused or denied. Meeting these responsibilities means claiming solidarity with all other human beings.

**3. HUMAN RIGHTS: ANTECEDENTS AND HISTORY**

Many people regard the development of human rights law as one of the greatest accomplishments of the twentieth century. However, human rights did not begin with the United Nations. Throughout human history societies have developed systems of justice that sought the welfare of society as a whole. References to justice, fairness and humanity are common to all world religions: Buddhism, Christianity, Confucianism and Islam.

From the seventeenth century in England, France and United States, the natural, legal and political roots of human rights were formulated through the philosophical and legal writings of scholars such as Grotius, Locke, Montesquieu and Jefferson. Their ideas were grounded in the view of the nature of man and the relationship of each individual to others, and to society. The idea is that all men are created equal, endowed with certain inalienable rights, among these are life, liberty, and pursuit of happiness; men are born and remain free, and equal in rights; the aim of every political association is the preservation of natural and imprescriptible rights of man. They understood man as an autonomous being possessed of rights in nature, rights that were not dependent upon a sovereign grant or legislative statute.

From these ideas stemmed the basic premises of landmark documents such as Magna Carta, Habeaus Corpus and the American Declaration of independence, the French Declaration of Right of Man and Citizen. In other words, the late eighteenth century in United States and France legitimized within the context of state the philosophical and legal justifications of rights. That man has certain inherent natural rights found practical expression and legal reality in the historical documents in the seventeenth and eighteenth centuries. **These documents are examined below:**

The Magna Carta (1215), the Habeas Corpus Act (1679), the American Declaration of Independence (1776) and the United States Constitution (1787), the American Bill of Rights (1791), the French Declaration of Rights of Man and Citizen (1789) all of which constitutionalized and institutionalised a Western standard of human rights and liberties, and that still exists today.

**The Magna Carta (1215)**

Magna Carta, meaning ‘The Great Charter’, is one of the most famous documents in the world. Originally issued by King John of England (r.1199-1216) as a practical solution to the political crisis he faced in 1215, Magna Carta established for the first time the principle that everybody, including the king, was subject to the law. In 1213, a party of rebel barons had came up with lots of grievances against the King. They also urged that John should agree to confirm the coronation charter issued by his ancestor, King Henry I, in 1100, which had promised ‘to abolish all the evil customs by which the kingdom of England has been unjustly oppressed’. In early 1215, the dispute escalated when King John refused to meet the barons’ demands. In May many barons renounced their oaths of allegiance to him, choosing Robert fitz Walter (1162-1235) as their leader. Their capture of the city of London that same month was a turning point in their campaign.

Once London was in the barons’ hands, John had no option but to negotiate with them. The two sides met at Runnymede, on the River Thames near Windsor in the south of England, in June 1215. The demands of the barons were recorded in the document known as the Articles of the Barons. Following further discussions with the barons and clerics led by Archbishop Langton, King John granted the Charter of Liberties, subsequently known as Magna Carta, at Runnymede on 15 June 1215. On 19 June the rebel barons made their formal peace with King John and renewed their oaths of allegiance to him

**The Habeas Corpus Act**

The history of Habeas Corpus is ancient. It appears to be predominately of Anglo-Saxon common law origin. Clearly, it precedes Magna Carta in 1215. Although the precise origin of Habeas Corpus is uncertain in light of it’s antiquity, its principle effect was achieved in the middle ages by various writs, the sum collection of which gave a similar effect as the modern writ. Although practice surrounding the writ has evolved over time, Habeas Corpus has since the earliest times been employed to compel the appearance of a person who is in custody to be brought before a court. And while Habeas Corpus originally was the prerogative writ of the King and his courts, the passage of hundreds of years time has permitted it to evolve into a prerogative writ initiated by the person restrained, or someone acting in his interest rather than by the King or his courts.

**THE HABEAS CORPUS ACT:** The English common law practice and procedure respecting Habeas Corpus was codified by Parliament in 1679 by enactment of the Habeas Corpus Act. This historic act of the English Parliament empowered English courts to issue Writs of Habeas Corpus even during periods when the court was not in session and provided significant penalties to the judge, personally, who disobeyed the statute. Habeas Corpus nevertheless established itself as the primary means by which individual liberty was empowered at the expense of the arbitrary exercise of power by the state. During the 19th century, the Writ of Habeas Corpus was further expanded to include those held by a purely private process other than that of the state.

AMERICAN DEVELOPMENT OF HABEAS CORPUS: As with other features of English common law and practice, by the time of the American Revolutionary War, the Writ of Habeas Corpus was clearly established in all of the British colonies in New England and was generally regarded as part of the fundamental protections guaranteed by law to each citizen. The American Constitution at Article I, Section 9 states that: “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Case of Rebellion or Invasion the public Safety may require it” It is important to note that the framers of the Constitution for the United States of America choose to include in the body of the Constitution the Writ of Habeas Corpus while other important individual rights, arguably as an afterthought, were included in the first ten amendments which were popularly called the Bill of Rights. This fact sheds light on the importance of the Writ of Habeas Corpus as viewed by the framers of the American Constitution at the time it was established.

The Habeas corpus writ in Nigeria is a prerogative process for securing the liberty of the subject. It ensures immediate release from unlawful custody or unjustifiable detention. It is directed at the detaining person or authority with a sharp command that the detained person be produced before the court for a specified purpose. Habeas corpus like other prerogative orders is governed by state laws. In the case of Lagos-State, the procedure for its application is governed by the Lagos High Court (Civil Procedure Rules). Other states of the federation would have their habeas corpus procedure regulated by the procedure applicable in the High Courts of Justice in England.

**The American Declaration of Independence**

The American Declaration of Independence calls for the British government to end the “long train of abuses and usurpations” of “certain unalienable Rights,” specifically “Life, Liberty and the pursuit of Happiness” The authors and signers of the Declaration did not desire for government to provide “Life, Liberty and the pursuit of Happiness”, but rather they expected government to protect their pre-existing rights which were “endowed by their Creator. Similarly, there is also the Bill of Rights to American Constitution. The Bill of Rights to the Constitution of the United States restricts Congress from making laws against the right to any religion, the right to exercise religion, the right to practice free speech, the right to freedom of the press, and the right “to petition the Government for a redress of grievances.” The Bill of Rights also declares that “the right of the people to keep and bear Arms, shall not be infringed” and the government shall not violate “the right of the people to be secure in their persons, houses, papers, and effect.

**The French Declaration of Rights of Man and Citizen**

The French Revolution broke out in 1789 as a result of the rise of Enlightenment ideals and because of the peoples’ resentment of royal absolutism, the system of noble privilege enjoyed by the upper class, and an unfair and unequal system of taxation. Like the American colonists, the French people felt their rulers were treating them unfairly. Certain rights and freedoms were only enjoyed by the nobility and aristocracy. When King Louis XVI went too far in his unfair treatment of his subjects, citizens of Paris moved into open rebellion and began executing members of the nobility. The National Assembly (the French Legislature) abolished the system of noble privilege and moved toward a representative form of monarchy. Looking to the US Declaration of Independence as a model, the National Assembly drafted the Declaration of the Rights of Man and the Citizen in 1789, even though the revolution was far from over. The French Declaration was not itself considered to be law, but its principles nevertheless formed the basis of subsequent French constitutional law, which emphasizes Liberal principles such as the presumption of innocence, freedom of speech, freedom of the press, freedom of religion, and the right to property. Whereas the seventeenth to the nineteenth centuries were eras during which the concept of natural rights was institutionalised within the context on nation-states in the West, the twentieth century witnessed the extension of this concept and its institutionalisation in international and regional organisation.

