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What Are Human Rights?

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Philosophical and Historical Background

Our modern notions of human rights have their roots in the Age of Enlightenment, particularly in the rationalistic doctrine of natural law and in the theory of the social contract, which were conceived by philosophers beginning in the seventeenth century and put into practice in the political and social spheres, largely as a result of revolutionary developments in the late eighteenth century (see Nowak 2003 and the references therein). By recognizing certain rights as natural and inalienable to human beings, based on the concept of human dignity, the Enlightenment empowered people to lift themselves out of the life of submission that had, broadly speaking, characterized the Middle Ages.

The rationalistic doctrine of natural law asserted that human beings were born free and equal in rights but that in the state of nature these natural rights lacked protection. According to the theory of the social contract, human beings decided to create States mainly for the purpose of protecting their natural and inalienable human rights. These concepts are central to some of the most important works of John Locke, Thomas Paine, Samuel Pufendorf, Jean-Jacques Rousseau, and other philosophers of the seventeenth and eighteenth centuries, whose writings can be seen reflected in the constitutional documents that emerged from the American and French Revolutions of the late eighteenth century. Locke, for example, asserted that ‘the great and chief end . . . of men uniting into commonwealths, and putting themselves under government, is the preservation of their property – that is, their lives, liberties and estates’ (Locke 1977, 180). This same notion is expressed almost verbatim in the United States Declaration of Independence of 1776:

We hold these truths to be self-evident – that all men are created equal; that they are endowed by their creator with inalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men deriving their just powers from the consent of the governed.

The same holds true for Article II of the French Declaration on the Rights of Man and of the Citizen (‘Déclaration des droits de l’homme et du citoyen’) of 1789: ‘The goal of every political association is the preservation of natural and inalienable human rights. These rights are liberty, property, security and resistance against oppression’.1
The core notions of this ‘first generation’ of human rights were subsequently elaborated in so-called bills of rights, which were either included in or attached to the constitutions of States. These early catalogues of human rights, which were referred to as ‘civil and political rights’, were inspired by the ideas of liberalism, democracy, and the fight against feudalism, the power of the Catholic Church, and other outdated and autocratic structures and regimes that still held hegemonic authority throughout much of Europe. During the late eighteenth and nineteenth centuries, the development of human rights in Europe was driven by bourgeois revolutions and was closely related to the development of democracy, constitutionalism, and the rule of law. With the rise of capitalism in the age of industrialization, the so-called civil and political rights, especially the right to property, came to be strongly criticized by Karl Marx and other socialist philosophers as egoistic and as pertaining exclusively to the bourgeoisie.2 These thinkers demanded factual equality in all spheres of life, including social and economic life, as well as the extension of human rights to all individuals, particularly the working classes. Thus, starting with the Russian Revolution of 1917, a ‘second generation’ of economic, social, and cultural rights gradually came to be included in the constitutions of a number of States, some of them avowedly socialist, which was in some ways the antithesis of the classical Western concept of civil and political rights.

Up until the end of World War II, human rights had been codified exclusively in national constitutions, as they were not considered a legitimate concern of the international community. This attitude changed profoundly due to the unspeakable human rights violations committed during the Holocaust. In 1945 the United Nations was established with three major aims and objectives: international peace and security, economic and social development, and the promotion of human rights. The term ‘human rights’ is used in several places in the Charter of the United Nations, but it is not defined therein. This task was delegated to the newly created Human Rights Commission, which was requested to draft an International Bill of Rights. This was a difficult task, considering the fundamentally different approaches that characterized Western and socialist concepts of human rights. Nevertheless, on 10 December 1948 the UN General Assembly adopted the Universal Declaration of Human Rights, which represents a synthesis in that it contains both generations of human rights in a single document. The subsequent drafting of a legally binding universal human rights convention, however, turned out to be even more difficult, as the Cold War had begun in earnest and Western powers insisted that two different treaties needed to be drafted to reflect the differences between the two generations. Finally, on 16 December 1966 the UN General Assembly unanimously adopted both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Western and socialist covenants share a number of common principles, such as the right of all peoples to self-determination (Article 1), which is a cornerstone of the so-called ‘third generation’ of human rights and one that reflects growing recognition of the needs and rights of the Global South. Subsequently other UN human rights treaties, most notably the Convention on the Elimination of All Forms of Discrimination against Women (1979)3 and the Convention on the Rights of the Child (1989),4 were ratified and thereby accepted as legally binding by almost all States throughout the world. Then, in 1993, after the end of the Cold War, the United Nations convened a World Conference on Human Rights in Vienna, at which all member States agreed on the universality, indivisibility, equality, and interdependence of all human rights, thereby putting an end to the ideological debates and distinctions concerning the various generations.6
civil and political rights, the African Charter on Human and Peoples’ Rights of 1981 contains the most important human rights of all three generations, including the most comprehensive list to date of the collective rights of peoples.

