NNHRR – Annual Research Day (Toogdag) 2023
Thursday 29 June 2023

Opening by Jasper Krommendijk, Chair Steering Committee NNHRR & Special video message from Prof. Theo van Boven - Harmony Building, Oude Kijk in 't Jatstraat 26, Lecture room 1314.0026

Plenary session 1: Looking Back

Chair: Jennifer Sellin (Maastricht University)

Prof. Cees Flinterman (Maastricht University)

Prof. Nico Schrijver (University of Leiden)

Prof. Brigit Toebes (University of Groningen)

After the opening of the Toogdag by Jasper Krommendijk, current chairman of the Steering Committee of the NNHRR, a short video message from Theo van Boven will be shown. This will be followed by a plenary session looking back at the origins and impact of the Universal Declaration of Human Rights. Each panel member will be asked to interpret the most relevant developments in the field of human rights over the past decades from her/his perspective and experience in about 10 minutes. Of course a lot has happened in the last 75 years, and the question is which developments (both positive and negative) really stand out and why? What is so relevant about that? Afterwards, the panel members will further reflect on these findings together. The discussion will be moderated by Jennifer Sellin.

Session 2: The Present Impact of the UDHR and Challenges in Realising its Aspirations in Today's World (Parallel Sessions)

These panels will separately discuss the impact of the UDHR on the current developments towards clarifying the content, interpretation and application of existing or emerging human rights norms regulating the conduct of business corporations, the (free) movement of persons and refugees, as well as the protection of public health & the environment, freedom of speech, and the rights of indigenous peoples.

Panel Working Group Business & Human Rights - Harmony Building, Oude Kijk in 't Jatstraat 26, Lecture room 1315.0049

Chair: Debadatta Bose (University of Amsterdam)

This panel will focus on business and human rights. Specifically, the panel will shed light on human rights-related investor obligations in international investments agreements, human rights due diligence and the rise of private dispute resolution in transnational business and human rights

Abdurrahman Erol (Erasmus University Rotterdam)

A Noble Effort or Window Dressing? Computational analysis of human rights-related investor obligations in international investment agreements

International investment law has drawn substantial criticism due to its imbalanced structure, disproportionately favoring foreign investors over other stakeholders. To rectify this issue, investment agreements have increasingly incorporated clauses imposing human rights-related obligations on investors. However, our current understanding of these obligations is fragmented, hindering a comprehensive analysis of their potential to mitigate the imbalance. This study proposes the utilization of newly emerging computational legal research to establish a taxonomy for human rights-related obligations in investment agreements, providing a nuanced assessment. Findings reveal that while the number of provisions has risen, they often lack progressive requirements, employ ambiguous language, and lack direct targeting of investors. This research contributes to the discourse on rebalancing international investment law, highlighting the challenges and avenues for enhancing human rights-related obligations on investors.

Jindan-Karena "Nina" Mann (University of Amsterdam)

Business and Human Rights in 'Small Places Close to Home': Considering the US influence on the development of domestic mandatory human rights due diligence laws

The US has played an important yet inconsistent role in the development of human rights. Indeed, US First Lady Eleanor Roosevelt was instrumental in the creation of the UDHR. In a speech in 1951, Roosevelt observed that universal human rights begin "in small places, close to home," and that if rights do not have meaning in neighborhoods, schools, factories, farms, and offices, they can have little meaning on a more global scale. Using this idea as a starting

point, this presentation assesses the influence that the US has had on the development of human rights due diligence (HRDD) laws. I observe how, while the US is often a vanguard in human rights developments initially, it is left behind by more progressive developments in Europe. In the context of HRDD laws, the Dodd-Frank Act on due diligence for conflict minerals and the California Supply Chain Transparency Act are examples of early HRDD laws. However, especially with the passage of the French Loi de Vigilance and the draft EU Directive on Corporate Sustainability Due Diligence, Europe is surpassing the US once again. In particular, the progressive elements missing in US laws include the comprehensive nature of the due diligence requirement, and the avenues for civil liability to victims of business-related human rights violations.