Clearly, the roots of the Universal Declaration of Human Rights are in the legal, moral and political thought of the seventeenth and nineteenth centuries in France, England and United States. The experiences of these states through the centuries led directly to the concern with human rights as expressed in the universal declaration. Until the eighteenth century no society, civilisation or culture, in either the Western or non-Western world, had a widely endorsed practise or vision of inalienable human rights and these were found in documents asserting individual rights, such as the Magna Carta (1215), the French Declaration on the Rights of Man and Citizen (1789) and the US Constitution and Bill of Right (1791) etc.

The UN Universal Declaration of Human Rights, adopted by United Nations General Assembly in 1948, for example, is based on the Jeffersonian Credo, and states in its preamble that ‘recognition of the inherent dignity and of the equal and inalienable rights of humans. Clearly, the roots of the Universal Declaration of Human Rights are in the legal, moral and political thought of the seventeenth and nineteenth centuries in France, England and United States. The experiences of these states through the centuries led directly to the concern with human rights as expressed in the universal declaration. However formal principles usually differ from common practise. Until the eighteenth century no society, civilisation or culture, in either the Western or non-Western world, had a widely endorsed practise or vision of inalienable human rights. Documents asserting individual rights, such as the Magna Carta (1215), the French Declaration on the Rights of Man and Citizen (1789) and the US Constitution and Bill of Right (1791) are the written precursors to many of today’s human rights instruments.

**Other important historical antecedents** of human rights lie in nineteenth century efforts to prohibit the slave trade and to limit the horrors of war. For example, the Geneva Conventions established bases of international humanitarian law, which covers the way that wars should be fought and the protection of individuals during armed conflict. They specifically protect people who do not take part in the fighting and those who can no longer fight (e.g. wounded, sick and shipwrecked troops, prisoners of war).Concern over the protection of certain vulnerable groups was raised by the League of Nations at the end of the First World War. For example, the International Labour Organisation (ILO, originally a body of the League of Nations and now a UN agency) established many important conventions setting standards to protect working people, such as the Minimum Age Convention (1919), the Forced Labour Convention (1930) and the Forty-hour Week Convention (1935). Although the international human rights framework builds on these earlier documents, it is principally based on United Nations documents.

**THE INTERNATIONALISATION AND UNIVERSALISATION OF HUMAN RIGHTS**

Important factors in the mid-twentieth century propelled human rights onto the global arena, the awareness around the world and its survival. The first was struggles of colonial people to assert their independence from foreign powers, claiming their human equality and right to self-determination. For example, the starting point for analyzing human rights in colonized places like Africa is African nationalism and pan-Africanism. These movements were engaged in the fight against rights abuses in Africa and the plundering of Africa's resources by colonial authorities. African nationalists appealed to colonial authorities and the international community regarding the need to respect the rights of colonized people. At the 1945 pan-African Congress, for instance, part of the Declaration read:

We are determined to be free. We want education. We want the right to earn a decent living; the right to express our thoughts and emotions, to adopt and create forms of beauty. We will fight in every way we can for freedom, democracy, and social betterment.

Indeed, the struggle for independence influenced the evolution of universal human rights.

The second and major catalyst was the Second World War. The extermination by Nazi Germany of over six million Jews, and persons with disabilities and atrocities of the Second World War horrified the world. The globalization of human rights began when the world was awakened to the crimes committed under one government (Hitler), and the need for a more universal system of accountability and responsibility. Calls came from across the globe for human rights standards to bolster international peace and protect citizens from abuses by governments. These voices played a critical role in the establishment of the United Nations in 1945 and are echoed in its founding document, the UN Charter. Governments then committed themselves to establishing the United Nations, with the primary goal of bolstering international peace and preventing conflict. They wanted to ensure that never again would anyone be unjustly denied life, freedom, food, shelter, and nationality. Member states of the United Nations pledged to promote respect for the human rights of all.

To advance this goal, the UN established a Commission on Human Rights and charged it with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in the Charter. The Commission was guided by Eleanor Roosevelt’s leadership. On December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the 56 members of the United Nations. The vote was unanimous, although eight nations chose to abstain. The UDHR, commonly referred to as the international Magna Carta, extended the revolution in international law ushered in by the United Nations Charter, namely, that how a government treats its own citizens is now a matter of legitimate international concern, and not simply a domestic issue. It claims that all rights are interdependent and indivisible. Its Preamble eloquently asserts that:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.

Rights for all members of the human family were first articulated in the 1948 United Nations Universal Declaration of Human Rights (UDHR), one of the first initiatives of the newly established United Nations. Its thirty articles together form a comprehensive statement covering economic, social, cultural, political, and civil rights. The Declaration is both universal (it applies to all people everywhere) and indivisible (all rights are equally important to the full realization of one’s humanity).

Another factor that have led to the universalisation and survival is the increasing emergence of non-governmental organisations working in the areas of human rights protection across the world. Since the founding of the United Nations, the role of non-governmental organisations (NGOs) has grown steadily. It is NGOS, both, large and small, local and international, that carry the voices and concerns of ordinary people to the United Nations. Although the General Assembly, which is composed of representatives of governments, adopts a treaty and governments ratify it, NGOs influence governments and UN bodies at every level. Not only do they contribute to the drafting of human rights conventions, they play an important role in advocating for their ratification and monitoring to see that governments live up to their obligations. Globally the champions of human rights have most often been citizens, not government officials. In particular, nongovernmental organizations (NGOs) have played a cardinal role in focusing the international community on human rights issues. For example, NGO activities surrounding the 1995 United Nations Fourth World Conference on Women in Beijing, China, drew unprecedented attention to serious violations of the human rights of women. NGOs such as Amnesty International, the Antislavery Society, the International Commission of Jurists, the International Working Group on Indigenous Affairs, Human Rights Watch, Minnesota Advocates for Human Rights, and Survivors International monitor the actions of governments and pressure them to act according to human rights principles.

Aside the NGOs, the survival of the United Nations and regional human rights instruments have played a great role. If the United Nations collapsed just like the League, that means its instruments, documents and treaties will surely go with it. It was the Charter of the United Nations that reaffirms a faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women (United Nations Charter, Preamble, 1945) and states that the goal of the United Nations is to promote universal respect for and observance of human rights and fundamental freedoms for all without distinctions of race, sex, language, or religion (United Nations Charter, Articles 1(3) and 55). Thus, the existence of United Nations plays a major role for the existence of human rights.

**CHALLENGES TO HUMAN RIGHTS IDEOLOGY AND HUMAN RIGHTS UNIVERSALITY**

Typically the scholarly debate over human rights takes place between two opposing camps: the universalists and the cultural relativists (communitarianism). The Universalists build their understanding of human rights upon the liberal tradition whereby rights are accorded to the individual by virtue of being human.