The Meaning of Human Rights

Given this history and these binding conventions, the question ‘What are human rights?’ can, from a legal point of view, be answered as follows: Human rights are the sum of civil, political, economic, social, cultural, and collective rights laid down in international and regional human rights instruments, and in the constitutions of States. These human rights have in common that they empower human beings to shape their lives in accordance with liberty, equality, and respect for human dignity. Since every State in the world has accepted as legally binding at least a few international human rights treaties, we can also conclude that human rights are the only universally accepted value system of our time.

By ratifying an international or regional human rights treaty, States voluntarily accept a legal obligation towards all other State parties to respect, protect, and fulfil all human rights recognized therein. This obligation can be broken down as follows:

- The obligation to respect means that the State and its organs (e.g. the police) shall refrain from violating human rights. Most human rights are not absolute but relative. For example, the right to personal liberty means the police shall not arbitrarily arrest or detain people. Whether an arrest or detention is arbitrary (a violation of the right to personal liberty) or not depends on possible justifications. If, for example, a judge has issued an arrest warrant against a person who is suspected of having committed a serious crime, the arrest carried out by the police is lawful and justified and, therefore, does not violate the right to personal liberty.

- The obligation to protect means that States shall protect individuals against violations of their human rights by other (private) parties. Thus, private security companies usually do not have the right to arrest or detain human beings, and States have the obligation to take all necessary measures to protect individuals against being arrested or detained by private security personnel.

- The obligation to fulfil human rights means that States shall take all necessary legislative, administrative, judicial, or other measures to implement human rights. With respect to the right to personal liberty, parliament shall, first, enact laws that determine under which conditions judges, prosecutors, or the police may arrest or detain individuals. These laws must be proportional to ensure that every suspicion of a petty crime does not lead to an arrest or detention and that the length of detention is as short as possible. Judges, prosecutors, and police officers shall be properly trained to avoid such breaches of obligation as arbitrary detention.

Civil and Political Rights

The so-called first generation, as laid down in the International Covenant on Civil and Political Rights and in the European or American conventions on human rights, encompasses a wide range of human rights. Broadly speaking, civil rights comprise existential rights based on the rationalistic doctrine of natural law, as well as rights to freedoms based on liberal philosophy; political rights, in turn, signify a variety of rights that pertain to and guarantee (democratic) participation in public affairs.

The most important existential right is the right to life, which means that the State and its organs shall not arbitrarily kill individuals (e.g. by summary execution, such as occurs under military dictatorships) and shall protect the lives of human beings against organized crime, preventable diseases,
and other palpable threats. The rights to human dignity and personal integrity require States to abolish slavery, slave-trade, servitude, and slavery-like practices, such as trafficking in human beings, as well as torture and cruel, inhuman, or degrading treatment or punishment. As outlined earlier, the right to personal liberty precludes arbitrary arrest or detention. This right is closely related to the right of persons accused of a crime to a fair trial before an independent and impartial court. States also have an obligation to provide equal access to justice and a fair trial in civil proceedings. The right to privacy is a very important liberal right, as it protects individuals against arbitrary searches and surveillance of their bodies, documents, homes, or correspondence in written, digital, and all other forms. In addition to the protection of personal data against surveillance by the State or by private actors (such as information technology companies), the right to privacy also protects the autonomy (sometimes called self-determination), identity, intimacy, sexuality, sexual orientation, and gender identity of human beings. Closely related to the right to privacy are the rights to marry and to found a family, the protection of the family as the natural and fundamental group unit of society, and the rights of children to special protection, including to be registered immediately after birth, to have a name, and to acquire a nationality.

