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# To be Equal and Free: The Nexus Between Human Rights and Democracy

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# Preface to the E-Paper Series “A Companion to Democracy”

Democracy is a fluid, ever evolving and adaptable concept. It is influenced by historical and social context, geopolitical characteristics of a country, its neighbors, allies and adversaries, the political climate, local and global trends. The e-papers series “A Companion to Democracy” examine the phenomena and concepts closely related to democracy and democratization – those which have both a positive and a negative influence upon it.

Some, like autocratization, corruption, the loss of legitimacy for democratic institutions and parties, curtailing civic participation or the uncontrolled proliferation of misleading information can rock democracy to its core. Others like human rights, active civil society engagement and accountability strengthen its foundations and develop alongside it. Our e-paper series delves into the most recent global trends and debates regarding democracy and its interactions with society, politics, rights and freedom.

# To be Equal and Free: The Nexus Between Human Rights and Democracy

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# Introduction

The end of the Cold War ushered in an era wherein democracy and human rights have been propositioned as intrinsically connected and mutually constitutive, and that particularly liberal democracy is a necessary foundation to support the advancement of universal human rights (Evans, 2001). Proponents of democracy proffer that a functional democratic state that accommodates diversity, protects individual freedoms and promotes equality is the most suitable system of governance to counter the concentration of power in the hands of a few and prevent the abuse of human rights that ensues therefrom (UN OHCHR & IDEA, 2013). As has been argued by some, the foundation of recognising contemporary human rights in democracy finds its origins in the early nineteenth century movement to abolish the transatlantic slave trade, which operated alongside the establishment of the modern democratic state (Alston, 2013).

A common understanding of democracy as a system of governance predicated on the belief in freedom and equality between people, where power is held by elected representatives that serve the interests of the majority (Cambridge Dictionary, 2019), warrants further interrogation. Determining what ought to constitute the priorities of a democracy is contested, and a variety of governance systems have emerged to give it effect. For example, a socialist democracy is grounded in the idea of a welfare state that recognises social rights (such as access to quality health care, housing, education and social security) coupled with access to employment opportunities (Esping-Anderson & van Kersbergen, 1992). Constitutional democracies require that the exercise of political power and social, economic and political relations within a society are governed in accordance with supreme principles, rules and procedures contained in a country's constitution (Tully, 2002). In a parliamentary democracy, citizens elect representatives to a legislative parliament to make the necessary laws that aim to directly represent the needs of the people who voted for them (Baron et al, 2011). Each of these systems of democratic governance fit into the broad definition of what constitutes a liberal democracy.

The core assumptions that define a liberal democracy include: the establishment of a territorial state governed by a constitution that defines the limits of the rule of law for its citizens, underpinned by the principle of self-determination; the guarantee of accountability that aims to uphold a core set of civil freedoms, including freedoms of speech, assembly, expression and the press; a separation of powers between the executive, legislative and judicial arms of the state; emphasis on individual property rights; and holding regular free and fair elections, without discrimination of any kind. The domestic state is responsible for developing policies that further that interest of its people in accordance with the principles of democracy, through the utilisation of the material, social, economic and political assets of the community; and the democratic state acts in the interest of all people within the territory, and not only to advance the interests of a particular group of people (Evans, 2001: 624).

We can therefore deduce the existence of a link between the concepts of democracy and human rights stemming from the fact that human rights are one of the basic tenants of democracy. The recognition of human rights codified in normative legal frameworks that ought to govern societal interactions in liberal democracies, can ensure the protection of human rights (Kurki, 2011). However, as will be discussed more below, whether human rights is the core determinant of a liberal democracy is questionable. In the pursuit of establishing freedom and equality, liberal democratic governance need not necessarily result in the respect for, or realisation of, human rights for all without discrimination. For instance, many liberal democracies do not consider access to housing or water as a human right.

In addition, the wide applicability of liberalism comprising a number of components – such as, the promotion of institutions of democracy, development of international organisations and international law, economic development and the promotion of human rights – make it difficult to identify the primary subject matter of liberalism (Jahn, 2013: 22). Each of these components on their own are insufficient for a state to be considered 'liberal', and the prioritisation by states of one component over another as a substantive policy area, coupled with a dearth in understanding how these components relate to each other, result in a fragmented understanding of 'liberalism'. As an example, Jahn reminds us that while contemporary notions of liberalism are associated with the protection of human rights and individual freedoms recognised in the Universal Declaration of Human Rights (UDHR), for example, historically liberalism was also associated with slavery and colonialism (Jahn, 2013: 25). Thus, liberals may argue that the value of human rights embedded in liberalism is to recognise that all people are born with rights, which they hold simply because they are human; human rights are necessary to preserve life and individual liberties; and the role of the state in fulfilling and protecting human rights is limited to preserving life and property (Renshaw, 2014).

However, growing concern has been expressed regarding the rise of authoritarian leaders who, in response to a precarious political and economic climate globally, espouse nationalist rhetoric and violate basic human rights, despite the ostensibly democratic character of the political system (Rodriguez-Garavito & Gomez, 2018). Scholars argue that these authoritarian leaders are leading us into an era of 'illiberal democracy' by undermining institutions of liberal democracy and the rule of law and have cautioned of its ensuing implications for the global human rights agenda (AIV, 2017; Muis & van Troost, 2015). According to Zakaria, democratically elected regimes 'are routinely ignoring the constitutional limits on their power and depriving their citizens of basic rights and freedoms' (Zakaria, 1997: 22).

