

Human Rights in Perspective: The Journey has just begun

“The Universal Declaration of Human Rights is the only significant statement of principle that has commanded worldwide respect.”

By Ms. Sade N. Jemmott

Far beyond the theory in the textbooks and the legislative outcomes of varied convocations, human rights ought to translate into practical benefits so that the concept itself develops into a truly universal one informed by people rather than politics. Indeed, The 1948 Universal Declaration of Human Rights³⁹⁷ is arguably the most significant³⁹⁸ statement of principle that has commanded worldwide respect³⁹⁹, however to consider it the only one is to devalue the noteworthy strides that have subsequently been made on this noble journey, particularly by non-governmental institutions⁴⁰⁰. Nonetheless, to have a clear perspective of not only where it is but where it can go, one must appreciate where it has come from.

³⁹⁷ Adopted and proclaimed by the General Assembly Resolution 217A(III) of 10 December 1948

³⁹⁸ Its passing is formally heralded as the real beginning of the contemporary human rights movement such that its anniversary is actually the designated international Human Rights Day.

³⁹⁹ The Universal Declaration of Human Rights was passed unopposed, although South Africa, Saudi Arabia and the Soviet bloc abstained.

⁴⁰⁰ Such as Amnesty International, the Minority Rights Group, the Anti-Slavery Society and the International Committee of the Red Cross- all of which are concerned with specific aspects of human rights.

The evolution of the human rights system⁴⁰¹ may be traced to 17th and 18th century philosophers such as Locke, Montesquieu and Rousseau from whom the ideals which formed the basis of several movements, including the Glorious Revolution⁴⁰² and the abolition of slavery, were derived. With the recognition of international law, after World War I, came the development of humanitarian law and various treaties intended to protect certain minorities. After World War II, the international society became acutely cognizant of the need to protect all human beings resulting in 'the creation' of what are now embraced as fundamental human rights, through the United Nations (UN)⁴⁰³.

Apart from the Universal Declaration, many other international attempts at safeguarding human rights have been made including the International Covenant of Civil and Political Rights (ICCPR)⁴⁰⁴, International Covenant on Economic and Social Rights (ICESR)⁴⁰⁵ as well as initiatives emanating from

⁴⁰¹ Human rights are commonly categorised as belonging to one of three generations: first (civil and political), second (economic, social and cultural rights) and third (collective/ group rights)

⁴⁰² The Revolution of 1688 in which King James II was overthrown by William III and his forces. It is considered to be the last successful invasion of England which arguably began modern English parliamentary democracy and out of which the Bill of Rights became one of the most important documents in the political history of Britain.

⁴⁰³ The international organisation that succeeded the League of Nations in 1945, and whose stated aims are to facilitate cooperation in international law, international security, economic development, social progress and human rights issues. Notably it marks the replacement of the European state-system with a genuinely global one considering that of the 51 signatories only 9 were European.

⁴⁰⁴ Adopted and opened for signature, ratification and accession by the General Assembly Resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976, in accordance with Article 49

⁴⁰⁵ Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976, in accordance with Article 27

specific international blocs such as the European Union (EU)⁴⁰⁶ and Organization of American States (OAS)⁴⁰⁷ which is credited with having adopted the American Declaration of the Rights and Duties of Man⁴⁰⁸- the world's first general human rights instrument. The common thread running through these and similar instruments⁴⁰⁹ may be identified as the recognition of the worth of the individual and certain conditions which are reasonably incidental to said worth.

Modern day human rights are generally placed in the sphere of natural law thought, being derived from higher authority such that this essential standard is viewed as an end in itself. Whereas from a positivist perspective, whereby law is examined as it is rather than as it ought to be, human rights may be considered a means to an end. Regardless of which school of thought one may be inclined to accept, human rights may be regarded as having been born of an increased sense of responsibility by the international community for the promotion and protection of each individual's rights and freedoms such that they may not be infringed by collective interest.

In concrete terms, rights demarcate for each of us some moral space or zone of personal sovereignty within which we may pursue our life plans without fear of encroachment from others or

⁴⁰⁶ A political and economic union, established by the Maastricht Treaty, of 27 member states located primarily in Europe.

⁴⁰⁷ An international organisation, headquartered in the US, which consists of the 35 independent states of the Americas.