Freedom rights include the right to liberty of movement and freedom to choose one’s residence, including the right to leave any country and to enter one’s own country. Aliens have no general right to migrate to another country but are protected against arbitrary expulsion and extradition, in particular if there is a serious risk of torture in their own country. Refugees have special rights, as guaranteed in the Geneva Refugee Convention. Similarly, children have special rights under the Convention on the Rights of the Child and shall, e.g., not be detained for purely migration-related reasons (Nowak 2019, 448 ff.). Other freedom rights include the rights to freedom of thought, conscience, religion, expression, information, assembly, and association. The internal freedom to hold an opinion or to adopt a religion of one’s own choice is absolute and must be protected against any form of State or private interference, including brainwashing. The freedom to manifest one’s religion in public or to express one’s opinion to the public by any media of communication, including the Internet, however, carries with it special duties and responsibilities and may, therefore, be subject to certain restrictions for the protection of the rights of others or for the protection of national security or public order. Determining where to draw the line between unjustified and legitimate interference by governments with the freedom of the media or the arts or public demonstrations can be extremely difficult (and is, in a sense, the core issue of the present volume). The covenant, however, prescribes that any propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law. These freedom rights, or political freedoms, are essential elements of a well-functioning democracy; they are in fact both civil and political rights and require special protection to facilitate a pluralistic democratic discourse and decision-making process. Restrictions are, therefore, only permissible in a democratic society if they are absolutely necessary. Thus, for example, broadmindedness and tolerance vis-à-vis unpopular opinions are essential characteristics of a democratic society.

The most important political right is the equal right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives, above all, the right to vote and to be elected in free, secret, equal, and genuine periodic elections. Citizens shall also have the right to have equal access to public service in their countries. As equality is another essential characteristic of any democratic society, all persons have the right to be equal before the law and to be entitled without any discrimination to the equal protection of the law and to effective protection against discrimination on any ground by private parties. Finally, persons belonging to ethnic, religious, or linguistic minorities are entitled to special protection.
Economic, Social, and Cultural Rights

In 1941 US President Franklin D. Roosevelt delivered his famous ‘Four Freedoms’ speech. In addition to freedom of speech and freedom of religion, he proclaimed the concepts of ‘freedom from fear’ and ‘freedom from want’. In human rights terms, freedom from fear – which promises to all individuals protection against all forms of violence, whether emanating from governments, organized crime, or external aggressors – shall be guaranteed as part of civil and political rights. Freedom from fear demands a strong, democratic, and liberal State in which the military and the police enjoy a monopoly on the use of force to protect the people against external and internal threats to their personal security but are at the same time subjected to the rule of law, checks and balances, as well as effective judicial and political control to avoid abuse of power. Freedom from want, on the other hand, means that the people shall be protected against poverty and shall enjoy prosperity and social security. In human rights terms, this important goal shall be ensured through the protection of economic, social, and cultural rights. Although this so-called second generation of human rights has its origins in the socialist concept of human rights and was first implemented in communist States, the fact that a synthesis of both generations is achieved in the Universal Declaration of Human Rights, in the two covenants, and in many other universal human rights treaties illustrates that the notions underlying liberal democracy and the social welfare state are not fundamentally incompatible and, broadly speaking, are no longer seen as the basis for antagonism among entities; rather, entities so underpinned can and shall coexist (or such values and practices can and shall coexist in a single entity). This recognition was underlined in the 1993 Vienna Declaration and Programme of Action, in which all States solemnly proclaimed the universality, equality, indivisibility, and interdependence of all human rights.

Nonetheless, the most elaborate catalogue of second-generation human rights remains that contained in the International Covenant on Economic, Social and Cultural Rights. The three sub-categories indicated in this title are enumerated in a deliberate order, which is useful in laying out a typology of human rights. Hence, economic rights include the right to work; to just, favourable, safe, and healthy conditions of work; to form and join trade unions; to strike; and to protect the economic and social interests of workers by all appropriate means. Of course, governments in a liberal democracy based on free-market economies cannot fully protect their people against unemployment and economic hardship. However, States have a clear obligation to ensure full and productive employment, fair wages with equal pay for equal work, safe and healthy working conditions, rest, leisure, and reasonable limitations of working hours and periodic holidays with pay, the free functioning of trade unions, as well as the right to strike and to collective bargaining.