Sarah Vandenbrouke (Leiden University, Department of Business Studies)

A Shell Game? Putting corporate codes of conduct at the center of human rights mandatory due diligence

The proposed text of the EU Directive on mandatory due diligence foresees an important transformation in transnational corporate governance: the shift from the mainly voluntary adoption of codes of conduct, to an overarching obligation for targeted companies to adopt codes applying to their global supply chain, across all sectors. This consecration of codes and their compliance programs however occurs in a context where both the effectiveness and the legitimacy of codes is heavily questioned, as well as the use of audits to assess supplier compliance and the diverse monitoring mechanisms. In this light, is the Directive a shell game, following the CSR trends aiming at reassuring consumers without operating a change in global supply chain with a window dressing strategy?

Gustavo Becker (Max Planck Institute Luxembourg & University of Amsterdam)

The Rise of Private Dispute Resolution in Transnational Business and Human Rights: Access to remedy for victims of the Mariana Dam disaster in Brazil

The Universal Declaration of Human Rights envisages that everyone has the right to an effective remedy by national tribunals for acts violating fundamental rights. Yet, victims of transnational business-related human rights abuses are often left without judicial remedies due to legal and practical barriers in corporations' host and home States. In this context, the UN Guiding Principles on Business and Human Rights promote non-State-based grievance mechanisms under a complementary function to courts. These mechanisms are essentially established by private actors, such as corporations, industry associations, and NGOs, and may embed private dispute resolution methods as a means of access to remedy. The problem is that this practice is advancing without clear grounds on how human rights law should be applied. An illustrative example is the use of private mediation for victims of the 'Mariana dam disaster' in Brazil, through which victims were provided with a private remedial process designed under the significant influence of the mining corporation responsible for the collapse. Through such a case study, this presentation introduces the rise of private dispute resolution in transnational business and human rights and approaches the issues it brings to the fulfilment of the right to access to remedy.

Panel Working Group Migration and Human Rights - Harmony Building, Oude Kijk in 't Jatstraat 26, Lecture room 1315.0043

Chair: Imen El Amouri (Tilburg University)

This panel will focus on different human rights part of the UDHR and how these rights play a role in the field of migration law. Over the years, human rights have become increasingly important for access to justice of migrants, in part due to the lack of enforcement mechanism of the Refugee Convention. The panel will shed light on different rights and concepts part of the UDHR and how these play a role for the rights of migrants and refugees.

Lynn Hillary (University of Amsterdam) & Mirjam van Schaik (Open Universiteit)
Apostasy-based refugee claims: conceptualization shapes practice

Annick Pijnenburg (Radboud Universiteit Nijmegen)
Moving beyond refugees and migrants: reconceptualizing the rights of people on the move

Amy Weatherburn (Vrije Universiteit Brussel)
On the margins of protection: migrant workers, labour exploitation and access to remedy

Panel on Human Rights as related to climate change, freedom of speech, sustainability & the rights of indigenous peoples - Harmony Building, Oude Kijk in 't Jatstraat 26, Lecture room 1315.0338

Chair: Maria Lorena Flórez Rojas (University of Groningen)

David Patterson (University of Groningen)

The right to health, the UDHR and the indivisibility of human rights

Climate change undermines all efforts to protect and promote human rights. But how can human rights researchers mainstream human rights into existing and planned research? This presentation will explore how the UDHR can inform our responses to climate change through a right to health lens.

Medes Malaihollo (University of Groningen)

The UDHR, UNDRIP and the Rights of Indigenous Peoples: Past, Present and Future

Historically, international law was not sympathetic towards indigenous peoples, as doctrines and legal concepts based on a Eurocentric bias provided support for the colonisation of indigenous peoples and their ancestral lands. Moreover, the rise of the modern Westphalian state system made it difficult for many indigenous peoples to participate in the 'club of nations' and claim rights to their ancestral lands. In the 20th century, however, international law experienced a paradigm shift. The UDHR lies at the heart of this as it marked the start of the modern system of human rights protection we currently know at the international level. By now, international human rights law protects indigenous peoples, with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) having a vital role. Most legal scholars and lawyers extensively, and rightfully, acknowledge the importance of the UNDRIP in this regard, yet the impact and the role of the UDHR in the international legal framework on the rights of indigenous peoples should neither be underestimated nor forgotten. This presentation discusses how there is still a place for the UDHR in terms of human rights protection of indigenous peoples when the UNDRIP has taken centre stage. Moreover, a lot has happened in the field of human rights over the last decades and one may wonder what the future will hold. With that in mind, this presentation will also reflect on whether there is room for improvement as regards the current international legal framework protecting the rights of indigenous peoples.