The universalisation of human rights was (is still) grounded as much in the empirical evidence of widespread abuses as in the following ethical and philosophical beliefs: (1) no state can be entrusted with an absolute power over its own citizens because of the tendency of states to abuse absolute power; (2) an international regime of human rights protection is needed to protect individuals against states and other supra-level organizations; (3) all individuals are entitled, by virtue of their common humanity, to a basic modicum of human dignity; (4) certain human rights are universal, fundamental, and inalienable, and thus they cannot and should not be overridden by cultural and religious traditions; and (5) the accident of birth into a particular social group or culture is not an ethically relevant circumstance and thus has no bearing on that individual's intrinsic human worth and her or his entitlement to be treated as a human beings. Universalists have based their support for universal human rights on the theory of natural law, the theory of rationalism, and the theory of positivism. The natural law theory bases its argument on the fact ‘that individuals have certain inalienable rights of the highest order granted to all individuals by God or Providence. Rationalism is of the idea that that human rights are held by each human being, in an individual capacity, due to the universal capacity of all humans to think rationally. Rationalists have a belief in the universal human capacity to reason and think rationally. Positivism, justifies the existence of universal human rights by noting the worldwide acceptance and ratification of human rights instrument. To the positivists, ‘universal human rights norms have been created and are embodied in the international treaties and customary international law.’

Although the universality of human rights is still widely accepted by many nations, it is increasingly exposed to competing claims of legitimacy from various cultures and subcultures. In other words, the influence of Cultural Relativism is to some extent undermining the universal human rights claim. For the Cultural Relativists, universal human rights are impossible in a world with diverse cultures. In other words, universal human rights norms are impossible to defend in such a richly diverse world and are no more than a “Western concept with limited applicability. Their arguments favour communitarianism.

Communitarianism” is adherence to the notion that international human rights conflict with traditional communal rules for orderly social behavior, and it posits that within the confines of the group, the society protects the human rights of its members. They argue that human rights put the individual above the community which goes against the communitarian values. The traditional concept of rights is the direct opposite of Western model emphasizing community over individual rights and freedom. Cultural relativists argue that values are grounded in specific communities and that the communal group, not the individual, is the basic social unit. Cultural relativism maintains that right or wrong is based on the particular situation and society.

It is these arguments that are usually presented under the guise of a distinctively “Asian,” “African,” or “Arab” perspective of human rights. Also among those that have challenged the notion of universality of human rights are Asian groups and numerous third world countries. For instance, at the 1993 UN Conference on Human Rights held in Vienna, a delegation led by China, Syria and Iran officially challenged the universality of Human Rights when they put forward the conclusions that human rights as currently defined are not universal but based on Western morality; that human rights should not therefore be imposed as norms on non-western societies in disregard of those societies’ historical and economic development and in disregard of their cultural differences and perceptions of what is right and wrong.

The argument takes its basis on the fact that human rights are individualist and was imposed on non-western states as a condition for independence. It also that third world countries especially sub-Saharan Africa were not yet independent and not represented in the United Nations. For example, they hold that the “excesses of contemporary freedom,” such as women’s liberation, homosexual rights, and so forth in other words “excessive individualism” are antithetical to social order.

For example in Africa the decision to marry is not that of the girl but that of the family and clan, sometimes the community at large depending on the status of the family. Individual exercise of free choice in this respect will be seen as a flagrant disrespect for elders and family. To claim such a right would affect bonds established in family and society.

In counter-argument, Universalists maintains that the argument of the Third World Countries is almost a moot argument considering the fact that the Third World countries have after gaining independence confirmed and affirmed the universal declaration of human rights. Take for example the African Declaration for peoples and human rights, the preamble acknowledges drawing from universal declaration. It is important to point out that the African Charter was not an imposition from the West nor was the AU Constitutive Act. These were documents purposely drafted and supervised by African leaders.

Universalists have argued that claiming cultural relativism as an excuse to violate or deny human rights is an abuse of the right to culture, since the right to culture is limited at the point at which it infringes on another human right. There are various cultural practices that violate human rights. For example, in Ghana and Togo the traditional practice of Trokosi is a gross violation of rights of a child and women. Trokosi is the pledging of girls, sometimes from infancy as payments for crimes committed by male members of the family. The girls serve traditional priest, work on their farms and bear their children in a slave like manner. This takes away freedom of choice; she is in slavery and made to pay for another crime. Moreover, they argued that ‘if cultural tradition alone governs state compliance with international standards, then widespread disregard, abuse and violation of human rights would be given legitimacy. What is important to note is that even though people have the rights to practice their culture but that culture must not be one that infringes on rights of human. Moreover, if the protection of human rights as argued on cultural relativism is subject to only state discretion, rather than international community, this would run against the aim for the creation of United Nations and its enactment of universal human rights, which almost all states have accepted and signed not under duress.

It should not be forgotten that the San Francisco Conference which established the United Nations in 1945 was dominated by the West, and that the Universal Declaration of Human Rights was adopted at a time, when most Third World Countries were under colonial rule. Thus to argue that human rights has a standing which is universal in character is to contradict historical reality. What ought to be admitted by those who argue universality is that human rights as a Western concept based on natural rights (should) becomes the standard upon which all nations ought to agree since it is based on one particular value system: natural rights.

**THE GENERATION OF RIGHTS**

Although the Universal Declaration has achieved the status of customary international law in its more than sixty years, as a declaration it is only a statement of intent, a set of principles to which United Nations member states commit themselves in an effort to provide all people a life of human dignity. For the rights defined in a declaration to have full legal force, they must be written into documents called conventions (also referred to as treaties or covenants), which set international norms and standards. Immediately after the Universal Declaration was adopted, work began to codify the rights it contained into a legally binding convention. It took eighteen years of debate to determine how this translation should be achieved. A split emerged during the process of drafting the follow-up to the Universal Declaration because some countries maintained a different view about the nature of economic, political and cultural rights. It was therefore decided in 1952, based on a motion from India and Lebanon with support from Belgium and the United States, that two conventions would be drafted instead of one. On December 16, 1966, the drafts of two conventions were approved: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Both agreements entered into force for the states that ratified them on January 3rd, 1976. Collectively, these two Covenants along with the Universal Declaration became known as the International Bill of Rights.

The International Covenant on Civil and Political Rights (ICCPR) are called the first generation rights because rights it contained deals with the individual rights that first originated in the issue of rights. It articulates the specific, liberty-oriented rights that a state may not take from its citizens, such as freedom of expression and freedom of movement. The so-called first-generation (human) rights refer to traditional civil and political liberties prominent in Western liberal democracies, such as freedom of speech, religion, and the press, as well as freedom from torture, which presuppose a duty of non-interference on the part of government towards individuals. These rights are the ‘classical’ human rights contained in notable instruments such as in Chapter 3 of the Constitution of the Republic of Namibia and Chapter IV of the Constitution of Nigeria. For many years, the dominant position was that only these rights were genuine human rights.

First-generation are strongly individualistic and are constructed to protect the individual from the state. These rights draw from those articulates in the United States Bill of Rights and the Declaration of the Rights of Man and Citizen in the 18th century. Civil-political rights have been legitimated and given status in international law by Articles 3 to 21 of the Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. Civil and Political Rights Articles 3-21 of the Universal Declaration list, in brief form, the civil and political rights to which all people are entitled. Many of these rights will sound familiar, as they have much in common with the constitutions of many advanced democracies, such as the United States and France. Rights articulated in these sections include: the right to life, liberty and security (Article 3); freedom from slavery, torture and “inhuman or degrading treatment or punishment” (Article 4-5); the right to equal protection from discrimination and due process of law (Articles 6-8, 10-11); freedom from “arbitrary arrest, detention or exile” (Article 9); freedom from “arbitrary interference with his privacy, family, home or correspondence” (Article 12); freedom of movement and of asylum in the face of persecution (Articles 13-14); the right to marry as one chooses and have a family (Article 16); the right to own property (Article 17); freedom of thought, conscience, religion, expression and association (Article 18-20); and the right to belong to a nationality, to engage in political participation and to enjoy equal access to public services (Articles 15, 21).