⁴⁰⁸ Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948

⁴⁰⁹ Other instruments of note addressing human rights include: The European Convention on Human Rights 1950, The European Social Charter 1961 and its revised version in 1966, The American Convention on Human Rights 1969 and the African Charter on Human Rights and Peoples' Rights 1981, the four Geneva 'Red Cross' Conventions of 1949 and the Human Dimension of the Final Act of the Conference on Security and Cooperation in Europe 1975 (the Helsinki Declaration).

from the state.⁴¹⁰ However, there are those perhaps not so rare occasions where human rights are in conflict with each other. This may be seen in respect to the rights to liberty and equality, for example, where too much of one may very well infringe the other. As a result, States are expected to perform a balancing exercise thus giving some measure of weight to the argument that human rights are not universal but rather are contingent on other considerations.

Although the distinction between international and municipal law has never been quite as clear as theory would have it, it has become increasingly blurred as contemporary world politics has witnessed a dramatic upsurge in the question of human rights and their place in the state-system.⁴¹¹ Indeed one clear indication of the worldwide support given to the Universal Declaration is the fact that Constitutions throughout the world embody its general principles in what are known as their Bills of Rights. In fact, according to Ms Tracy Robinson⁴¹², after 1948, 98% of the Constitutions of the world contained some form of protection of human rights.

Quite significantly, though not in itself a legally binding instrument, ‘the Universal Declaration...as a common standard of achievement for all peoples and all nations...not only crystallizes the political thought of our times on these matters, but it has also influenced the thinking of legislators all over the world.’⁴¹³ Notably, it not only outlines fundamental human rights but also imposes on States corresponding duties; thus underscoring the fact that much of the substance of its text may fairly be considered to have attained the status of customary international

⁴¹⁰ Simeon McIntosh, *Caribbean Constitutional Reform: Rethinking the West Indian Polity* (Caribbean Law Publishers, Kingston 2002)

⁴¹¹ *The Penguin Dictionary of International Relations* (Penguin Books Ltd, London, England 1998)

⁴¹² The current Commonwealth Caribbean Human Rights Law lecturer in the Faculty of Law, Cave Hill

⁴¹³ Dag Hammarskjöld, Second United Nation Secretary-General, 1953-1961

law as established in *Filartiga v. Pena-Irala*.⁴¹⁴ This obviously was the intention as assembled States were called upon to disseminate, display, read and expound its text, principally in schools and other educational institutions, without distinction based on the political status of countries or territories.

Despite the norm-creating effect of the Universal Declaration, political ideology invariably influenced the understanding and definition of human rights such that western democratic states, for example, tend to focus on civil and political rights whereas socialist States place emphasis on social and economic rights. Perhaps an important dimension of the tension between the various systems of the world lies in the fact that the reality facing some developing States is that subsistence and basic need are often a more immediate and pressing concerns than constitutional niceties and protective legal procedures. However, it is undeniable that the social and economic rights embodied in the Universal Declaration have failed to take root as firmly as their civil and political counterparts. This is evident from an examination of Caribbean Constitutions which tend to offer little to no explicit protection in those areas. This void is significant considering that the premise underlying all UN human rights texts is that the two groups of rights are of equal priority and are invariably interrelated and interdependent. Additionally, on occasion since the 1970's, the Universal Declaration has been used as a platform for the development of third generation rights such as- collective rights, right to self-determination and rights to development- with the clear support of developing States but the increased skepticism of some western developed States. In this light, it is submitted that perhaps ideological distinctions and resultant differences in the understanding and interpretation of human rights make it difficult for statements of human rights principles to command true worldwide respect.

⁴¹⁴ 630 F. 2d 876 (1980); (1980) 19 I.L.M. 966. US Circuit Court of Appeals, 2nd Circuit

Based on these distinctions, some States and liberal scholars argue that there can be no fully universal concept of human rights. However this relativist approach to human rights arguably shifts the emphasis from the individual and the minimum standard due to him by virtue of being human to the state-centered perspective where human rights are contingent on the varying political, economic or cultural behaviors of States or groups of States. This, it is submitted, is a step back in the development of human rights because it stifles its progress by categorizing that which should not be so categorized into ‘western’, ‘socialist’, ‘developed’, ‘developing’ and other counter-productive labels. This approach denies the concept its true form or at the very least its intended form of universality, such that all peoples of the world can legitimately expect a particular standard of treatment.