Economic rights are closely related to social rights. Most important among these is the right to social security, including social insurance, which shall protect all people against the risks associated with unemployment, sickness, accidents, maternity, disability, old age, and/or the death of family members. The right to social security can be achieved in a market economy only through State intervention aimed at protecting individuals against such risks. This right is rooted in the notion that human beings should not have to be afraid to drift into poverty if they become ill, old, unemployed, or disabled. They should be able to rely on a social safety net if they are, for whatever reason, no longer able to care for themselves and their families. In a social welfare state, this can be realized only by means of pooling such risks and by redistribution from the wealthy to the poor, from the healthy to the sick, and from the younger and actively employed generation to the elderly (Nowak 2017, 95). The right to social security is closely related to the obligation to extend the widest possible protection and assistance to families, with special social protection (at least) for mothers during a reasonable period before and after childbirth, and with special protection for children against economic and social exploitation, child labour, and so on. Another important social right is the umbrella right to an
adequate standard of living, which includes the essential rights to food, water, clothing, and housing, as well as the right to the continuous improvement of living conditions. The effective implementation of these rights by States and by the international community leads to the eradication of poverty, which is the most important of the Sustainable Development Goals that the United Nations has targeted for realization for all human beings by 2030. Finally, States have the obligation to recognize and implement the social right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This shall be achieved, inter alia, through the reduction of the stillbirth rate and infant mortality, the improvement of environmental and industrial hygiene, the prevention, treatment, and control of epidemic, endemic, occupational, and other diseases, and the creation of conditions that ensure medical service and medical attention for all in the event of sickness.

The most important cultural right is the right of everyone to education, which shall be directed to the full development of the human personality and to ensuring respect for its dignity. This includes the right of all children to free and compulsory primary education; the right to free secondary education, including technical and vocational education; to higher education, which shall be made equally accessible to all by the progressive introduction of free education; and to fundamental education and life-long learning for everybody. The right to human rights education at all levels constitutes an important component of the right to education, as it promotes understanding, tolerance, and friendship and enables all persons to participate effectively in a free society. Another important cultural right is the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production. This right includes the obligation of States to respect the freedom of scientific research and creative activity and to take all necessary steps for the conservation, development, and dissemination of science and culture. Music is one of the most important expressions of art and culture protected by this right.

**Collective or Solidarity Rights**

Article 1 of both covenants enshrines the right of all peoples to self-determination. By virtue of this right, peoples freely determine their political status; freely pursue their economic, social, and cultural development; and freely dispose of their natural wealth and resources. This collective right of peoples played a very important role in the process of de-colonization, and many formerly colonized peoples in Africa and Asia achieved their political and economic independence through the active exercise of their right to self-determination. In exceptional circumstances, this right may also lead to the dismemberment of multinational States, as was the case with the former Soviet Union and the former Yugoslavia. However, the right to self-determination can also be enjoyed by peoples within national boundaries, through greater autonomy and self-government. This right is particularly important for Indigenous peoples.

Further collective rights of peoples can be found catalogued in the African Charter on Human and Peoples’ Rights of 1981. Most importantly, all peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. For a long time, the right to development contributed to controversial political debates, but it was finally recognized unanimously by the United Nations in the 1993 Vienna Declaration and Programme of Action. Another controversial collective right is the right of all peoples to national and international peace and security, which shall be governed by the principles of solidarity and friendly relations. Finally, in light of the current global climate crisis, the right of all peoples to a generally satisfactory environment favourable to their development is increasingly recognized as important. Indeed, it is likely that the human rights perspective, as well as the right to human rights litigation, will play a major role in dealing with this crisis.
Implementation and Monitoring

The implementation of human rights is primarily an obligation of national authorities. Today, almost all States have constitutions that include some kind of bill of rights, which is legally binding and therefore requires implementation by the legislative, executive, and judicial branches of government. International human rights treaties States have ratified are either incorporated into domestic law directly or made applicable by the enactment of special legislation. Most States have ratified a broad variety of international and regional human rights treaties and can be held accountable before various international and regional monitoring bodies in case of non-compliance.