Seventy-one years pursuant to the adoption of the UDHR in 1948, it appears that the very notion of human rights has been placed under threat. On the one hand, the political vision of democracy has sought to embed peace and security in society, infused with respect for the inherent dignity and human rights of all people protected by the rule of law, in the pursuit of freedom and justice (UDHR, 1948: Preamble). On the other hand, despite the establishment of the international human rights regime incorporated domestically in

many democratic states, and enforced through international institutions whose primary mandate is to protect and promote the respect of human rights, state-sanctioned human rights violations continue to occur throughout the world, while perpetrators escape accountability with impunity.

The world's people continue to endure sporadic and sustained regional conflicts; environmental degradation and climate change; frequent occurrences of social violence and discrimination on the basis of race, gender, religion, ethnicity and nationality; structural violence in the form of unsustainable high levels of poverty, unemployment and inequality experienced particularly amongst the global youth; uprisings against corrupt and autocratic leaders; and the closing of political space.

Liberal democracy, and its promises to advance human rights for all, has consequently been placed under a critical spotlight. This paper seeks to explore the role of human rights in democracy, and specifically whether human rights is a necessary ingredient for its sustenance. Moreover, the paper considers whether the delivery of human rights is a consequential outcome of liberal democracy.

The paper is structured as follows: first, I explore the relationship between democracy and human rights, followed by an overview of the achievements and shortcomings of the international human rights system. I then proceed to unpack the growing trend of human rights infringements and its impact on democracy, and the ensuing implications for civil society organisations and human rights defenders. I conclude by considering the implications of contemporary human rights violations for the future of global democracies.

## The ambiguous relationship between democracy and human rights

Discussions regarding the role of human rights as inherently complementary to promoting liberal democracy are often met with contestation. This is especially so noting the ideological underpinnings concerning civil, political, economic, social and cultural rights, and which of these are central to the promotion of liberal democracy, including who ought to benefit therefrom. For example, some critics of the human rights agenda have argued that proponents of liberal democracy focus on the procedural aspects of predominantly individual and 'negative' rights over communal rights. In this respect, the emphasis is placed on the state to refrain from engaging in acts that limit individual freedoms or that limit the participation of members of society in an open free-market economy. However, critics of this individualised approach argue that although rights are essential in democracy, they are not merely tools for individuals to protect their interests against the state. Instead the advancement of human rights, and particularly the equal recognition and respect by the state for civil, political, economic, social and cultural rights, can

promote a more holistic idea of democracy that protects the interests of all people in society (Kurki, 2011).

The universality of human rights in democracy vis-à-vis its application as culturally relative, has too generated much debate. Often cultural relativism is used as a justification to violate the basic human rights of marginalised groups in many societies, and particularly in relation to women, children and gender non-conforming persons. Applications of a universalist approach to human rights have also resulted in essentialist conceptions of what constitutes the 'universally human' based on Western liberal norms (Gould, 2004: 51). Here, a distinction can be drawn between 'conceptual' and 'substantive' universality. Whereas a conceptual notion of universality asserts that human rights are intrinsic to all human beings equally, simply by virtue of them being human beings; substantive universality interrogates whether human rights as recognised in institutionalised and normative frameworks such as the UDHR are indeed of equal application to everyone. Importantly while human rights claims may embody universal social values such as justice, fairness and humanity, human rights as individual entitlements against the state and society are a distinctive means to realise these social values. It is proffered, therefore, that the idea of human rights as universal entitlements was first used post the American and French Revolutions to structure new political orders (Donnelly, 2007).

Thus, although perhaps Western in its origin as an entitlement against the state, a more nuanced approach to the universal application of human rights that considers the political, economic and social context in which these rights operate, and also recognises that ideas of human rights have emerged from the contributions of various cultural perspectives, can avoid the binary trap of the universal / cultural relativist debate. Ultimately human rights promotion ought to recognise the equality of all human beings as bearers of inherent human dignity (Gould, 2004).

The reliance on human rights and democracy indicators has become a popular tool when gauging the strengths and weaknesses of a democratic state. Human rights indicators seek to monitor the relationship between an activity or outcome against human rights norms, standards and values as an assessment of the promotion and implementation of human rights (UN OHCHR, 2012a: 16). When evaluating democracies, consideration is given to factors such as corruption, security, open government, regulatory enforcement and adherence to the rule of law, access to justice for citizens, and the protection and enforcement of human rights and associated freedoms (WJP, 2018; Freedom House, 2019).

Davis et al have argued that „the burgeoning production and use of indicators in global governance has the potential to alter the forms, the exercise, and perhaps even the distributions of power in certain spheres of global governance“ (Davis et al, 2012: 4). Thus, the authors have problematized the social processes that surround the creation and use of indicators; the conditions of production that may influence the kinds of knowledge that indicators provide; and the influence that indicators in global governance may

have on the nature of standard-setting and decision-making. Moreover, the effect that indicators may have on the distribution of power between and among those who govern and those who are governed has been questioned, including the nature of responses to the exercises of power through indicators (Merry, 2011).

The phenomenon of globalisation has also presented its challenges and has exacerbated the contradictions associated with the relationship between liberal democracy and its promise to advance human rights for all. On the one hand, globalisation has assisted in developing an interconnectedness in the world that extends beyond state borders and promoting more social and political interactions, economic flows and cultural exchanges. Moreover, the developments in technology have encouraged the formation of new transnational relationships that challenge the territorial limits of democracy, extending the global free market in goods, services and finance (Evans, 2001). At the same time, however, globalisation has also seen the rise of the economic power of transnational corporations to influence national decision-making processes, which raises concern regarding the autonomy and limited power of the liberal democratic state to act in the interests of the broader common good. The need to sustain the conditions to grow the global liberal economy further leads a country to often implement constraints imposed by international financial institutions, which may impede the state's ability to effectively advance human rights (ibid). Thus, while the human rights framework is predominantly state-centric, the human rights challenges it seeks to address are not exclusively national.