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) addresses those articles in the UDHR that define an individual’s rights to self-determinations as well as basic necessities, such as food, housing and health care, which a state should provide for its citizens, in so far as it is able. The ICESCR are called second generation rights. Second-generation, “socio-economic” human rights guarantee equal conditions and treatment. They are not rights directly possessed by individuals but constitute positive duties upon the government to respect and fulfill them. Socio-economic rights began to be recognized by government after World War II and, like first-generation rights, are embodied in Articles 22 to 27 of the Universal Declaration. They are also enumerated in the International Covenant on Economic, Social, and Cultural Rights.

The ICESCR defines a broad set of rights related to the economic, social, and cultural elements of life that states must provide to their citizens. Specific rights relate to: housing, education, health etc. Economic, Social, and Cultural Rights Articles 22-27 specify the economic, social and cultural rights that belong to all individuals above and beyond the basic political freedoms described above. While many U.S. citizens often do not think of the protections that fall in these areas as “rights,” strictly defined, many other countries in the world do, particularly countries with more socialized forms of government such as those in Western Europe.

Article 22 presents the rationale that justifies the inclusion of these rights in the Universal Declaration; it is quoted here in its entirety: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national efforts and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

This provision is remarkable in several respects. First, it holds that economic, social and cultural rights help create the background conditions necessary for the realization of human dignity, which Article 1 had established as the foundation for all human rights. The clause makes explicit what is implicit in the notion of human rights: that one must enjoy a measure of peace, health, and security in one’s environment as a precondition for being able to exercise one’s private rights. Second, it calls not only for national action to secure these rights but also for “international co-operation.” This means that national governments have a responsibility to help other countries meet these human rights obligations in addition to meeting their own.

It is therefore no longer acceptable for countries to know that violations are occurring elsewhere and not take any action. This “co-operation” could take the form of more passive measures, such as technical assistance, or more active measures such as intervention. Third, Article 22 recognizes that countries have different capacities, in terms of political “organization and resources,” to achieve the economic, social and cultural objectives specified in the Universal Declaration. It is important that each nation make all reasonable efforts within these constraints to fulfill its obligations to its people and the international community.

The rest of the enumerated rights in this section guarantee: the right to employment, non-discrimination in pay, a decent wage or supplemental income to ensure “for himself and his family an existence worthy of human dignity,” and unionization (Article 23); the right to rest and leisure (Article 24); the right to a standard of living that includes the determinants of physical well-being, such as “food, clothing, housing and medical care and necessary social services” as well as forms of social insurance that protect an individual in the case of “unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” (Article 25); the right to education and “full development of the human personality” (Article 26); and the right to “participate in the cultural life of the community” and benefit from scientific and technological advances (Article 27).

These rights involve complex questions in terms of how they should be interpreted and implemented. What does it mean, for instance, that one has the right to “full development of the human personality?” What constitutes “an existence worthy of human dignity?” Because these standards essentially bring the entire realm of social and economic policy into the domain of human rights, some believe they make the very notion of “rights” problematic, possibly eroding or weakening the imperative rigorously to enforce all human rights.

Second-generation rights have generally been considered as rights which require affirmative government action for their realisation. In contrast with first-generation rights, which have been perceived as individual entitlements, particularly the prerogatives of individuals, second-generation rights are held and exercised by all the people collectively or by specific subsets of people.

Protection of the second generation rights have been difficult as many states particularly in the developing world have not been able meet the expectations. States are sometimes reluctant to protect these rights as they continue to call them aspirational rights.

States reluctance are based on the belief that states’ courts are unable to enforce affirmative duties on states to protect such rights are, therefore, mere aspirational statements. Also, there is the argument that regardless of the political system or level of economic development, all states are able to comply with civil and political rights, but not all states have the ability to provide the financial and technical resources for the realisation of affirmative obligations such as education, good medical services, basic services necessary for ensuring good standard of living.

**INTERNATIONAL CRIMINAL TRIBUNALS; ICC AND HUMAN RIGHTS PROTECTION**

Prior to ICC creation, two major international tribunals were created to prosecute war crimes committed in Rwanda and the Former Yugoslavia: The International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY).

**The ICTR**

The Rwandan genocide was exceptional in its brutality, in its speed, and in the meticulous organization with which Hutu extremists set out to destroy the Tutsi minority. In response to the genocide, the United Nations Security Council set up the International Criminal Tribunal for Rwanda (ICTR) in 1994, with a mandate to prosecute “persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and against Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states between 1 January 1994 and 31 December 1994. As of 2014, the ICTR had tried 75 individuals in 55 cases; 49 individuals were convicted; 14 were acquitted; 12 were awaiting the outcome of appeals. The ICTR wind down its operations and all proceedings concluded by the end of 2014.

A significant number of perpetrators of the genocide, including former high-level government officials and other key figures behind the massacres were brought to justice. The majority have been tried in Rwandan courts. Others have gone before the International Criminal Tribunal for Rwanda (ICTR) or domestic courts in Europe and North America. Rwanda's community-based gacaca courts finished their work in 2012; the ICTR completed its own in 2014

The ICTR was only ever expected to try a small number of suspects: primarily those who played a leading role in the genocide. To some extent, it has performed this task, and has tried and convicted several prominent figures, including former Prime Minister Jean Kambanda, former army Chief of Staff General Augustin Bizimungu, and former Ministry of Defence Chief of Staff Colonel Théoneste Bagosora. The ICTR also set important precedents in the development of international criminal law, such as the first-ever prosecution of rape as genocide in the case of a former bourgmestre (mayor), Jean-Paul Akayesu.

However, the tribunal has inherent limitations, as is the case with most international tribunals, and attracted criticism, particularly by Rwandans, for the relatively small number of cases it has handled, its high running cost, bureaucratic processes, the length of time trials have taken, and the fact that it was located outside Rwanda

**The ICTY**

After sitting for 10,800 days, hearing 4,650 witnesses and digesting 2.5m pages of transcripts, the international criminal tribunal for the former Yugoslavia (ICTY) was dissolved recently. The court that put Slobodan Milošević in the dock dissolved in December 2017 after 24 years with 161 indictments. The war crimes Tribunal put the former Yugoslav president Slobodan Milošević, the Bosnian Serb leader Radovan Karadžić and Gen Ratko Mladic in the dock. Established in 1993, it was the first tribunal of its kind since hearings in Nuremberg and Tokyo at the end of the Second World War. Ninety individuals were sentenced for genocide, crimes against humanity or other crimes. Politicians and senior military officers, judgment after judgment confirmed, will no longer escape with impunity but be held responsible for their actions, even in wartime. Among the ICTY’s achievements was the accumulation of legal expertise and testimony, producing an archive of evidence that will serve future historians well. On the positive side, all citizens of the world now expect criminal behaviour in war to be subject to international legal accountability. That is a huge shift in thinking.

**The International Criminal Court (ICC)**

The International Criminal Court is the standing judicial body dedicated to investigating and prosecuting war crimes, crimes against humanity and genocide. Its function is to protect certain fundamental human rights. It both protects and prosecutes individuals, not states. The International Court of Justice is the international judicial body responsible for adjudicating disputes between states on questions of international law.

While the international criminal tribunals for the former Yugoslavia and Rwanda have tried individuals for crimes against humanity, and only those that were committed in those territories over a specified period, the International Criminal Court is a permanent body.