On the domestic level, the legislative power must ensure that all laws respect human rights and provide the normative framework for the effective protection and fulfilment of all human rights. The full implementation of human rights demands significant budgetary resources. For example, the right to equal access to justice and to a fair trial in civil and criminal cases requires States to establish an independent and impartial administration of justice; to build courts; to employ and train judges, prosecutors, and other judicial personnel; to provide legal aid to those in need; and to conduct civil and criminal proceedings in full compliance with all requirements of international law. The right to an effective remedy against violations of any human right usually demands also that victims of human rights violations can lodge a complaint before ordinary or special courts, such as labour courts, administrative courts, constitutional courts, or special human rights courts. The right to vote means that States have to organize free, fair, and secret periodic elections, above all, to legislative bodies, and to ensure that all citizens, including the elderly, the sick, and those living abroad, have an equal opportunity to participate in the election and to be properly informed. In addition, States have to ensure that all votes are properly counted and that election fraud is avoided. The right to education requires States to build schools at all levels, to employ and train teachers, to develop school curricula in compliance with international standards, and to ensure that every child has access, free of charge, to primary schools and has an equal opportunity to pursue studies in secondary schools and at university level. The right to the enjoyment of the highest attainable standard of physical and mental health requires States to build hospitals and to maintain effective health care standards; to employ and train doctors, nurses, and other health personnel; and to ensure that every individual, in the event of sickness or accident, has access to proper health services.

These four examples from different categories of human rights have illustrated that the proper implementation of human rights is expensive and requires a proper legislative framework and execution by political decision-makers, administrative authorities, judges, and many other stakeholders, including civil society and the corporate sector. The human rights architecture differs from country to country. Many States have established specific human rights bodies, such as national human rights institutions, human rights commissions, ombuds-institutions, equality bodies, national preventive mechanisms against torture and ill treatment, and special bodies for the protection of the rights of children, of persons with disabilities, and for the LGBTQI+ community. In most countries, people who feel that their human rights have been violated can address themselves to a variety of non-judicial human rights bodies and/or to courts.

If victims of human rights violations have exhausted all domestic remedies, they usually also have the opportunity to bring their case to the attention of regional or international human rights monitoring bodies. The most effective way to do so is to lodge a formal complaint before an international court. Since the United Nations has not yet established a World Court of Human Rights, this is currently only possible at the regional level. The best-known such regional body is the European Court of Human Rights in Strasbourg, to which all roughly 820 million inhabitants of the 47 member States of the Council of Europe can lodge a complaint directly.
regarding any alleged violation of the European Convention on Human Rights. The Strasbourg Court, which consists of one full-time judge per member State, deals every year with tens of thousands of individual human rights complaints. In the Organization of American States, the Inter-American Commission and Court of Human Rights (with headquarters in Washington, DC, and in San José, Costa Rica) serve a similar function, while the African Union has established the African Commission and Court of Human and Peoples’ Rights (headquartered in Banjul, Gambia, and in Arusha, Tanzania).

Within the United Nations, quasi-judicial expert bodies, such as the Human Rights Committee (which monitors issues pertaining to the International Covenant on Civil and Political Rights); the Committee on Economic, Social and Cultural Rights; the Committee on the Rights of the Child; and the Committee against Torture, make determinations regarding individual human rights complaints. In addition, these treaty-monitoring bodies examine periodic reports from States, which provide information from governments (and often also from civil society organizations) about their respective implementation measures and difficulties in complying with their international obligations. A similar reporting mechanism, the Universal Periodic Review (UPR), has been established for all UN member States by the highest human rights body of the United Nations, the Human Rights Council. The Council has also established a variety of country-specific or thematic Special Rapporteurs or independent experts, who deal with urgent appeals from victims of human rights violations, carry out fact-finding missions to member States, and provide independent public reports on a broad variety of human rights issues.

Generally, most States comply with their constitutional and international human rights obligations, with human rights-related judgements of domestic or regional courts and with the respective decisions, conclusions, and recommendations of domestic, regional, and international human rights bodies. Of course, in well-functioning and prosperous democracies with a high standard of rule of law, human rights are usually implemented more consistently and effectively than in dictatorships, in poor, fragile, or failed States, or in conflict-affected countries. Notably, however, possibilities for the international community to assist or force States that are unable or unwilling to comply with their human rights obligations are extremely limited. Only in cases of gross and systematic human rights violations, such as genocide, systematic torture, summary executions, enforced disappearances, war crimes, or crimes against humanity, does the international community have certain possibilities to apply economic and other sanctions or even to use military force to protect people against such crimes (this is known as the Responsibility to Protect, or R2P). In exceptional cases, some of the major perpetrators of human rights crimes have been brought to justice personally before the International Criminal Court (ICC) in The Hague or before special criminal tribunals that dealt with such crimes in the former Yugoslavia, Rwanda, Sierra Leone, Cambodia, and Timor Leste.