These limitations of the normative human rights framework find expression when considering the human rights obligations of businesses. Instruments such as the United Nations (UN) Guiding Principles on Business and Human Rights (UNGPs) have been developed to encourage businesses with global operations to respect human rights in the territories in which they operate, and for states to protect victims of business-related human rights violations. Notwithstanding the universality of human rights, the insistence of many states that their human rights obligations are limited to within their own borders, coupled with the non-binding nature of the UNGPs on both business and the state, have led to gaps in protecting the rights of affected communities. Extraterritorial obligations of states (or the lack thereof) is therefore a missing link within the international human rights protection system, resulting in weak regulation of the negative implications of globalisation and little protection for vulnerable and marginalised groups (ETO Consortium, 2013).

Despite these critiques of the limitations of democracy, it can also be argued that the broad appeal of especially liberal democracy remains the most suitable vehicle to advance the full range of civil, political, economic, social and cultural rights toward ensuring that everyone is able to enjoy the material, social, economic and political benefits that democracy seeks to deliver. At the same time, however, these contestations concerning the value and role of human rights in the context of liberal democracy are exacerbated in the global human rights arena, as discussed in more detail below.

# The evolution of the international human rights system: achievements and shortcomings

Established in 1945 and in accordance with the United Nations Charter, the UN initially comprised 51 Member States. Following the global devastation of the Second World War and its atrocious impact on humanity, the central mission of the UN is to maintain international peace and security (UN, 2019). The adoption of the UN Charter provided a normative basis that sought to prioritise the advancement and protection of universally recognised human rights within the structures of international governance (Buergethal, 1997). The UN continues to promote democracy as one of its core values and principles, and respect for human rights and fundamental freedoms embodied in the rule of law, as essential elements for the deepening of democracy (UN OHCHR, 2019). In 2019, the number of UN Member States has grown to 193 representing its universal reach.

Fundamental to its functioning is the UN's principle of sovereign equality of its Member States and the commitment to refrain from threatening the territorial integrity or political independence of another state, including respect for the principles of self-determination and non-intervention in the domestic affairs of States (Mingst & Karns, 2012: 23). Simultaneously, the permanent members of the UN Security Council have veto powers, and as such, inequality is also embedded within the UN framework (Mingst & Karns, 2012: 32). Moreover, the UN framework presents a tension between respecting the sovereignty whilst also fulfilling its obligation to protect victims of internationally recognised human rights violations (Mingst & Karns, 2012).

Nonetheless, the UN has played a significant role in the process of globalising human rights, and has been central to establishing norms and institutions that promote the respect for and protection of human rights. The normative content of 'human rights and fundamental freedoms' referred to in the UN Charter was later expanded in the UDHR, which together with the International Covenant for Civil and Political Rights, 1966 (ICCPR) and the International Covenant for Economic, Social and Cultural Rights, 1966 (ICESCR), are recognised as the international Bill of Rights (Buergethal, 1997: 705). Each of these documents recognise the various human rights contained therein as central to the general welfare of a democratic society, and any limitations to human rights must be in accordance with the rule of law. Particularly Article 21 of the UDHR makes explicit the relationship between human rights and democracy, by stating that everyone has the right to participate in their government, either through direct representation or through freely chosen representatives, and that the will of the people shall inform the authority of government.

The later approval of the covenants nearly two decades after the adoption of the UDHR was a result of the lack of agreement between states concerning the justiciability of socio-economic rights, and the positive obligation on states to progressively realise these

rights. Hence the initial inclination to reduce the UDHR into a single binding instrument was rejected (Viljoen, 2012). Other fundamental international human rights frameworks include the Convention on the Elimination of all Forms of Racial Discrimination, 1965 (CERD), Convention on the Elimination of all Forms of Discrimination Against Women, 1979 (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT), Convention on the Rights of the Child, 1989 (CRC) and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (UN OHCHR, 2012b). The impressive body of international law generated as a result of these UN instruments has served to locate human rights within the global political arena (Evans, 2001).

Institutions such as the UN Human Rights Commission were established, initially to investigate systemic human rights violations committed in apartheid South Africa and racial discrimination in Zimbabwe, and later expanded to address human rights violations in general. The Human Rights Commission has since been replaced with the Human Rights Council, and the Office of the High Commissioner on Human Rights (OHCHR) has become one of the primary institutions responsible for the administration of the international human rights system (Buergethal, 1997). Although the 47 HRC Member States include repeated offenders such as Egypt, Bahrein and the Philippines which is cause of regular scrutiny (BBC, 2018), the institution remains an important global force for accountability and justice.

Through the creation of special procedures, the UN has relied on the advice on a number of independent human rights experts who report on thematic and country-specific issues to various UN bodies. These Special Rapporteurs have expanded the UN's approach to pertinent human rights challenges, including, freedom of opinion and expression, freedom of peaceful assembly and association, arbitrary detention, enforced disappearances, torture, and the promotion of a democratic and equitable international order, amongst others. Field visits to investigate country-specific human rights allegations allow Special Rapporteurs to assess the translation of abstract international human rights norms in the domestic context in which it operates, and the legal, political, economic and social barriers that limit their effective implementation. Consequently, they play a pivotal role in advancing the promotion and protection of human rights in countries throughout the world (Naples-Mitchell, 2011). However, in a recent statement by Special Procedures Mandate Holders they claim that their ability to carry out their mandates is threatened: "Many of our colleagues have faced direct attacks from governments and politicians, online trolls, and other non-State actors using, for instance, the violent language of misogyny, racism, and other forms of discrimination and harassment" (UN SP, 2019: 1).