Audrey Fino (University of Groningen)

Perspectives on Freedom of Expressions and its Limitations: Gendered Hate Speech and Incitement in Human Rights and International Criminal Law

While freedom of expression is enshrined in the UDHR, the ICCPR, and international criminal law, which also have their genesis in the atrocities committed during the Second World War II, specifically allow for its limitation. This, to counter the harm in certain forms of hate speech, and especially incitement. The presentation focuses on gender-based incitement targeted at women, and identifies cross-overs and disparities in contemporary human rights, and international criminal law.

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Session 3: The Present Impact of the UDHR and Challenges in Realising its Aspirations in Today's World (Parallel Sessions in the Academy Building, Broerstraat 5)

This session involves a number of parallel presentations reflecting on the future direction of human rights. We will look beyond the horizon of what the UDHR offers and navigate the opportunities related to the development of new human rights and the advent of new technologies and future (energy, economic, and human) challenges.

Panel on Human Right and Future Opportunities in the Digital Age - Academy Building, Broerstraat 5, Lecture room A12

Chair: Antenor Hallo de Wolf (University of Groningen)

Kostina Prifti, Alberto Quintavalla & Jeroen Tempermann (Erasmus University Rotterdam)

The Interaction Between Artificial Intelligence and Human Rights: a systematic review of the scientific literature

AI technologies may contribute to the advancement of human rights but they pose obvious risks: one needs only think of instances where algorithms discriminate against ethnic minorities and other marginalised and vulnerable groups. In this vein, scientific literature has begun to investigate the matter closely, varying in scope. Existing research attempts to provide a general framework for the impact of AI on human rights on an international governance level or focuses on specific issues on the interaction between AI and human rights. Scholarship that comprehensively addresses the impact of AI technologies on human rights, linking it with an in-depth discussion on regulation and governance of the impact on various governance levels, is missing and needed. This article aims to fill this gap by developing a systematic review of existing theoretical work on the impact of AI on human rights and exploring regulatory implications of the findings thereof in various governance levels. A systematic review is performed using keywords ("fundamental rights" OR "human rights") AND ("artificial intelligence" OR "AI applications" OR "AI systems), searching the database of Scopus and Web of Science. The results of the systematic review reveal points of convergence in what may be termed common risks and benefits that AI poses in relation to human rights. Risks are divided into the categories of structural risks, related to the nature and design of AI technologies, and functional risks, related to what AI does from an agent-oriented viewpoint. Furthermore, the study sheds light into various categories such as the type of technology, application domain, affected groups, and type of solution advanced, for the various types of impact that AI applications may have on human rights. Lastly, a discussion on regulatory and governance responses to the systematised common risks is offered and further research required is highlighted.

Foto Pappa (Sant' Anna School of Advanced Studies in Pisa)

Digitalizing the Farm: Human Rights Law Risks

Everyone is familiar with digitalization. What about agricultural digitalization? The new agricultural revolution is here, using digital technologies such as robots, drones, sensors, Internet of Things (IoT) and AI. A growing number of countries are considering (or have already introduced) digital agriculture policies (Ethiopia and Armenia are two examples), while other countries such as Kenya have signed MoUs with Microsoft aiming to help disseminate this mode of production. With the growth of the digital agriculture sector projected to reach around $28.45 billion by 2029, it is evident that this technology merits attention. Digital agriculture is described as a solution to population growth and the threat of climate change. However, according to critical social sciences, power asymmetries are expected to deepen, and inequalities between farmers exacerbated. To illustrate, a correlation between a large farm size with the adoption of digital agriculture technologies has been presented in literature, arguing that digital agriculture may progressively drive more and more small food producers out of agriculture. Thus, digital agriculture should be receiving attention by scholars of all fields.