Mary Robinson, United Nations High Commissioner for Human Rights, presents a laudable view when she comments that ‘...we should try to move away from the vocabulary and attitudes which shape the stereotyping of developed and developing country approaches to human rights issues. We are collective custodians of universal human rights standards, and any sense that we fall into camps of “accuser” and “accused” is absolutely corrosive of our joint purposes. The reality is that no group of countries has any grounds for complacency about its own human rights performance and no group of countries does itself justice by automatically slipping into the “victim” mode...’ This is of particular importance for the Commonwealth Caribbean, as respect for and observance of human rights have become a kind of litmus test to gauge the good governance and legitimacy of a government⁴¹⁵ - a characteristic of paramount significance in a post-colonial context.

Arguably, there is a symbiotic relationship between municipal and international human rights systems which was explicitly illustrated in the landmark case of *Minister of Home*

⁴¹⁵ Godfrey Smith, ‘Feature Address’ at the Commonwealth Caribbean Human Rights Seminar Belize 2000

*Affairs v. Fisher*⁴¹⁶ where Lord Wilberforce attributed the generous interpretation of the Constitutions to their international human rights law antecedents. This in itself pulls sharply into perspective the instrumental role the judiciary has in transforming broad international statements of principle, such as the Universal Declaration, into meaningful domestic rules. An examination of the role of the International Criminal Court adds even further weight to this line of reasoning as it acts as supra-national enforcement mechanism to ensure that individual States do not violate human rights principles and obligations- a clear illustration of the developing universality of human rights.

It is quite clear that never in the history of the world has there been such unity of purpose in promoting the concept of human rights and basic freedoms.⁴¹⁷ Even in the Commonwealth Caribbean, there is a tradition of vigorous advocacy for evolving human rights interpretation. However, criticisms of the region's unhealthy preoccupation with the death penalty are to be given great credence. This habitual eclipsing of general human rights by the death penalty has the effect of absorbing and diverting much of the Caribbean's legal time and energy that could otherwise be channeled into developing and evolving other important areas of human rights law.⁴¹⁸

The debate on the death penalty as a human rights issue is not surprising considering that the punishment has implications for arguably the most important human right- the right to life- as highlighted in the seminal *Pratt and Morgan v. Attorney General of Jamaica*.⁴¹⁹ However, it is submitted that of equal or even more fundamental importance are and should be the conditions and circumstances which make the right to life desirable in its true

⁴¹⁶ [1980] AC 319, [1979] 3 All ER 21, [1979] 2 WLR 889 (1979) 44 WIR 107

⁴¹⁷ A.K Fiadjoe, 'Human Rights and Comparative Constitutions', Vol. 13 West Indian Law Journal, 1989.

⁴¹⁸ Godfrey Smith, 'Feature Address' at the Commonwealth Caribbean Human Rights Seminar Belize 2000

⁴¹⁹ [1994] 2 A.C. 1; [1993] 3 W.L.R. 995, PC (Jam)

sense, it being part and parcel of the totality of human rights. To further echo the words of The Honourable Godfrey P. Smith: “Of what use are civil and political rights when our children die because there is no access to clean water? Of what use is international copyright protection if we cannot afford to buy textbooks for our children’s education? Of what use is respecting the right to life, because of new WTO⁴²⁰ rules, we cannot export our bananas to feed ourselves? These are the human rights realities of this region...If international trends in human rights law will ultimately reshape our judicial and legal landscape and the way we practice law, let us be actively involved in determining the nature and content of international human rights.”

This is where education of the masses, meaningful intellectual discourse on the real issues, the mobilization of all organs of the State and international community and bold activism on the part of Caribbean leaders, become essential. Decades after the first fruits of freedom were tasted, however ironically within the shores of Haiti, the time has now come for the region to stand up and be counted leaving behind the days of allowing others to make decisions which directly inform the quality of life for its people. It is incumbent on each internationally recognized State in the world, whether individually or on the platform of collective effort to see the human rights journey to its logical conclusion—justice for all.

Perhaps that justice will be contingent on States the world over discarding the counterproductive crutch that is their refusal to accept the universality of human rights on the basis of ideological differences. To quote Rosalind Higgins⁴²¹ the desire for specific fundamental rights and freedoms, “...are keenly felt by the African tribesman as by the European city dweller, by the inhabitant of a Latin American shanty-town as by the resident of a Manhattan

⁴²⁰ World Trade Organisation

⁴²¹ *Problems and Process: International Law and How We Use It* (Oxford University Press, London 1994)

apartment.” Therefore it is submitted that human rights should be approached in this context, such that States become truly cognizant that real development in this area can only come from reform in the general context of international law. Therefore the best place to start may be with the UN, although characteristically for an organization of this kind, agreement on specifics is often difficult to obtain and if obtained, difficult to sustain.