The establishment of the UN has also led to the robust development of regional human rights systems. Reflecting many of the features of the UN system, regional human rights bodies have been established to monitor, promote and protect human rights in Africa, Asia, Europe and the Americas. These bodies include the African Commission on Human and Peoples' Rights, Arab Human Rights Committee, ASEAN Intergovernmental Commission on Human Rights, European Court of Human Rights, European Committee

of Social Rights, Inter-American Court of Human Rights and the Inter-American Commission of Human Rights. The advancement of the regional human rights system further dispels the myth that human rights, even as reflected in the UDHR, are a 'Western' construct. For example, Article 60 of the African Charter of Human and Peoples' Rights states, '[T]he Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various Africa instruments on human and peoples' rights, the Charter of the United Nations, the Universal Declaration of Human Rights, other instruments adopted by the United Nations....' (African Charter, 1981, Article 60).

However, some have lamented that the organisation's monitoring mechanisms may be too diverse, uncoordinated and state-centric to be effective. Global funding for human rights monitoring is also limited (Mingst & Karns, 2012: 240). Moreover, the UN's inability to respond to the demand from human rights that it has itself engendered and to prevent the human rights tragedies that occurred in Bosnia, Rwanda and the Sudan, for example, raised questions concerning its efficacy, and therefore, its legitimacy. Despite the establishment of judicial bodies such as the International Court of Justice (ICJ), ad hoc international war crimes tribunals for the Former Yugoslavia and Rwanda, and the International Criminal Court (ICC), the UN's enforcement mechanisms have been criticised for being weak (Evans, 2001).

These criticisms notwithstanding, the large number of states that are members of the international human rights regime suggests that its underlying values, such as the respect for human rights without discrimination, could be a reflection of universalism, corresponding with a sense of justice and accountability that is valued regardless of one's culture or location (Tladi, 2009).

The UN has also been tasked with social and economic development, which further impacts on the attainment and protection of human rights. A 2005 report by then UN Secretary General Kofi Annan entitled, 'In larger freedom: towards development, security and human rights for all', emphasizes that, '[W]e will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights' (UN A/59/2005, par 17). The report highlighted that global interconnectedness has presented both threats and opportunities, and as such, human rights and freedoms can only be advanced through broad and sustained cooperation among UN Member States, and through partnerships with civil society and private sector actors (UN A/59/2005). Thus, an important aspect of development policy is the relationship between economic development, and its implications for the advancement of human rights and democracy. Consequently, more emphasis has been placed on ensuring that economic development attends to the everyday needs of ordinary citizens, and not just that of the political and economic elite (GPF, 2013).

However, UN implementing agencies and its associated institutions such as the World Bank and Internationally Monetary Fund, have been criticised for their developmental approach, even more so in the global south. From funding government-led infrastructural

programmes to the provision of basic human needs such as education, social protection and health care, to prioritising privatised and free-market economies, and implementing structural adjustment programmes (Mingst & Karns, 2012), these interventions have also been criticised for impeding the advancement of human rights in various contexts. Initiatives that seek to advance development ought to simultaneously promote economic growth and job creation, alongside other economic, environmental and social benefits to affected communities (UN OHCHR & HBS, 2018). To remedy these shortcomings in development projects, the human rights based approach (HRBA) to development adopted in recent years seeks to analyse inequalities, which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress (UN OHCHR, 2006:15; Fischer, 2013:119). The HRBA to development aims to operationalise international human rights standards in development programmes and practices toward the promotion and protection of human rights (UN OHCHR, 2006:15). Moreover, in terms of the HRBA, development processes must be participatory, transparent and ensure accountability, with corresponding and effective remedial measures when human rights are violated (ibid).

Although the human rights based approach can potentially provide a more powerful approach to development through internationally agreed upon legal human rights frameworks, the reliance on distant international human rights standards in domestic contexts can also present challenges (Nyamu-Musembi & Cornwall, 2004). For example, dependence on the international human rights system to enforce rights, and the interface between different legal systems governing access to entitlements can make the process of recognising and claiming rights more complex (ibid:4). Moreover, finite financial resources require the establishment of priority-setting pertaining to rights realisation, which subsequently undermines the indivisibility of human rights and brings to the fore the challenge of dealing with competing rights (ibid). Nonetheless, the ultimate goal of HRBA must be to transform relations of power between rights-holders and the state, and effectively meet the challenge of aligning human rights principles with development procedures, practices and outcomes (ibid). Thus, while prioritising human rights in development has been a positive step, the translation of these human rights ideals to normative frameworks and tools of measurement has in some instances diluted its impact.

Taking into account the shortcomings of earlier development interventions, and building on the idea that human rights and sustainable development are interdependent and mutually reinforcing, the Sustainable Development Goals (SDGs) seek to realise human rights for all through making explicit reference to the UDHR and inequality. Also referred to as 'Agenda 2030', the SDGs have been celebrated for establishing greater consensus between various stakeholders, including governments and civil society. Agenda 2030 promotes democracy, good governance and the rule of law as essential for the achievement of sustainable development, which includes inclusive economic growth, social development, environmental protection and poverty eradication (UN Agenda 2030, 2015: par. 9). Moreover, the SDGs apply to rich and poor countries alike to address contemporary challenges presented by a more interconnected community both locally and

globally (IDS, 2015). Thus, the SDGs have been proposed as a fundamental operational tool in response to rising global inequalities (DIHR, 2018).

Despite its incorporation of human rights language, the SDGs have also been criticised as weak due to their voluntary and country-led nature (Arts, 2017:9). Worryingly, a quick word search reveals that neither the SDGs nor its indicators specifically mention 'democracy'. However, in an apparent attempt to avoid applying a blanket understanding of what constitutes 'democracy', SDG 16 aims to 'promote peaceful and inclusive societies for development, provide access to justice for all and build effective, accountable and institutions at all levels'. Through the promotion of SDG 16, it is envisioned by the UN that all relevant stakeholders, including civil society and the private sector, will assist in the development of context specific benchmarks to evaluate democracy (UN DEF, 2019). Indeed, countries with poor human rights track records, including those considered to be liberal democracies, were also engaged in the drafting and negotiating processes that led to the adoption of the SDGs by all UN Member States by consensus. This is of concern in a global context where there appears to be a persistent decline in global freedom and a rise of authoritarian regimes (Freedom House, 2019). SDG 16 thus presents an opportunity to challenge the rise of authoritarianism by advocating for an expansion of democratic institutions that advance peaceful and inclusive societies through the realisation of human rights.