**Current Challenges**

The promotion and protection of human rights is the main source of governmental legitimacy. Governments are elected to provide for the common good, which is today defined by a broad variety of human rights. First of all, governments are vested with the monopoly of the use of force to protect the rights to life, personal liberty, security, integrity, and dignity against external and internal threats. Furthermore, governments shall establish a well-functioning system of justice to provide all individuals with equal access to the courts, with a fair trial in all civil and criminal matters, and with a remedy against any human rights violations. They shall also establish well-functioning elections, media, education, health, housing, social security, and social welfare systems to comply with a broad variety of constitutional and international human rights obligations. Indeed, there are almost no governmental functions that bear no relation to human rights.
What Are Human Rights?

In fact, *good governance* is broadly understood to mean that governments are democratically elected and accountable, are based on the rule of law, are not corrupt and effectively implement all civil, political, economic, social, cultural, and collective rights.

The effective implementation and realization of all human rights for all human beings demands strong democratic States with a comprehensive human rights architecture, checks and balances, and effective control against abuse of power. Parliaments, courts, national human rights institutions, independent media, and civil society must be in a position to control powerful public and private actors – such as the military and police, organized crime, terrorists, and the corporate sector. Economic, social, and cultural rights – above all, social security and justice – can only be effectively implemented if governments have effective control over *private market forces*, in particular transnational corporations, global financial markets, and organized crime. With the rise of *neo-liberal economic policies* since the 1970s, which are characterized by privatization, deregulation, and minimizing the role of the State, governments and international organizations have gradually lost control over the global economy. This major *shift in global power relations* has contributed to major global economic, financial, and ecological crises, to the phenomenon of failed and fragile States, to global organized crime and terrorism, armed conflicts, global migration, and refugee flows, and to an extreme level of *economic inequality*, which undermines the social fabric and coherence of our societies. The almost unlimited power of transnational corporations and global financial markets leads to a feeling of insecurity among the people, to populism, radicalization, and new authoritarianism, which threaten the fundamentals of democracy, the rule of law, and human rights.

The *global climate crisis* is the most obvious example of the failure of global politics to control the global economy.7 Even in highly advanced democracies, populist leaders have come to power who primarily serve the interests of the global economy and, therefore, simply deny the anthropogenic causes of climate change. The rapid *globalization* and *digitalization* of all areas of life constitute further global challenges, which can only be effectively addressed at the global level by strengthening, rather than weakening, multilateralism and global political and economic organizations. The United Nations and affiliated organizations, including *international financial institutions* (most notably the World Bank and the International Monetary Fund) do provide the necessary organizational framework, but the latter are in urgent need of fundamental reforms in order to regain political control over global economic and financial markets. Human rights is the only universally recognized value system that can provide substantive guidance for a new and urgently needed economic, social, and political world order. This is recognized and represented in several documents that constitute tangible steps in the right direction, including the 2015 United Nations Agenda 2030 – with its 17 Sustainable Development Goals (SDGs) – the 2015 Paris Agreement on climate change, and the 2018 Global Compacts for Migration and Refugees. Nevertheless, the current political and economic elites need either to step aside and allow for authentic democratic self-determination of the peoples under their control or undergo a fundamental re-orientation to meet the major challenges of the twenty-first century – indeed, to ensure the very survival of our planet. In other words, what we need is nothing less than a *new global social contract*, one that recognizes that the primary source of the legitimacy of national, regional, and global governance is the protection of all human rights for all people.

Notes

1  ‘Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l’homme. Ces droits sont la liberté, la propriété, la sûreté et la résistance à l’oppression’.

2  Karl Marx, ‘Zur Judenfrage’, 1843: ‘Vor allem konstatieren wir die Tatsache, dass die sogenannten Menschenrechte, die droits de l’homme im Unterschied zu den droits du citoyen, nichts anderes sind als die
Manfred Nowak

Rechte des Mitglieds der bürgerlichen Gesellschaft, d.h. des egoistischen Menschen, des vom Menschen und vom Gemeinwesen getrennten Menschen’. For an English translation of this passage from ‘On the Jewish Question’, see Nowak (2017, 11).