However, most legal literature so far has focused on data issues, concerning the use of the data collected by digital agriculture technologies. In my submission, I will be examining the risks of digital agriculture technology to human rights, focusing on the right to food and the right to science. Specifically, after delineating the risks that have been underlined by social scientists about the introduction of digital agriculture, I will be connecting these risks to human rights impacts as well as obligations of states under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Specifically, the introduction of such a disruptive technology in agriculture is bound to have an effect related to the availability and accessibility to food -which are central elements of the human right to food. Moreover, the right to science is connected to issues of access to this technology, since it has been demonstrated that (small) farmers face barriers in adopting digital agriculture. Lastly, another element that needs to be addressed is whether the right to science also entails an obligation to protect from the negative effects of (digital agricultural) technology.

Vanessa Tünsmeyer, Marina Markellou (University of Groningen)

Art. 27 UDHR in a time of digitalized museum collections: Aligning copyright law in Europe for the benefit of cultural rights

The advancement of digitalization has been both a challenge and an opportunity for the realization of cultural rights, especially at the intersection of IP law, copyright law and human rights law. The last two decades have witnessed a truly revolutionary shift in the ways cultural heritage material can be accessed and reused by everyone, across the globe. One widely known example are digitalized museum collections, a common practice for museums, including in Europe and which are the focus of this contribution.

Reflecting this evolution, the European Commission has recently manifested its strong willingness to support the cultural heritage sector to make best use of their digital assets, in order to procure the full benefits of the digital transition, within its Recommendation 2021/1970 on a common European data space for cultural heritage. This includes urging

Member States to make more systematic use of the existing Copyright framework, as cultural heritage institutions have encountered different copyright-related obstacles when digitizing and sharing cultural heritage. The increasing digitization of cultural objects advances the realization of cultural rights both in Europe and abroad, connecting for example to the access dimension of the right to take part in the cultural life protected. Specific measures have therefore been taken at the EU level to address such challenges. Copyright and its related rights in the European digital single market thus navigate the space between the two elements of Art.27 UDHR, namely the right to participate in the cultural life on the one hand and the "right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author" on the other.

This paper considers how the European institutional framework for a digital European cultural heritage can contribute to the realization of the two dimensions of Art.27 UDHR from a Copyright perspective. Ultimately it argues that the advancement of digital technologies highlights the versatility of existing cultural rights to respond to these technological challenges. At the same time, these advancements also underline the pressing need to better align IP & copyright law with the obligations states have incurred under human rights law. This need has existed for years and becomes only more urgent the faster technologies develop.

Naomi van de Pol (Utrecht University)

Do we need neurorights to protect our mental integrity? An analysis of the ECHR

Traditionally, the majority of human rights protect (against) *physical* actions and objects. They protect *mental* actions – such as emotions and thoughts – to a much lesser extent, most likely because people's internal lives have long been considered inaccessible to the outside world. However, advancements in neurotechnology have created unprecedented possibilities for accessing and influencing the human brain. Neurotechnological interventions – 'neurointerventions' – may not only be used in healthcare to treat illnesses like Parkinson's disease or obsessive-compulsive disorder. In the near future, neurointerventions may also be employed in other domains of society, such as in criminal justice for rehabilitation purposes. For example, recently, a Dutch research group showed that neuromodulation (transcranial direct current stimulation) reduced aggression in a forensic population.

In principle, neurointerventions offer potential benefits for the criminal justice system, but they also raise fundamental concerns about offenders' human rights. Because such neurotechnologies may have profound *mental* effects, it must be examined whether traditional rights and freedoms guarantee adequate protection for *minds*. This has been the topic of international debate for several years now, in which two basic positions can be distinguished. First, some legal scholars assert that existing human rights do not sufficiently protect the mind. They advocate for novel human rights, often referred to as 'neurorights', particularly a human right to mental integrity. Other scholars argue that traditional rights and freedoms offer adequate legal protection against emerging neurotechnologies because existing provisions can be interpreted in such a way as to include protection for the mind.

To contribute to this debate, this presentation will examine whether current human rights law can be interpreted to include protection for the mind, specifically a right to mental integrity.