These challenges associated with the protection and promotion of human rights in the international system have in turn impacted on the lived realities of millions of people across the globe. As per the UN Charter, for the latter half of the 20th and early 21st centuries, human rights has been understood to be intrinsically linked to sustaining peace and security. This notwithstanding, however, the frequency and persistence of human rights violations has raised questions regarding the ability of democracy rooted in liberalism to deliver on its promises in advancing a better existence for humanity as provided for in the UDHR.

## The erosion of human rights and its impact on democracy

It is apparent that the perceived erosion of human rights globally constitutes both a failure of states to protect human rights through the rule of law on the one hand, and expand the reach of human rights to all people regardless of the status they may occupy in society, on the other hand.

The fear generated by the attacks of September 11, 2001 in the United States justified the limitation of human rights in the name of counter-terrorism initiatives, not only in the US but also in other countries. Since then, it appears that the progress made in globalising human rights norms through the UN has been reversed, often through

language defending state security at the cost of human rights for all, and particularly vulnerable and marginalised groups in society (Gilmore, 2018). The UN has been emphatic in reminding states that while it is permissible to limit rights to protect citizens within their borders, such interventions must respect human rights, especially of those most vulnerable and marginalised in societies; and be in accordance with the rule of law applicable to everyone, including those who hold positions of power (UN, 2005a).

Despite these calls, however, some states continue to adopt an approach to address national security concerns that undermines internationally recognised human rights and the rule of law. On the African continent, for example, weak adherence to the rule of law and fragile criminal justice systems has resulted in impunity for state actors who have violated human rights. Various laws have been used to justify the unlawful detention, interrogation, torture and the destruction of property in the name of state security. Citizens have reportedly endured extended periods of pre-trial detention, a denial of the rights of accused persons, limits to freedom of expression and association, and persistent allegations of state corruption (Sigsworth, 2019). In Uganda, surveillance systems and regressive tax measures on social media usage have reportedly been implemented to constrain political dissent, and in Senegal, new procedural barriers may impact on the ability of the political opposition to effectively participate in upcoming elections (Freedom House, 2019).

Beyond counter-terrorism interventions, states frequently resort to the law to limit basic human rights. For example, in 2017, Russia's parliament adopted a bill that decriminalised a first offence of family violence unless it causes serious harm that requires hospital treatment. The move significantly weakens the legal protections afforded to victims of domestic violence (HRW, 2017). In Turkey, the presidential system of governance has been criticised for insufficient checks and balances against the abuse of executive power, which also allows for more presidential control over judicial appointments; while in Hungary, constitutional and legal interventions resulted in limiting the independence of the judiciary, attacks on civil society organisations working with asylum seekers, and threats to media freedom (HRW, 2019).

In established democracies such as the United States, concern has been raised regarding the decline in the rule of law, as government policies and actions have improperly restricted the rights asylum seekers and refugees, contributing towards an increase in discriminatory and xenophobic attitudes towards immigrant populations. In Venezuela, allegations of a flawed presidential election have resulted in an extension of authoritarian rule, as the country's economic and humanitarian crisis continues (Freedom House, 2019).

Indeed, the constraints on human rights, and particularly core civil and political rights that form the basis of democratic rule such as the freedoms of expression, assembly and association, are often enforced through state-driven legal restrictions imposed by democratically elected regimes (Rakner, 2018). Moreover, such restrictions also find legitimacy within UN human rights structures that promote the balancing of human

rights entitlements against the duty of the state to protect its citizens. For example, the Special Rapporteur on the rights to peaceful assembly and of association often provides recommendations to states on permissible limitations of the right to peaceful assembly and the policing of assemblies through the use of force and surveillance (UN OHCHR, 2016).

Poverty and exclusion underpinned by growing and unsustainable levels of inequality in democracies further undermine the advancement of human rights. Factors such as global economic crises, a lack of access to public health care and education, and food insecurity compounded by climate change impact on the rights to equality and non-discrimination, which are core tenets to the foundation of democracy. Poverty and inequality further limits the ability of people to claim their rights and access justice for human rights violations. Although democracy presumes that the needs of the majority determine state priorities, inequalities of income and wealth in democracies reproduce inequalities in the distribution of power that influence state outcomes, and more so with respect to how governments distribute their budgets in the societies they govern. This in turn impacts on the realisation of human rights, and especially social and economic rights (Balakrishnan & Heintz, 2015; Moyn, 2015; Donald, 2017). Consequently, democracy itself is undermined when the needs of the majority of its population are excluded in preference of a political and economic elite.

## Repeated human rights violations: a failure of democracy?

The aforementioned challenges relating to the role of human rights in the political economy of democracy is evident from the frequency of protests erupting globally, as citizens demand accountability for systemic human rights violations underpinned by non-adherence to the rule of law by state actors, coupled with unsustainable levels of inequality and poverty that persists unabated. Despite the recognition of human rights in governance frameworks, structures and institutions of liberal democracy, the mere recognition of these rights in laws and policies in democratic societies alone does not equate to social justice for victims of violations nor does it serve to advance the interests of the majority of the people subject to its rule.