5 All of the UN documents can be found in Blackstone’s International Human Rights Documents (Bisset 2020).

6 See Para. 5 of the Vienna Declaration and Programme of Action: ‘All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis’ (Office of the High Commission for Human Rights 1993).

7 Editor’s note: this chapter was authored before the emergence of the COVID-19 pandemic.

References


For most people who are not lawyers, law can be very intimidating. All the more so for artists, as artists and lawyers appear to live in separate universes, use entirely different instruments, and have different goals: the law is definitional and conservative in its approach, whereas the business of art is to defy definitions and be ahead of its time. When musicians think of law, if they ever do, they think of restriction, limitation, regulation, but rarely do they see the law as an instrument that can protect and reinforce their rights. But law is versatile. It can be used both to restrict and regulate creative endeavours and as a mechanism to protect artists and strengthen artistic freedom of expression. In the wrong hands, the law can become a dreadful political weapon or, if manipulated rightly, the only hope for justice in the darkest of hours. But for as many roles law can have, music has just as many. Music can incite to hatred and violence, or it can be used as political propaganda in the same way it can bond people together and inspire them to reflect and challenge authority. Music and law are equally powerful social endeavours, forces for good or evil, depending on who manoeuvres them. We think of lawyers as a monolith, of artists as another; yet, fundamentally what matters is not what they represent but who they are: their intentions, their strength, their values, and determination to safeguard our rights and preserve our dignity.

It is very important to me that money never be the reason why an artist cannot gain access to appropriate legal support. As a member of a profession bound by ethical rules, I aspire to use the law to ensure access both to justice and to equality before the law for those most vulnerable – and to engage in pro bono work.

It is in this spirit that I created Avant-Garde Lawyers (AGL), an international NGO providing specialized legal support to artists unable to afford it. Very few artists attain a level of wealth and fame that allow them to afford good lawyers when they find themselves censored, harassed, or imprisoned for their artistic expressions. In a time of rapid political and moral change that puts pressure on freedom of expression, artists should enjoy stronger levels of protection for their contribution to public debate, which is essential to a free and open society.
AGL’s mission is to harness the full potential of the law to serve artists and to ensure that their right to free expression is respected. International law protects everyone’s right to express freely and ‘in the form of art’. However, in domestic laws everywhere there is a tendency to provide less protection to non-verbal expression than to speech. Speech is protected, in part, for the political and social messages that can be conveyed. Yet art, which often uses abstract forms to express ideas, is also a medium for the communication of political and social ideas. Indeed, not only is there a sense of prosody in every musical piece but songs are often forms of social and political commentary, a vehicle for ideas, feelings, and opinions. In my opinion, therefore, art, as a means of contributing to public debate, should be given the same legal protections that speech is afforded.

AGL defends musicians who use their music to uncover abuse and inequality and who, because of their music, have been imprisoned, tortured, or forced into exile. Sajad Sepheri spent half of his life deracinated in refugee camps and poor living conditions because he dared to sing about the injustice he witnessed in his country, Iran; Ramy Essam, after severe beatings, forgot the meaning of fear and stood up time and again in Tahrir Square, Egypt, to lead the crowds of the Arab Spring into singing with him about freedom. These are our heroes. And alongside them stand the brave lawyers who defend them. Here’s to lawyers and musicians to march together maestoso!
I am an Iranian musician, songwriter, and researcher living in exile in Albania. As an artist and a member of the Iranian opposition movement, I fought for democracy and freedom.

When I was five, my father sent me to a school of the Quran to learn how to read, recite, and interpret the holy book. I became an expert in Arabic vocal techniques through 11 years of training in reciting the Quran. So, when I started playing the setar at age 16, I did not have much trouble comprehending music, especially vocal techniques. Our family had a close relationship with Iranian traditional music, which was the only kind of music authorized at that time. My uncle was a musician, a singer who played the santur and setar and who made these instruments as well.

I formed my first music band when I was 17 years old, with 14 musicians who played Iranian traditional instruments, including the santur, daf, setar, tanbur, tombak, and tar. We included singers but quickly learned that we were not permitted to have a woman lead singer. This role was banned due to ideological and fundamentalist ideas about women and music. Discrimination and censorship extended far beyond women. One day I proudly recited some verses of the Quran for one of my relatives, accompanying myself on the setar. He became enraged at what, for him, was desecration but what was for me celebration and exaltation of the texts. Apparently only voice, no instrumental music, is permitted to express the Quran.