Therefore, the following question is posed: Does the European Convention on Human Rights (ECHR) protect mental integrity, and if so, to what extent? In the presentation, case law of the European Court of Human Rights will be analysed, specifically cases concerning Article 3 (the prohibition of ill-treatment), Article 8 (the right to respect for private life) and Article 9 (the freedom of thought) ECHR. By examining in which cases mental integrity plays a central role and what interferences with the ECHR harm mental integrity, the presentation aims to clarify what protection mental integrity enjoys under the ECHR, and whether there are gaps in the ECHR protection that would call for revisions – perhaps new 'neurorights' – in the current human rights framework.

Panel on New Rights and New Responses to Future Challenges - Academy Building, Broerstraat 5, Lecture room A7

Chair: Roland Moerland (Maastricht University)

Marlies Hesselman (University of Groningen)

The Human Right to Affordable, Clean, Modern Energy Services: A New Right for the 21st Century at the Crossroads of Climate Crisis and Energy Transition

This presentation considers the evidence of increasing legal recognition in international, regional and national law of a new human right that has not received so much attention in international legal literature so far: the human right to affordable, clean, modern energy. [1]

This new right is increasingly visible in law and case-law, e.g., in response to grievances such as: household disconnections; unaffordable price increases; or a lack of basic connections and energy supplies, especially in informal settlements. In addition, some, but not all, legal developments have occurred in response to concerns about access to modern, affordable, reliable, sustainable energy access for all in the context of the climate crisis or in relation to calls for a *just energy transition*. A 'just energy transition' implies that States' decarbonization policies are carried out in such a manner that the burdens and benefits of transitioning to clean energy are evenly and fairly distributed, and that "energy poverty" is not exacerbated amongst those currently struggling with (affordable) energy access. Where possible, the transition should improve access to energy services for those currently un(der)served.

Questions of (un)just energy transition, including with arguments related to electricity as a basic service under human rights law, are for example seen in a joint communication by UN Special Procedures about the construction of a windfarm in Oaxaca Mexico, which did lead to better modern, affordable energy access for local (indigenous) communities'; similarly, the IACtHR has considered in the case of *Rio Negro Massacres* that reparations for human rights violations are due in case people are violently displaced from their lands for benefit of construction of a hydro-electric dam. These reparations include a responsibility to ensure access to basic (affordable) energy supplies in their new localities. According to the IACtHR: '*access to electricity is essential for the guarantee of other human rights'*, including the right to housing, and other rights.[2] As such, the Court asked the government to provide '*access to electric power at affordable prices, taking into account the conditions of displacement and low-income levels'*.[3][4]

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[1] E.g. a recent paper of the author demonstrates that new "rights to energy/electricity" have been at least legally recognized in 5 constitutions, and 15 other jurisdictions through case-law so far. This research has not (yet) been exhaustive, so the trend may be even wider than presently understood. In several countries, constitutional amendments are or have being discussed, e.g. in Mexico and Brazil. See Hesselman (2022).

[2] IACtHR, *Masacres de Río Negro v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs (Judgment of 4 September 2012) Series C No. 250, 86, 183, 281-284; IACtHR, *Masacres de Río Negro v. Guatemala*. Monitoring Compliance with Judgment (Order of 25 May 2017) para. 33. See for discussion of this case also: Hesselman (2023).

[3] IACtHR (2012) para. 284; IACtHR (2017) paras. 11, 33-36;

[4] IACtHR (2017) para. 36.

This case is by no means the only example in which the notion of a 'right to (affordable) energy services' has been invoked in a context of energy transition and climate crisis, including by other indigenous peoples. My contribution aims to provide a few further examples, with the overall intention of raising the larger question: *does the globally developing legal practice on the right to affordable, clean, modern energy access suggest that this right has been overlooked so far, and deserves to be more firmly recognized as a new right for the 21st century*? *If so, what might this entail, especially in light of the climate crisis and energy transition?*

As States are (re)considering their ambitions on climate action for the COP26 in Glasgow in 2020,[5] they have another important objective to keep in mind, which is to ensure that all persons enjoy universal access to affordable, reliable and modern energy services by 2030.[6] In fact, States agreed through UN Sustainable Development Goal 7 that all persons must enjoy such access, especially in response to concerns that many people still lack basic electricity access, or continue to cook on solid fuels, like wood, coal or dung, which severely harms their health. [7]