In Latin America, 2019 has been marked with escalating mass demonstrations over entrenched inequality and decades of enduring a series of austerity reform measures, which have left many unable to access their basic human needs. In Chile, protests have left more than a dozen people dead and thousands more injured and arrested. In response, several cabinet ministers have been replaced and President Pinera has been prompted to pledge more pro-poor policies that would include a boost to the minimum wage and pensions, lower medical and public transport costs, and guarantee proper health insurance (The Guardian, 2019). Similarly, in Ecuador, the announcement of the end to

a fuel subsidy sparked unrest resulting in the government declaring a state of emergency and initiating a curfew (Palacio & Diaz-Pabon, 2019). And in Bolivia, although President Morales has reportedly held clear majority support for much of his rule and has successfully reduced poverty, his removal as leader by the country's armed forces also speaks to the legitimacy of democratic rule in the country (Paarlberg, 2019).

In the Middle East, Lebanon's Prime Minister Hariri announced his resignation in response to nationwide demonstrations lasting almost two weeks, over rapid economic deterioration, mushrooming debt and rising increases in general costs of living (Qiblawi, 2019). It is not new that protests against poverty, and particularly inequality, have led to a change of leadership in the region. In 2011, Mohamed Bouazizi of Tunisia set himself alight in protest of the poverty, unemployment and corruption that saw him unable to adequately provide for his family despite working hard as a vegetable seller. The incident fuelled protests that not only ended the dictatorship of Ben Ali's 23-year rule of Tunisia, but also saw a regime change in neighbouring Egypt and Libya (Abouzeid, 2011).

In addition to rapidly increasing levels of inequality and deepening poverty, global youth have staged mass demonstrations in countries across the world voicing their concern over the future of the climate, inspired by youth activists Greta Thunberg of Sweden and Autumn Peltier of Canada. In the United States, 21 plaintiffs between the ages of 11 and 22 have instituted action against their government in *Juliana v US*, for its failure to mitigate the effects of climate change. The plaintiffs argue that the US government implemented policies that harmed the climate, and as a consequence, children will be robbed of a climate system that is capable of supporting human life (Irfan, 2018).

Moreover, although there has not been another world war of the scale encountered in 1945, the post- World War II era has not entirely been one of unprecedented peace and progress. While some argue that human beings are living safer and more prosperous lives than their ancestors, civil wars within states, often supported by external actors and powerful nation-states, has seen the lived realities of many of the world's people destroyed (Fazal & Poast, 2019).

When victims of the effects of conflict, climate change and poverty seek refuge in wealthier countries, they are confronted by racism and xenophobia, and attacks against their religious and ethnic identities. In the United States, the rise of right-wing extremism was reportedly responsible for 50 killings in 2018, 26 per cent more than the previous year and the fourth deadliest year for domestic-extremist related attacks since 1970 (DeSimone, 2019:10). In Europe, attacks inspired by the right-wing increased 43 per cent between 2016 and 2017. These attacks are driven by a belief that one's individual and/or national way of life is under attack or threatened, and characterised by anti-globalism, and racial or ethnic supremacy (DeSimone, 2019). The global rise of the #MeToo movement also brought to the fore the insidious nature and multiple forms of discrimination and gender-based violence endured by women and members of the LGBTQIA+ communities, and who are unable to secure adequate redress from the state when their human rights have been violated (North, 2019).

The nuanced manifestations of human rights violations fuels tensions between citizens and the state, and are further exacerbated when leaders are corrupt. In South Africa, mass protests against corruption led to Jacob Zuma resigning as the country's president before his term had expired (The Economist, 2018). In the Sudan, women-led civic action saw the end of the brutal 30-year reign of Omar-al-Bashir, who for years was able to escape an ICC arrest warrant for crimes committed against humanity (Sadek, 2019). In Hong Kong, protests erupted against proposals to allow extradition to mainland China and demands for full democracy through complete universal suffrage (BBC, 2019).

While the underlying factors that spark these uprisings differ, and are often become sustained through prolonged citizen mobilisation, a common trend is that global citizens are calling for a redistribution of political, economic and social power that prioritises the interests of the majority as per the purpose upon which liberal democracy as defined earlier, is premised. Human rights are thus used by citizens as both a political claim to broaden the scope and relevance of its application, and a legal entitlement to enforce its protection in the domestic and international contexts.

Advancing human rights is therefore dependent on relations of power that exist within society (Habib, 2014). The challenge in adopting institutionalised human rights-based approaches for realising particularly the socio-economic aspirations of poor and marginalised communities is that these approaches assume that rights are not fully granted because of the failures of individual leaders (ibid). At the same time, leaders are constrained by relations of power, and if "power is configured against the poor and marginalised, then leaders are unlikely to be successful in fulfilling political and socio-economic rights that advance those interests" (ibid:131). It has thus become imperative to reflect on the politics not provided for in the human rights normative framework that enables, or inhibits, the progressive realisation of human rights.

The regular occurrence of mass unrest demonstrates an urgent need for the world's leaders to address the grievances raised by citizens, which is heightened in a context of growing levels of poverty, inequality and unemployment. Instead, autocratic and conservative leaders have been elected to lead many democratic countries, raising concern about whose interests liberal democracies ought to advance. At the same time, however, the current state of affairs which undermines human rights is not the fault of democracy, per se, but rather a reflection of the priorities of elected governments that do not advance the interests of the majority of their citizens. These global demonstrations reveal that through contestation, ordinary citizens can reconfigure relations of power and expand democracies to serve the needs of growing proportions of populations throughout the world who feel marginalised and excluded from systems of governance on matters that directly affect their well-being.