As genocides and war crimes continued to occur in the postwar period, a need to found a permanent (that is not to work for a limited time and specific region), standing court that could try cases involving war crimes, crimes against humanity, and genocides committed anywhere in the world at any time arose. The Rome Statute of the International Criminal Court was adopted by the United Nations in July of 1998 and entered into force in July of 2002. The Court is located in The Hague, Netherlands. The Rome Statute, which established the court, has been ratified by 125 countries, but the US is a notable absence. A few countries, most notably the US, voted against the Rome Statute and have not supported the creation of the ICC (the others being China, Iraq, Libya, Yemen, Qatar, and Israel). The then Bush administration worried that the ICC may exercise its jurisdiction to conduct politically motivated investigations and prosecutions of U.S. military and political officials and personnel. The U.S. has aggressively tried to secure exemptions from prosecution for American citizens, both in the UN Security Council and on a bilateral basis with other countries through bilateral immunity agreements (BIAs).

The ICC, like many of its predecessor tribunals, seeks to prosecute individuals rather than states. Its jurisdiction is both broad and limited. It is broad in the sense that it can take cases from any country in the world, but it is limited by the principle of complementarity. This principle holds that the ICC “can only act in cases where states are unwilling or unable to do so.” Thus, the ICC is designed to respect state sovereignty in situations where states are willing to act responsibly to fulfill their obligations to international justice. States that are party to the Statute and accept the standing of the Court can refer cases to the ICC for investigation, as can the UN Security Council. ICC prosecutors can initiate their own investigations when approached by victims or NGOs, as long as the principle of complementarity is respected. The ICC is also limited in that it can only review crimes that have been committed subsequent to its establishment in July 2002.

Nevertheless, the court has global jurisdiction to prosecute and bring to justice those responsible for the worst crimes - genocide, crimes against humanity, and war crimes. It is a court of last resort, intervening only when national authorities cannot or will not prosecute extreme violators of human rights. The main contribution of the Rome Statute is that it allows countries to exercise their sovereign right to allow an international court to prosecute certain crimes committed on their territory rather than conducting these trials themselves. As of May 2011, the ICC received 9,214 communications to investigate alleged crimes in 140 countries.

The court’s first verdict, in March 2012, was against Thomas Lubanga, the leader of a militia in the Democratic Republic of Congo. He was convicted of war crimes relating to the use of children in that country's conflict and sentenced in July to 14 years. The highest profile person to be brought to the ICC was Ivory Coast's former President Laurent Gbagbo, who was charged in 2011 with murder, rape and other forms of sexual violence, persecution and other inhumane acts. Other notable cases included charges of crimes against humanity against Kenya's President Uhuru Kenyatta, who was indicted in 2011 in connection with post-election ethnic violence in 2007-08, in which 1,200 people died. The ICC dropped the charges against Mr Kenyatta in December 2014. Among those wanted by the ICC are leaders of Uganda's rebel movement, the Lord's Resistance Army (LRA), which is active in northern Uganda, North-eastern DR Congo and South Sudan. Its leader Joseph Kony is charged with crimes against humanity and war crimes, including abduction of thousands of children. The court has an outstanding arrest warrant for Sudanese President Omar al-Bashir - the first against a serving head of state. In 2015, the ICC began a preliminary investigation into the 2014 Gaza conflict. The Palestinian Authority submitted evidence to the court in June of what it claims were war crimes committed by the Israeli military. A UN report found evidence of war crimes by both Palestinian militant group Hamas and the Israeli military.

African countries like Uganda, the Democratic Republic of the Congo and the Central African Republic have referred situations occurring on their territories to the Court. Additionally, the United Nation’s Security Council referred the circumstances in Darfur, Sudan, a non-State Party, to the ICC. ICC has been careful in interpreting its mandate as a “court of last resort.”

**Targeting Africa/Biased against African states?**

The ICC, however flawed, offers ordinary Africans a real alternative to hold their leaders accountable, to finally end the impunity, and stop leaders from getting away with the most brutal crimes.

However, the ICC has been criticised, particularly by the African Union, for its focus on Africa. In the court's 17-year history it has only brought charges against black Africans.

At a national policy conference in 2017, South Africa’s governing African National Congress said that it was determined to pull out of the ICC, arguing that it is biased against African States. This came after the South African government in March 2017 pulled back from its plans to leave the ICC. On 6 July 2017, the pre-trial chamber of the ICC found that South Africa had a duty to arrest Sudanese President Omar Al Bashir when he was in the country in 2015 to attend the African Union Summit. However, South Africa was spared sanctions.

Sudanese President Omar al-Bashir has been sought by the ICC since 2009 for alleged genocide and war crimes in Darfur.

South Africa is a signatory to the Rome Statute, which created the ICC in 1998 at the inaugural conference in the Italian capital. Africa, with 34 countries, is the largest regional grouping within the 124 member ICC. South Africa was the first African country to incorporate the Rome Statute into national laws. Crimes designated by ICC jurisdiction become statutory crimes under South African law.

In the first session as chair of the AU, Zimbabwean President Robert Mugabe proposed that African countries withdrew from the AU and instead formed a new African court. At the African Union Summit in January this year, leaders adopted a non-binding resolution calling for African countries to leave the ICC.

In 2016, Burundi and the Gambia announced their withdrawal from the ICC, because they said the ICC only focused on prosecuting African leaders. Gambia reversed its decision in February 2017. Nine of the ten cases of the ICC since it was launched involved former African leaders. The ICC’s first successful conviction in March 2012 was against the Congolese strongman Thomas Lubanga for gang-pressing child soldiers into his military campaigns.

Kenyan President Uhuru Kenyatta was indicted by the ICC for crimes against humanity related to violence following the 2007 elections, where more than 1000 people died. However, the case collapsed because the Kenyan government refused to cooperate with the ICC.

The Ugandan warlord Joseph Kony, the leader of the Lord’s Resistance Army (LRA), known as the ‘Butcher of Uganda’ is being sought by the ICC for allegedly kidnapping as many as 70 000 children. Kony founded the LRA in 1986 with a goal of creating a Christian theocratic state in Uganda based on his interpretation of the Bible and the Ten Commandments.

Ironically, all the cases at the ICC, except Kenya, were either brought by African governments themselves or by citizens. The ICC took its own initiative to open the now collapsed case against Kenyatta.

Former UN General Secretary Kofi Annan says that of the ‘nine investigations on the African continent, eight were requested by African states’.

The ICC denies any bias, pointing to the fact that some cases - such as the LRA in Uganda - were self-referred by the country affected, and some were referred by the UN. Fatou Bensouda, the deputy chief prosecutor of the ICC, who is Gambian, has argued that the ICC is helping Africa by its prosecutions of criminals. Moreover on the issue of Middle East, only one Arab state has ratified so far, that is Jordan and a number of important countries seem determined not to submit to the jurisdiction of the ICC. Some have not even signed the treaty, such as China, India, Pakistan, Indonesia and Turkey. Others, including Egypt, Iran, Israel and Russia, have signed but remain dubious and have not ratified. It is unlikely that alleged crimes against humanity in those states will be prosecuted.