In response to basic energy deprivations, there has been an upwards legal trend to consider and recognize "*rights to energy*" in national, regional or international law. This paper provides an overview of how/where such rights have been recognized in constitutional law, energy laws and public service laws so far, especially with the aim of ensuring that all people enjoy a minimal level modern energy services provision.[8]

At the same time, in light of concerns that providing universal modern energy access could be at odds with important environmental and climate objectives (including those formulated in SDG 13), this paper also analyses how questions of sustainability, clean energy and renewable energy have been taken into account. By way of a few examples, the paper discusses evidence of how 'rights to energy' have used to present a legal challenge to: (a) the removal of household subsidies for low(er)-grade coal in Poland, (b) the (fair) recovery of costs of decommissioning of fossil fuel plants by energy companies on end-consumers in the USA, (c) secure better rights for consumers to self-generate, store and use electricity on their premises in the USA; (d) difficulties with extension of transmissions lines due to applicable environmental laws in Brazil.

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[5] States are expected to submit their revised Nationally Determined Contributions under the Paris Agreement at COP 26 in Glasgow in November 2020. At present, States' NCDs – comprising their joint commitments to stabilize climate change at safe levels, i.e. well below 2ºC or preferably 1,5ºC - are estimated to set the world on to a trajectory of 3ºC warming.

[6] This objective was agreed through UN Sustainable Development Goal 7 in UNGA Resolution 70/1, 'Transforming Our World' (25 September 2015) A/RES/70/1.

[7] According to the SDG 7 Tracking Framework (2019) the number of persons lacking basic electricity access dropped from 1.2 billion to 800 million persons between 2014 and 2018, but about 2.8 billion persons persistently lack access to clean(er) cooking fuels (i.e. LPG, electricity, biogas, natural gas or solar).

[8] This research is based on the results of the author's PhD research which analyses international human rights law, regional law and a range of national development on rights to energy in approximately 20-25 countries from the American, Asian, European and African regions.

All in all, the paper will thus show – and further argue – that while the *right to energy* is a clear and understandable response to civil society's (mounting) concerns that access to energy must be regulated as a minimal social need, and is deeply associated with basic demands of equity, dignity and human rights, the *right to (clean) energy* can also be a powerful attribute in ensuring that both universal access and the energy transition are *both green* and *social*, or recognize the both the *environmental* and *social* dimensions at play in ensuring fair and just access to energy at the cross-roads of the energy transition.[9]

Luiza Leite de Queiroz (Vrije Universiteit Amsterdam)

A link without a right, or* ubi nexus, ibi ius*? International human rights instruments & (international) fiscal policy

In recent years, human rights scholarship has progressively turned its gaze to the topic of taxation. While perhaps not the archetypal object of human rights inquiry, the ties between the two are ever more present in legal analyses. As a growing body of literature has shown, both the tasks of raising and spending tax revenue may impinge on the realisation of socio-economic rights. This relationship is encapsulated by the term tax and human rights nexus. Notably, however, sovereigns' fiscal powers are, to a large extent, curtailed by the international tax regime. Whereas appeals for a normative alignment between international tax law and human rights are mounting, a closer look at what exactly international human rights frameworks allow with respect to taxation is still largely missing. This paper seeks to fill this gap by systematically analysing regional human rights court's jurisprudence on taxation where it intersects socio-economic rights. In doing so, it aims at illuminating the opportunities for, and limitations of, judicial review of (international) fiscal policies.

With sporadic silver linings, our jurisprudential survey points to a rather discouraging picture. Challenging fiscal policies on the basis of the negative impacts they may have on socio-economic rights via international human rights litigation is thwarted on a few different grounds. Most notably, two out of three regional human rights frameworks do not create, or support, a straightforward juridical link between taxation and socio-economic rights realisation – precisely the core of the nexus. On the other hand, where permissive provisions theoretically enable legal enunciation of the nexus, the respective court's power is yet to be galvanised. But whether the nexus gets to be outlined via jurisprudential interpretation or not widely rests on the extent of procedural rules on jurisdictional access. Finally, where courts have been confronted with matters relevant to the nexus recourse to judicial deference has essentially dampened any meaningful advancement of its legal contours. In the end, the idea that every relevant aspect of tax policy design and implementation still falls entirely within the purview of the domestic democratic process is a misconception that works against the realisation of socio-economic rights around the globe.