A Jungian psychoanalyst in Shiraz, Farid Ghahremani, invited me to assist group therapy sessions with music. Through his work with a group of young women survivors of sexual violence, I witnessed the power of music to help recuperate identity and well-being. I was also introduced to the writings of Jung and Nietzsche and other great minds in psychology and philosophy. His clinic was forcibly closed by the government.

Full of the desire to change my country and gain the freedom to express myself as a human and artist, at the age of 18 I joined the opposition. The next 14 years of my life were spent in the People's Mojahedin Organization of Iran (MEK), dedicated to the struggle against dictatorship in Iran. Living in camps and bunkers on the Iraqi side of the border, we were forbidden to possess personal phones and radios – we had no connection with the outside.
world. I performed over 250 concerts during this period, including nearly 100 songs I wrote. The audience was frequently the 4,000 members of the MEK opposition, sometimes also including Iraqis and visitors from Europe, and the concerts were almost always transmitted worldwide by the opposition Iranian National Television (INTV). We sang songs against the forced wearing of the hijab, against the death penalty, against imprisoning social and human rights activists. We sang to keep alive the memories and values of people killed by the regime. We sang for Kurds, the Baloch people, women, children. We were the voice for the voiceless millions of Iranians who were forbidden from expressing themselves under Islamic rule.

But we musicians were also severely censored, ironically by the propaganda machinery of the opposition, which was continually hardening into a cult. All the lyrics and music had to be approved by a jury appointed by the leadership. We had to express our admiration and devotion to the leaders. Nevertheless, as creative artists we found ways to convey essential messages. This effort had immense value for us and sustained us in the face of the cultic aspects of the organization. Paradoxically, there was no better place at that time from which to convey our serious messages through music than in the hellish world of a cult.

In a camp surrounded by terrorists and Iranian government agents, we were subjected to numerous ground and mortar attacks. Many friends were injured or killed in these attacks, including my dear artist friends. In 2013 I went on a 92-day hunger strike to protest the assassination of my friends in what became known in the international press as the Camp Ashraf massacre – the brutal, premeditated murder of 52 unarmed people. I composed and performed five songs in memory of my friends and comrades.

As a fighter for freedom and democracy, I have been threatened by the Iranian government. Due to the content of my songs and my former membership in an organized opposition group, nothing but imprisonment, torture, and probable execution awaited me in Iran. But on the other hand, the nature of the organized opposition had gradually degraded into a full-fledged cult. Art and the artist – and individuals in general – were not respected except when they carried out precise orders, promoted the cult’s political goals, and espoused their ideology.

I was unable to leave the cult until an international campaign led to an agreement brokered among Iraq, the United States, and Albania. In 2016 we were brought to Albania en masse and thus saved both from massacre by the Iranian terrorist attacks and the wrong policies of the cult’s leaders.

For the first time in 14 years, I was able to talk to my mother, my father, and my siblings through Skype. I started a new life from scratch. On this new journey, I met a woman who was the first person who respected my human identity, my art, and my ideals. We married in 2016, and I resumed my higher education in interdisciplinary social studies. In 2019 our son was born. That same year I was invited as a researcher to the Department of Sociology at the University of Amsterdam.

Despite living in a European country and my best efforts to build a dignified life from scratch, I am still deprived of many basic human rights. At the time of this writing, I have not yet been recognized as a refugee or citizen. I don’t have a passport, and I am not allowed to travel internationally. I cannot go to Amsterdam to continue my research on identity transformation and cultic identity. I still haven’t been able to see my mother, and I am unable to meet musicians or attend music festivals abroad to advance my musical vocabulary. I hope someday I can write and talk about my lived experience through a scholarly lens, and, most importantly, with a renewed musical voice.1

VOICE: Sajad Sepehri (Iran/stateless)
Note

1 Editor's note: Although the University of Amsterdam supported Sajad's visa application to the Netherlands, the Dutch government refused to issue a visa until proof was supplied that he could not obtain travel documents from either Iran or Albania. Finally, after two years devoted to trying to prove that he could not obtain any travel documents, the Dutch government relented and issued a visa and a Dutch *laissez-passer*. On 21 August 2020, Sajad flew to the Netherlands. In his Dutch residency card, obtained on 15 September 2020, his nationality is listed as 'stateless'.

VOICE: Sajad Sepehri (Iran/stateless)