**REGIONAL HUMAN RIGHTS INSTRUMENTS**

Although the rights covered in the UN human rights framework are universal, complementary human rights systems have been developed that apply to the people living in specific parts of the world. These regional human rights instruments are meant to reinforce UN Conventions, which remain the framework and minimum standard in all parts of the world. Examples are the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, also known as the European Convention on Human Rights), adopted in 1950 by the Council of Europe and now ratified by 47 member states; the American Convention on Human Rights, adopted in 1969 by the Organisation of American States (OAS), by governments in North, Central and South America; and African Charter on Human and People’s Rights, adopted in 1981 by the Organisation of African Unity (OAU), now AU. These regional human rights instruments have been elaborated in an effort to render protection to individuals in specific regions, in addition to the UDHR and other domestic/state protection.

**The European Convention on Human Rights**

The European Convention on Human Rights, adopted by the Council of Europe in 1950, is the oldest and strongest of the regional human rights systems. The Convention was inspired by the Universal Declaration of Human Rights of 1948.

Although the Convention has expanded geographically, the enlargement of the 1990s was so significant that it brought a significant number of up to now 22 States to join the Convention. At the moment, the Convention has been ratified by 47 states in Europe.

Within the Council of Europe the European Convention is implemented by the Committee of Ministers and the European Court of Human Rights, located in Strasbourg, France. The European Court of Human Rights is a permanent judicial body that hears and decides on individual complaints concerning violations of the European Convention by anyone residing in the territory of the member states. It complements the human rights guaranties that exist at national level. While the European Convention and the European Court on Human Rights remain key in the Council of Europe’s work on human rights, the Council has developed several non-judicial means to monitor the realisation of human rights in its members states. For example the European Commission against Racism and Intolerance (ECRI) was formed as an independent body of experts to monitors racism, xenophobia, and intolerance in order to make recommendations to governments on how to combat them. There is also the Commissioner for Human Rights, an independent institution within the Council of Europe, mandated to promote the awareness of and respect for human rights in the member states. The Commissioner identifies possible shortcomings in human rights law and practise, raises awareness and encourages reform measures to achieve tangible improvement in the area of human rights promotion and protection.

There is an important distinction between the European Court and the Commissioner. The Court is reactive: it can respond only to complaints laid before it by individuals or by the member states themselves. The Commissioner, on the other hand, may be proactive, conducting investigations on how human rights are safeguarded in different European countries. However, only the Court has the power to take decisions in the form of judgments, which are binding on the member states.

**The European Court and its Achievement in Human Rights Protection**

It has been established that the Convention’s best known and most successful organ is the European Court of Human Rights. After a slow start in the 1950s, there was an exponential growth in the number of applications from the 1980s. At that time the European Court became better known in the existing States Parties, many countries from central and Eastern Europe acceded to the Council of Europe and ratified the Convention. As a result, the number of applications rose from 1,000 in 1988 to over 2,000 in 1993. The Court recorded well over 50,000 in 2008. Not only did the number of complaints rise, the ‘output’ went up as well. On 18 September 2008 a milestone was reached when the Court delivered its 10,000th judgment.

These statistics do reveal how ‘normal’ it has become to complain in Strasbourg. The statistics also show what a huge effort has been made to handle the unprecedented flow of applications, although there are sometimes the issue of backlogs and negative jurisprudence. At the end of 2007, over 100, 000 cases were pending, 10,000 of which constituted backlog (that is to say, they had been pending for more than three years). In an attempt to roll back the enormous number of applications about undue delays, the Court insists that States as long as they cannot solve the underlying problem of overburdened judicial systems provide a national remedy allowing litigants to expedite a decision by the courts dealing with their case or to obtain adequate redress for delays that have already occurred.

The ‘negative jurisprudence’ (whereby the Commission rejects cases as inadmissible) was extremely important because it defined the areas in which the Convention could be applied. The Commission has at some time rejected applications. If the Commission systematically rejected particular kinds of complaints, then there was nothing that the Court could do about it.

However, the Court has also done work great in the protection of rights of individuals especially rights to life (Article 2 of the Convention) and fair trial (Article 6 of the Convention). The Court’s first judgment about the right to life (Article 2 of the Convention) was delivered in 1995. Since then the Court has dealt with many cases, mainly stemming from the ‘troubles’ in Northern Ireland and the conflict between Turkish armed forces and the PKK (Workers’ Party of Kurdistan) in the southeast of Turkey.

Also, entire monographs have been devoted to the right to a fair trial in Article 6 of the Convention such as the right to be heard by an ‘independent and impartial tribunal’ and the right to a public hearing.

Indeed, European citizens look up to the Court to defend their rights. It is safe to say that the right of individual application, the cornerstone of the Convention system, has developed into a basic feature of contemporary European legal culture.

In most Council of Europe member States it is quite common for a lawyer in a high-profile (or even a not so high-profile) case to announce ‘that the litigation will continue in Strasbourg.

The principal mechanism and the Court’s working instrument are the individual applications. In the whole history of the Convention and the Court, there have been few interstate complaints.

Overall, the European Court of Human Rights … is more than just another European institution, it is a representation of the people’s right. It harmonizes law and justice and tries to secure, as impartially and as objectively as is humanly possible, fundamental rights, democracy and the rule of law.

In terms of numbers, no other international tribunal deals with so many cases. In terms of substance, no other supervisory body has been able to reach such a level of sophistication in shaping and refining human rights standards. In terms of significance, the Court’s judgments have an impact matched by no other human rights body, not only on the parties whose disputes are settled in final and binding rulings, but also on the community of 47 Contracting Parties as a whole. In terms of legal status, few treaties can claim to have developed from common international undertakings to instruments of a constitutional standing, and there is arguably no court in the world that has done so much for the emancipation of the individual as a subject of international law.

Scholars believe that the European Convention on Human Rights has brought into being the most effective international system of human rights protection ever developed. As the most successful attempt to implement the United Nations Universal Declaration of Human Rights of 1948 in a legally binding way, it is part of the heritage of international law and it constitutes a shining example in those parts of the world where human rights protection, whether national or international, remains an aspiration rather than a reality.

**Human Rights and Democracy: Any Linkage?**

Scholars have defined democracy as a form of governance done in the people’s best interest that is they tend to stress the representative character of a democracy. Some have defined a democratic order as one where principles of basic human freedoms and rights along with mass participation in politics are secured. The term ‘democratic’ is sometimes used to characterize a form of politics, and also used more broadly to describe a type of society, characterized, broadly speaking, by conditions of equality, a society of equals, with equal rights and equal status, whose members relate to one another as equals.

Two ideas are essential in the characterization of a society as democratic, as a society of equals. First, each member is understood as entitled to be treated with equal respect, and therefore are entitled to the same basic rights, regardless of social position. An aristocratic or caste society or some other society with fixed social orders requires respect (and equal rights) within social ranks, but differential respect (and rights) across ranks. Second, the basis of equality lies in the capacity to understand and follow the requirements that provide the fundamental standards of public life, a capacity that appears to be more or less universally characteristic of human beings.

However when looking at the vast array of definitions it becomes clear that one element appears to be present in the definition of democracy and that is a government that gives power to the people or that believes that the voice and participation of all counts, and invariably a government that would respect the rights of the people.

Is there a democracy without human rights? The argument is that the idea and concept of democracy includes human rights as democracy is built on the fundament of human rights. Human rights serve as a basis for a political opinion-building and decision-making process allowing every human being political participation.

Thus, a universal consensus exists on the nexus/link between human rights and democracy. The essential point for addressing the question about human rights and democracy is that an idea of equality plays a central role in any reasonable normative conception of democracy. Some consider respect for human rights to be a prerequisite for democracy, and others argued that democracy and human rights are interdependent and mutually reinforcing.