Consequently, civil society organisations and human rights defenders resisting these regressive developments often encounter various forms of state repression, and it appears to be more so when the domestic political power they are challenging is threatened (Kreienkamp, 2017). Civil society organizations and Human Rights Defenders (HRDs) are vocal opponents of regimes, organizations and individuals who insistently violate

existing human rights and democratic norms and processes. The same applies to the Special Rapporteurs (UN Special Procedures Mandate Holders). Consequentially, there is a heightened awareness of a need for institutional support and protection of these actors on both a national and an international level.

## Repercussions for civil society and human rights defenders

Civil society organisations (CSOs), which include non-governmental organisations, have been credited for the UN's success in defining human rights norms, monitoring respect for human rights and promoting human rights across the world. They continue to provide expertise with respect to drafting human rights conventions; monitor and report on human rights violations; advocate for the implementation of human rights norms; provide human rights education to affected communities who require human rights guarantees; mount publicity campaigns and protests; and appear before international bodies to lobby for global reform through inter-state cooperation. Some provide humanitarian relief to refugees victims of human rights violations and HRDs (Mingst & Karns, 2012). CSOs have also influenced the creation of UN expert bodies, the position of the UN High Commissioner for Human Rights and Special Rapporteurs who conduct expert investigations on human rights-related issues (Van Tuijl, 1999).

Through their activities that hold governments accountable to advance and protect human rights, CSOs also play a crucial role in sustaining democracy, as they serve as drivers of social progress and economic growth which benefits all people in democratic societies, and not just a privileged few. Thus CSOs are a crucial component for the strengthening of democracies throughout the world (UN, 2015).

However, as highlighted earlier, the advent of globalisation has contributed to sources of injustice that extend beyond the scope of domestic systems of accountability. This has led to a global network and coalitions of CSOs, who play a crucial role in influencing outcomes of the global political-economy. Organizations like the global alliance CIVICUS have set up permanent monitoring mechanisms to track the state of civic space worldwide (CIVICUS Monitor). Due to their increased visibility in highlighting the persistence and depth of human rights violations in domestic contexts, states have sought to repress their work. Nevertheless, global coalition-building among CSOs has been an effective tool to deter government interferences. With the support of organisations such as CIVICUS, for example, CSOs and HRDs have brought to the attention of Special Rapporteurs the impact of business-related activities on affected communities and the environment in a variety of countries and contexts, which in turn has heightened the visibility of the political, economic and social risks experienced by vulnerable and marginalised communities globally (CIVICUS, 2017). Through knowledge and resource exchange, NGOs committed to fighting global poverty and ending injustice continue to influence decision-making processes and influence policy-making toward the advancement of human rights (Van Tuijl, 1999; CIVICUS, 2017).

National human rights institutions (NHRIs) further support the work of CSOs in advancing human rights domestically on a national level. Adopted in 1993 by the UN General Assembly, the UN Paris Principles require NHRIs to protect human rights through receiving, investigating and resolving complaints or through mechanisms of alternative dispute resolution; and to promote human rights through education, outreach and capacity building. As per the Paris Principles, NHRIs are required to be independent and guaranteed autonomy from the state by statute or provided for in the constitution, although they can be funded by the state. Importantly, NHRIs are tasked with building a culture of human rights domestically through advising and assisting their governments to achieve their human rights obligations. As of 2019, there are 78 NHRIs that have been established in accordance with the Paris Principles in different countries in the world (GANHRI, 2019).

NHRIs occupy a unique role in the human rights lexicon, situated somewhat between CSOs and the state. Their structural positioning within the state apparatus allows them sufficient proximity to the government to advance policy reform and promote the work of CSOs that they work with. At the same time, they are required to be independent from all entities, including the state and private actors. Noting that many NHRIs receive their funding directly from the state, NHRIs also receive much scrutiny from independent observers who monitor their financial and political independence (Smith, 2006).

However, in some instances, NHRIs have encountered pushback from the state due to their governments' complete disregard for human rights. In 2017 in the Philippines, for example, lawmakers reportedly voted to reduce the budget of the country's Commission on Human Rights to USD 20 because of the NHRI's approach highlighting the human rights violations committed by the state in pursuing its 'war on drugs' (Hincks, 2017).

In recognition of the invaluable contribution made by individuals and organisations to making human rights a lived reality, the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) obliges states to protect, promote and implement all human rights and fundamental freedoms, and ensure that all persons under its jurisdiction are able to enjoy those rights and freedoms in practice. The state thus has a duty to ensure the creation of an environment that enables HRDs to carry out their activities toward the advancement of all human rights. In doing their work, HRDs have the right to be protected, the right to freedom of assembly, the right to freedom of association, the right to freedom of opinion and expression, the right to protest, the right to develop and discuss new human rights ideas, the right to an effective remedy, the right to access funding and the right to access and communicate with international bodies (UN OHCHR, 2011). The SDGs also recognise the role of human rights defenders, including CSOs and NHRIs, in building peaceful and inclusive societies for sustainable development.

Yet, despite this recognition and the responsibility of liberal democratic states to protect human rights defenders, there appears to be a global backlash by states limiting core democratic freedoms of association, assembly, expression and access to information,

and the closing of political space (UN OHCHR, 2018). These human rights defenders are active in support of the rights to access food, water, health care, adequate housing, education, a clean environment, land and the equitable distribution of resources for everyone without discrimination (CIVICUS, 2019a). However, throughout the world state-sponsored machinery has been utilised to suppress the voices of individuals seeking the promotion, protection and realisation of civil, political, economic, social and cultural rights. To restrict civic space, states have embarked on a variety of strategies that include stigmatising CSOs, tightening legal restrictions, intimidating activists, resorting to violent repression and restricting the free flow of information (Kreienkamp, 2017).