Nonetheless, there are three general categories of reform proposals, which are of commendable value, namely: structural, financial and operational. Structurally, the UN should become more democratic, responsive and authoritative which involves reforming the General Assembly, the Security Council including the P5⁴²², the secretariat and the rationalization of the functions of the Economic and Social Council, particularly the specialized agencies. On the financial plane, it has proved necessary to make the UN solvent and less reliant on a handful of First World states, particularly the United States, in the name of impartiality and achievement of purpose. Operationally, the UN’s role should be redefined particularly in respect to communal conflicts, to expand its competence in complex emergencies, global governance, humanitarian intervention and the global protection of human rights and the environment.⁴²³ These reforms would chart a much needed, more purpose-driven course for human rights internationally.

In the region, Caricom, the Caribbean Court of Justice, individual governments and their oppositions, the educational institutions and the people themselves all have roles to play in what should be viewed as an ongoing human rights struggle. Basically, the time has come for human rights, the concept, to truly reflect its significance by translating into functional reality that has

⁴²² The five permanent members of the Security Council - United States, United Kingdom, France, Russia, China.

⁴²³ These issues were addressed by Secretary-General Boutros-Ghali’s ‘Agenda for Peace’ (1992)

a positive impact on human day to day existence. This meaningful application must be accepted universally as encompassing not only the right to life, liberty and freedom from torture but also the practical benefits of proper education, sustainable jobs, suitable places to live, food on the table and other such conditions which inform the quality of life.

To whom much is given much is expected such that with the immense power entrusted to the UN and other similarly oriented organizations comes monumental responsibility especially in respect to human rights. As such, it is humbly submitted that while significant, globally-respected statements of principle like the Universal Declaration are admirable, the focus should instead shift from paperwork to provinces, from letters to lives such that the human rights movement develops a pulse of the people in a more practical sense. In like vein, the Commonwealth Caribbean community, being born and raised in a human rights struggle, ought to take a progressive if not revolutionary stance thus ascending to its apt place in the international arena to facilitate a sustainable guarantee to each of its citizens of justice at home and abroad.

Bibliography

Books

Antoine, Rose-Marie Belle. Commonwealth Caribbean Law and Legal Systems. London: Routledge Cavendish, 2008.

Harris, D J. Cases and Materials on International Law. London: Sweet and Maxwell Limited, 2004.

Higgins, Rosalind. Problems and Process: International Law and How We Use It. London : Oxford University Press, 1994.

McIntosh, Simeon. Caribbean Constitutional Reform: Rethinking the West Indian Polity. Kingston : Caribbean Law Publishers, 2002.

Newnham, Graham Evans and Richard. Penguin Dictionary of International Relations . London : Penguin Books Limited , 1998.

Vincent R.J Human Rights and International Relations . Cambridge : Cambridge University Press, 1986.

Articles

Fiadjoe, A K. "Human Rights and Comparative Constitutions." West Indian Law Journal 13 (1989).

Cases

Filartiga v. Pena-Irala 630 F. 2d 876 (1980); (1980) 19 I.L.M. 966. US Circuit Court of Appeals, 2nd Circuit

Minister of Home Affairs v. Fisher [1980] AC 319, [1979] 3 All ER 21, [1979] 2 WLR 889 (1979) 44 WIR 107

Pratt and Morgan v. Attorney General of Jamaica [1994] 2 A.C. 1; [1993] 3 W.L.R. 995, PC (Jam)

Websites

Amnesty International. Amnesty International. 2008. 13 June 2008 <<http://www.amnesty.org/>>.

International Committee of the Red Cross. International Committee of the Red Cross. 2008. 15 June 2008 <<http://www.icrc.org/eng/>>.

Minority Rights Group International. Minority Rights Group International. 2007. 17 June 2008 <<http://www.minorityrights.org/?lid=548>>.

The Anti-Slavery Society. Fighting Slavery Today. 2007. 16 June 2008 <<http://www.anti-slaverysociety.addr.com/society.htm>>.

United Nations . Human Rights: Quotable . 1996. 25 June 2008 <<http://www.un.org/cyberschoolbus/humanrights/resources/quotable.asp>>.

United Nations. Office of the High Commissioner for Human Rights. 2008. 14 June 2008 <<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>>.

United Nations. An Agenda for Peace. 1992. 11 June 2008 <<http://www.un.org/docs/SG/agpeace.html>>.