Respect for human rights is often perceived to be a prerequisite for democracy or democracy perceived as a prerequisite for the respect of human rights. Sometimes respecting human rights is perceived to be one of a set of various elements, including respect for the principles of the rule of law and separation of powers. The focus of this argument is that democracy cannot be defined without human rights.

One of the essential elements of democracy is the respect for human rights and fundamental freedoms. Thus there is an agreement that human rights cannot be protected effectively if the state is not democratic. The link between democracy and human rights is captured in article 21(3) of the Universal Declaration of Human Rights, which states:

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

A functional democracy that accommodates diversity, promotes equality and protects individual freedoms is increasingly becoming the best bet against the concentration of power in the hands of a few and the abuse of human rights that inevitably results from it. In turn, the greatest protection of human rights emanates from a sustainable democratic framework grounded in the rule of law. Democracy is supposed to be geared or committed to equality. Their common grounding in political equality actually confirms the mutual relationship between human rights and democracy. Of course, just as human rights, democracy implies more than political equality. Democracy qua political regime also implies egalitarian deliberation and decision-making procedures.

It is accepted that democracy provides the natural environment for the protection and effective realization of human rights. Scholar consider respect for human rights as the only requirement that needs to be fulfilled in order to be considered to be a democracy. While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as democratic. Democracy has been seen as a prerequisite for respecting human rights with the argument that in a democracy respect for human rights is best assured. If a nation respects human rights it automatically may be considered to be a democracy because a democracy automatically would respect human rights. Democracy helps to protect such basic personal liberties as liberty of speech, and gives people the opportunity to claims those rights. It is sometimes also said that democracy is a demand of justice.

Nonetheless, respecting human rights does not automatically turn a nation into a democracy. Certain human rights can adequately be protected in non-democracies. Empirical studies and practical evidence have illustrated that a democracy does not necessarily entail better protection of human rights. Democracy may even exacerbate ethnic conflict and lead to greater violations of human rights especially in the period immediately following transition to a democratic system. Respect for human rights is only said to increase at the end of the democratization process i.e. when a democracy is well installed.

In addition, longstanding democracies do not automatically provide the highest and best protection of human rights. For instance, in many democracies (e.g. Belgium and the United States) economic and social rights are not justiciable or only partly justiciable. Governments might provide a variety of welfare benefits including food and shelter, medical care and access to education. However, citizens generally do not have the right to sue the government for such benefits in court when not provided.

It has been seen that a democratic system may be run by a government while at the same time massively violating human rights. An instance is Federal Republic of Nigeria, where human rights are yet to be adequately protected and are violated with so much impunity. Thus, “official” or “formal” democracies do not always adequately protect human rights.

However, once a democratic society is in place, it is assumed that it comes with ideas of equal standing and equal respect and it provides that expression in the basic design of the essential arrangements of collective decision-making. Martin Luther King, Jr. said that the ‘great glory of American democracy is the right to protest for rights’, that in essence means that citizens have a right to bring not only their interests but also their sense of justice to bear on matters of common concern. Many times, a democratic order that gives people the ability to participate in decision-making processes of the state does not imply or lead to respect for human rights, even though people might have right to voice out abuses and demand for justice. Justice sometime requires democracy.

A society that fully subscribes to democracy is not ipso facto just or promoter of human rights. For instance, it is believed from the conception of human rights that human rights are universal, indivisible and interdependent. Thus, in order to be “democratic” all civil, political, economic, social and cultural rights would have to be respected, even though it could be problematic for some reasons. First, human rights appear to be an open-ended category of rights. Secondly, all human rights treaties and texts contain a different set of rights. Moreover, not all nations accept all rights to be legally binding upon them and different geographical regions tend to emphasize different human rights. The interpretation and implementation may also vary according to the region.

However, a nation respecting human rights might be labeled democratic and the ones without regard to human rights might be labeled authoritarian or autocratic. It has been argued that no true progress can be made with regard to democracy if human rights are either still grossly violated by the government or aided by the government through its silence on abuses.

Human rights and democracy are also interdependent and mutually reinforcing. “Interdependent” means that one cannot exist without the other. “Mutually reinforcing,” means that both concepts directly or indirectly influence each other. The argument is that democracy cannot exist without human rights. It is also true that there is a greater likelihood that human rights are “better” respected in a democratic government. Since democracy comes from the people, it requires a commitment to respect the choices as well as their rights in day-to-day running of the government.

Conceptually democracy is linked to human rights. As many issues remain unsolved with regard to human rights, these issues reflect on the discussion of democracy. As such no true progress can ever be made with regard to democracy if no progress is made with regard to outstanding human rights issues.

**HUMAN RIGHTS AND MIGRATION**

Asylum Seekers/Refugees

For centuries, people have been forced to flee their homes because of conflict, political, racial and religious persecutions, natural disasters, inhuman treatments or other issues that have made them uncomfortable or pose threats to their well-being in their societies. They may end up as asylum seekers or refugees in foreign lands. The highest number of refugees ever recorded, was produced during and after the two world wars. This led to the necessity of creating a structure that could help these people. In the 1950s, the United Nations High Commissioner for Refugees was created. Its mandate was to provide refugees with international protection, as well as to seek “permanent solutions for the problem of refugees by assisting governments and private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

In July 1951, a diplomatic conference in Geneva adopted the Convention relating to the Status of Refugees (‘1951 Convention’), which was later amended by the 1967 Protocol. These documents clearly spell out who is a refugee and the kind of legal protection, other assistance and social rights a refugee is entitled to receive. Initially, the 1951 Convention was more or less limited to protecting European refugees in the aftermath of World War II, but the 1967 Protocol expanded its scope as the problem of displacement spread around the world. The 1967 Protocol broadens the applicability of the 1951 Convention. The 1967 Protocol removes the geographical and time limits that were part of the 1951 Convention.

The 1951 Convention and 1967 Protocol together remain the cornerstone of refugee protection, and their provisions are as relevant now as when they were drafted. Today, when governments fail to protect their citizens and if people become displaced for any reason, they could become **asylum seekers, refugees, persons eligible for subsidiary protection or internally displaced persons**.

Asylum Seekers

Individuals, who seek international protection (refugee status or subsidiary protection status) are called asylum seekers. According to UNHCR, “asylum seekers are individuals who have sought international protection and whose claims for refugee status have not yet been determined”. Thus, a refugee is initially an asylum seeker, as he originally applies for asylum in the host country, but an asylum seeker is not necessarily a refugee at the beginning, but can become one if he falls under the provisions of the 1951 Refugee Convention definition. After applying for asylum, this asylum seeker may become a refugee. However, sometimes, an asylum seeker may not meet the Refugee Convention criteria and may not be entitled to refugee status, but may suffer persecution if he were to be returned to his country of origin. In this case, he may be granted “de facto” legal status to be able to enjoy the protection of the asylum country. This type of status was defined, under European law, in the form of “subsidiary protection”.

Subsidiary Protection (Complementary protection)

In situations of armed conflict, there are usually massive movements of civilians across international borders, hampering the ability to conduct case-by-case interviews and individual status determination. In those cases, the fleeing civilians might be given protection on a prima facie basis, which means that they are assumed to have fled a situation where civilians are targeted and persecuted en masse. Hence, an asylum seeker may be entitled to refugee or subsidiary protection status. A great number of asylum seekers, who do not qualify as refugees, become “persons eligible for subsidiary protection.” In international law, this type of obligation to protect people who do not satisfy the 1951 Refugee Convention definition, is also known under the name of complementary protection/subsidiary protection. In summary, subsidiary protection, complementary protection or de facto refugee status have been developed by countries to offer an alternative protection to various categories of people who were excluded from the Refugee Convention definition, but who if returned, removed or expelled from the host country, could suffer serious harm.