In 2018, popular Brazilian human rights activist Marielle Franco was assassinated under mysterious circumstances. She was known for her work on state and police corruption, and was an advocate for young people, women, LGBTQIA+ rights (Amnesty International, 2018). In 2017, Daphne Caruana Galizia, the journalist who led the corruption investigation surrounding the 'Panama Papers' in Malta was killed in a car bomb near her home (Garside, 2017). Human rights organisations have also endured the brunt of state repression, especially with respect to women's rights and sexual and reproductive healthcare rights. For example, the US global gag rule prohibits foreign NGOs who receive US global health assistance from providing legal abortion services. In 2019, the US government expanded the rule to restrict organisations from funding groups that provide abortion services and information, even in instances where such organisations do not receive any US aid. Activists and CSOs have warned that this can have a devastating impact on access to, and advocacy surrounding, health care rights especially for poor women, HIV/AIDS programmes, members of the LGBTQIA+ community and sex workers (OSF, 2019). The tools used by human rights defenders to mobilise resistance against state repression are frequently intercepted by state apparatus. In many countries throughout the world, social media sites and the internet generally have been shut down as governments attempt to quell freedom of expression and dissent, often during elections cycles (UN HRC, 2018).

Thus, it has become apparent that notwithstanding its promises to advance peace and security through the realisation of human rights as one of its means, liberal democracy has also been the site of witnessing numerous violations to basic human rights and freedoms.

In response to state repression, civil society actors have encouraged transnational grassroots mobilisation to defend human rights and reject any forms of hate and social division (CIVICUS, 2019a). Further, CSOs have engaged in efforts to strengthen local trust and support in the communities they operate in; diversify their sources of funding through established donors, private entities and individuals; utilising strategic litigation as interventions to challenge restrictive laws; increasing peer support within civil society networks; encouraging diverse and multi-stakeholder partnerships between the government, civil society and the private sector; and leveraging international pressure on fouling states (Kreienkamp, 2017).

# The implications of contemporary human rights violations for the future of global democracies

In light of the sustained human rights activism and resistance, it appears that there is general consensus amongst global citizens that all people are equal and embody a wide range of civil, political, economic, social and cultural human rights that the state is obligated to protect. It also appears that, rather than rejecting liberal democracy when advocating for the advancement of human rights, global citizens are calling for greater accountability and democratic participation in decision-making processes that directly affect their lived experiences. However, the state-centric nature of the existing human rights framework is limited in its ability to provide solutions to human rights violations that extend beyond the boundaries of the state. The responsibility of domestic governments alone to address the complex and interconnected nature of contemporary human rights concerns is thus stunted (Gould, 2004).

As such, context specific interventions are essential for the sustenance of liberal democracy toward the advancement of human rights. For human rights to achieve its ideal of realising a dignified existence for humanity, it is important for global citizens to embed in society the notion that human rights are interdependent and indivisible, especially given that human rights concerns are no longer limited to issues of domestic concern in a globalised political-economy. For entities that promote external democratisation, emphasis should be placed on transnational intersectional movement building that encourages the connection between human rights activists and organisations situated in the global north and south (Manve, 2019; CIVICUS, 2019b). Noting the youthful nature of populations in mainly the global south, intersectional movement building amongst young people is essential for the deepening of democracy that responds to their needs, not only in the global south, but also in the north. Journalists reporting on human rights and state repression require added protection, and citizen-based monitoring of internet freedoms should be encouraged.

Moreover, human rights defenders and CSOs require technical support to empower citizen-based monitoring of state budgets, to further understand state priorities and expenditure on human rights, and to hold states accountable to progressively realise particularly social and economic rights. Lastly, to leverage the human rights potential of frameworks such as the SDGs, and ensure that it does not become reduced to a technocratic checklist of deliverables that have little bearing on the daily lives of the people it seeks to assist, relationships between NHRIs and local human rights defenders should be strengthened. In this way, through existing regional and international human rights structures, pressure can be exerted on states to meet their human rights obligations as articulated directly by global citizens (GANHRI, 2018; SAHRC, 2018).

From the examples cited earlier, it is evident that despite the gaps in the international human rights system, it has also been indispensable in promoting human rights education

in various cultures and societies throughout the world, highlighting that human rights are not static norms that exist in legal and policy frameworks in isolation from the political, economic and social context in which they operate. Instead, ordinary citizens are aware that human rights are essentially political, and that through grassroots mobilisation, resistance and demands for accountability, human rights is a powerful tool to ensure that democracy indeed delivers on its promise of securing a peaceful, just and free society for all the world's people.

## Conclusion

It is evident that the protection and advancement of human rights remains fundamental to the core of sustaining democracy underpinned by the values of dignity and equality. Concurrently - and notwithstanding its limitations, such as the advent of gross global economic inequalities that have had a negative impact on the realisation of the full range of human rights for all – democracy is still a useful governance structure to expand the reach of human rights, particularly for vulnerable and marginalised communities. The broad definition of liberal democracy also allows for the equitable redistribution of resources that allow for the realisation of human rights provided for in the UDHR and its associated Covenants. However, this can only be achieved if the priorities of governments of liberal democracies seek to ensure that democracy serves the interests of the majority of the people it governs, as opposed to only a political and economic elite.

It is also apparent that those who seek to promote and defend human rights must be adequately supported and protected, especially because of the innovative role they play in ensuring that democracy continuously contributes towards social progress. To this end, human rights advocacy must find expression in the rule of law, which is also a fundamental component of sustaining democracy, with a view of guaranteeing that those who violate human rights are adequately held to account. To counter the global rise of inequality between and within countries that threatens the attainment of a peaceful world order, the SDGs also present a useful opportunity to not only strengthen human rights-based approaches to development but can also be utilised progressively as a framework that aims to strengthen democracy in a manner that achieves more peaceful and inclusive societies. Ultimately, human rights remain a potent tool to ensure that power is reconfigured in democracies in a manner that frees the potential of humanity to secure a dignified existence for all.

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