Cristinao d'Orsi (University of Johannesburg) (online)

Article 14 of the Universal Declaration of Human Rights, Africa and the non-application of the verb 'enjoy'

[9] This is also sometimes referred to as 'just energy transition', or as the fair distribution of cost and benefits of energy consumption in debates on 'energy justice'.

My contribution focuses on Article 14 of the Universal Declaration of Human Rights (1948 UDHR) on the right 'to seek and to enjoy [...] asylum' (14.1) –subject to exceptions (14.2) and how this right has been translated into the domestic legislation of African countries and is applied into practice. Because its correct application by states would help to construct a better future for refugees.

The first regional legal instrument to adopt a formula similar to Article 14 is the African Charter on Human and Peoples' Rights (1981 Banjul Charter), whose Article 12.3, recalling the right enshrined in Article 14.1 of the 1948 UDHR, which stipulates that every individual persecuted shall have the right of 'seeking and obtaining asylum'.

Although the second verb used (after 'seeking') is different, it is clear that the 'attainment' of the right mentioned in Article 12.3 of the 1981 Banjul Charter seems in some way preparatory to the 'enjoyment' of the same right mentioned in Article 14.1.
However, when it comes to the application of fundamental norms of refugee law, African countries, both in their sub-regional and domestic instruments, tend to neglect Article 12.3 of the 1981 Banjul Charter, preferring to recall the Convention Relating to the Status of Refugees (1951 Geneva Convention), with its 1967 New York Protocol, and the OAU Convention Governing the Specific Aspects of Refugees Problems in Africa (1969 OAU Convention).

None of these instruments contains a formula allowing the 'enjoyment' of the right to asylum (after having obtained it). Where the 1951 Geneva Convention recalls, in its Preamble, Article 14 of the 1948 UDHR only in the part about 'seeking' asylum, without going more into detail, the 1969 OAU Convention dedicates an entire article (Article 2) to the subject of 'asylum'. However, in the six paragraphs of this article, no mention of any kind is made to a possible right to 'enjoy' and/or 'obtain' asylum. This occurs in spite of the fact that also in this last convention, the 1948 UDHR is indicated in its Preamble (at paragraph 6) as the instrument that 'has affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination' (that is the same formula used by the 1951 Geneva Convention in paragraph 1 of its Preamble).

Any hope that the recent New York Declaration for Refugees and Migrants (adopted on 16 September, 2016 as a resolution by the UN General Assembly) could revamp a right to 'enjoy' asylum, wiped out by the text of the resolution, that limits itself only to 'reaffirm respect for the institution of asylum and the right to seek asylum' (paragraph 67). Similarly, the 2018 Global Compact on Refugees does not make any explicit mention of a right to 'enjoy' asylum. Yet, it cites a couple of the Executive Committee (ExCom) Conclusions where the right of 'enjoy' asylum appears, namely Conclusion No. 103(LVI) of 2005. There, in paragraph (s) the ExCom 'underlines the importance of applying and developing the international refugee protection system in a way which avoids protection gaps and enables all those in need of international protection to find and enjoy it'.

Thus, I analyse the theory and practice of refugee law in Africa to discover if there is a piece of sub-regional and/or domestic legislation and/or one or more adjudicated cases/s on the continent where the right to 'enjoy' asylum has been reaffirmed in a way that renders the 1948 UDHR in this regard applicable.

Because, as Mr Baroody, Saudi delegate at the negotiations of the 1948 UDHR, affirmed: '[e]very persecuted person should be able to enjoy the right of asylum. That right was indisputable, both from the humanitarian point of view and because to deny it would mean the abandonment of the essential principles of the declaration'.

However, if the Universal Declaration, as H. Hannum wrote in 1996, 'today exerts a moral, political, and legal influence far beyond the hopes of many of its drafters' is the application of its Article 14.1 having the same influence?

Session 4: Roundtable discussion involving speakers from all of the three previous sessions, who will together reflect on the future of the UDHR - Academy Building, Broerstraat 5, Heymanszaal

Chair: Lottie Lane (University of Groningen)

Closing keynote speech - Academy Building, Broerstraat 5, Heymanszaal

Prof. Dr. Theresia Degener (Protestant University of Applied Sciences in Bochum)