Refugee

According to the 1951 Refugee Convention a refugee is any person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

Refugees are not to be seen as **economic migrants.** Although, an asylum seeker, a refugee, a person eligible for subsidiary protection, and an economic migrant are sometimes linked through the asylum channel when they all apply for asylum to receive a certain status, they are not the same. An economic migrant is a person who moved from one place to another, usually having a good reason for leaving. While refugees are forced to flee because of a threat of persecution and because they lack the protection of their own country, an economic migrant, in comparison, may leave his or her country for many reasons that are not related to persecution, such as for the purposes of employment, family reunification or study. In the case of economic migrants there is an element of choice and planning in their movement. A refugee on the other hand is forced to flee from conflict to save his life and freedom, and therein lies the need for protection. A migrant continues to enjoy the protection of his or her own government, even when abroad.

Sometimes, those who flee famine and poverty may not be simply economic migrants, but also refugees from hunger, if their economic reason is linked with a political reason, even persecution. This means that “they are fleeing out of a state of necessity, not out of choice”. What is more, “an economic migrant may, for example, become a **refugee sur place**, when there is an armed conflict or violent change of regime in a person’s country of origin, or when the government or other actors in that country begin to inflict human rights violations on the community of which the migrant is a member, and such a person cannot return to his/her country.

Since, by definition, refugees are not protected by their own governments, the international community steps in to ensure they are safe and protected. The cornerstone of the 1951 Convention is the principle of **non-refoulement** contained in Article 33.

**The Principle of Non refoulement as Refugee Law**

The principle of non-refoulement can be defined as the prohibition to expel or return a person to a place where he could face persecution, torture or inhuman treatment. The legal basis for this principle is Article 33 of the 1951 Refugee Convention and Article 3 of the UN Convention against Torture, under international law and Article 3 of the European Convention on Human Rights, under European law. Refugee law imposes a clear and firm obligation on States: under the principle of non-refoulement no refugee should be returned to any country where he or she is likely to face persecution. This is the cornerstone of the regime of international protection of refugees”.

The principle of non-refoulement applies as soon as an asylum seeker claims protection. References in international law about non-refoulement first emerge during the inter-war period. In 1933 the League of Nations adopted the Convention relating to the International Status of Refugees, containing an explicit reference to non-refoulement at Article 3 “Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (refoulement) refugees who have been authorised to reside there regularly, unless the said measures are dictated by reasons of national security or public order.

An exception to the right to non-refoulement was formulated by Article 3 of the 1933 Convention relating to the International Status of Refugees. This has to do with national security and public order. If the refugees became a threat to the security of the host country and the local population, they could be expelled, only after receiving “the necessary authorisation and visas permitting them to proceed to another country.”

**Developed countries and Protection of Refugee Rights under the Principle of Non Refoulement in the 1951 UN Convention and 1967 Protocol**

The 1951 Convention and its 1967 Protocol are the only global legal instruments explicitly covering the most important aspects of a refugee’s life. According to their provisions, refugees deserve, as a minimum, the same standards of treatment enjoyed by other foreign nationals in a given country and, in many cases, the same treatment as nationals.

European Union, for instance have continued to protect their borders from intrusion and as a result, many times refugees are locked out. For instance European Union has taken some measures to prevent illegal migration, ranging from controlling outside borders to engaging in civilian and military operations in conflict zones. In terms of controlling the borders, several agencies were created, such as Europol (the European Police Office), Eurojust (the European judicial cooperation body), to deal with immigration, terrorism, human trafficking, organised crime and any other international crime. Additionally, Frontex, the European Agency for the Management of Operational Cooperation at the External Borders, was entitled with border security.

United States and other countries in the Middle East, Asia and Africa have not kept to the promise of non Refoulement. With the election of Donald Trump, the United States has been taking harsh measures and blocking refugees and those freeing from conflict. Countries have tried to justify their increasingly harsh migration policies on the grounds that they are having to cope with more than their own share of refugees, and refugees have become a great burden.

Some of the ways countries have continued to curtail refugees, which have led to violations of human rights of refugees are military operations at the borders, using detention camps to isolate refugees, sometimes expulsion; neglect of their basic needs and health care; violence, including sexual violence for women and girls; sending them back to the so-called safe third countries, paying other countries to help stop the influx (especially European countries). These are explained in details below:

(a) Military Operations

For instance, the EU member states have constructed an increasingly impenetrable fortress to keep irregular migrants, mostly asylum seeker out irrespective of their motives and regardless of the desperate measures that many are prepared to take to reach its shores. In order to “defend” its borders, the EU has funded sophisticated surveillance systems, given financial support to member states at its external borders, such as Bulgaria and Greece, to fortify their borders and created an agency to coordinate a Europe-wide team of border guards to patrol EU frontiers. Individual member states themselves are taking drastic measures to stop irregular arrivals. Migrants and refugees are being expelled unlawfully from Bulgaria, Greece and Spain, without access to asylum procedures and often in ways that put them at grave risk. They are ill-treated by border guards and coastguards. In addition, some EU countries are using the threat of lengthy detention as a deterrent for those thinking about coming to Europe. Western European countries have funded reception and detention centres for migrants and refugees in countries where there are serious concerns about access to asylum procedures in detention, such as Turkey and Ukraine. They have put in place readmission agreements with countries of origin and transit, allowing those who manage to arrive in Europe to be sent back more easily. Such operations come with human cost and suffering of the refugees (death, trapped in transit, loss of connection with family, hunger and diseases). Countries like United States is planning to build a wall to block irregular migrants and this is bound to affect refugees fleeing for their lives. Every year thousands of migrants and refugees try to reach Europe. Their journey is fraught with danger. Over 250,000 people are estimated to have lost their lives trying to reach Europe since 2000.

(b)**Safe Third Countries**: Most times, the so-called safe Third Countries are not in any way safe. The Amnesty International reported recently that Turkey is not even a safe country that the EU sends back refugees to. Many of the refugees have testified on the hardship and suffering they endure in Turkey, with no escape route. The UNHCR note on temporary Protection emphasized the risks inherent in the presumption of “protection elsewhere.” They note that in many instances applicants are simply sent to a “safe third country” without guarantees that the state in question will accept responsibility. The ultimate result is that the applicant is returned to their country of origin. Chain deportations of applicants under the basis of “protection elsewhere” may ultimately result in refoulement. Moreover, if a state engages in chain deportation they may ultimately violate Article 3 of Committee Against Torture document should the individual ultimately end up in a state in which they are faced with a serious risk of torture, cruel, inhuman or degrading treatment.

(c) **Expulsion of Refugees**. Countries like Israel engaged in expulsion of African refugees. They government was bent on sending them back, and threatened that they either leave with the countries provided free flight or face imprisonment.

(d) **Detention Camps**: Countries like Australia have detention camps where asylum seekers are kept. Most of these camps are inhabitable. Asylum seekers are not provided with basic amenities and many suffer from various ailments without proper care. The government has left them there for years without deciding their cases.

These are some of the current realities faced by refugees. With the current harsh realities and violations of rights of refugees, it is important that countries review again the refugee rights instruments, both at the international, regional and national levels in order to shift its primary focus from protecting borders to protecting people in order to respect the principle of non-refoulement as contained in the 1951 Convention and 1967 Protocol.