

## **The Relevance of the Universal Declaration of Human Rights Today: Appraisal Based on Its Significance and Some Contemporary World Realities**

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### **Introduction**

The Universal Declaration of Human Rights, 1948 (UDHR), was adopted sixty years ago under the auspices of the United Nations (UN). Since its adoption, UDHR has witnessed various changes. First, there have been a number of attempts to wane the rights it contained through cultural relativization. Second, in recent years, it is caught in the cross fire of modern challenges, which grew complex due to globalization and the 9/11 terrorist attack, the rise of new human rights and the existence of binding human rights conventions of general or specific application and content.<sup>1</sup> Third, two World Conference on human rights were held. And, finally, UDHR has been a catalyst for an exemplary increase in human rights instruments and commendable coverage in their contents. In the system created by such instruments, a remarkable network of binding standards of human rights and mechanisms for their implementation has been established. Therefore, the situation the world was in at the time of its adoption has been changed by now in many ways.

Due to this change, UDHR has faced a number of challenges. For instance, at times its relevance today is questioned. This article is inspired by questions that have more to do with the need to examine applicability of UDHR today that can be generally put as '*What is the Relevance of the UDHR Today?*' Hence, it appraises the contemporary relevance of the UDHR. This is done from two perspectives: from its significance (nature) and realities of the world that call for its primary application today. Thus, this article tries to show its relevance based on these perspectives unlike other works that either simply proceed with presumption of its relevance or entertain its relevance from other dimensions. In this article, I argue that UDHR is a living Declaration as it gives human rights answer(s) to current challenges of the world and, therefore, relevant today. I show also that its relevance is not limited in what it

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<sup>1</sup> For instance, the International Covenant on Civil and Political Rights, 1966 (ICCPR), has general application or application to all human beings in Party States. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987, deals with a specific (torture) content. The Convention on the Rights of the Child, 1989, has specific application (application to children) in Party States.

contains but also in what it does. For simplicity, the work is presented in different parts. The first part gives historical background of the UDHR shortly to make the discussion complete. Then, some of the grounds that make it relevant today will be discussed. Finally, a brief conclusion will be made.

## **I. The UDHR: General Background**

Here, I will deal with some notable facts about the UDHR under distinct sub-sections.

### **A. The UDHR: the first international human rights document**

To reiterate the obvious, the UDHR is the first human rights instrument (IHRI) adopted at international level. Study of the history of human rights shows that before the adoption of the UDHR human rights issues were deemed to be matters of domestic laws.<sup>2</sup> This was based on the general and traditional understanding of international law as a law governing the relationship between and among states, not between states and the people in their territory.<sup>3</sup> Despite that understanding, the world community has come together to establish an international human rights system (IHRS) and this system was put in place for the first time through the UDHR.<sup>4</sup> In other words, the UDHR presented a turning point to the aforementioned conception in international law. It has made human rights issues among the subject matters of international law and thereby provided for the basis for IHRS, which is a special and distinct branch of contemporary international law.

### **B. The UDHR: Lynchpin of international human rights system**

The UDHR has been regarded as a document that possesses some grand qualities the past, present and future generations may give gratitude for it and its makers. These qualities make it the milestone of IHRS. Some of these qualities are worth mentioning. First, the UDHR is praised as the first more comprehensive IHRI proclaimed by a universal international organization, the UN.<sup>5</sup> It is comprehensive as it contains both civil and political rights, and

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<sup>2</sup> M Sepúlveda & et als Human Rights Reference Handbook, 3<sup>rd</sup> revised ed (2004) 5; A Eckert 'Universality by Consensus: The Evolution of Universality in the Drafting of the UDHR' (2001) 1 (2) Human Rights & Human Welfare 21

<sup>3</sup>T Buergenthal & etal International human rights in a nutshell, 3<sup>rd</sup> ed. (2002) 3; M Sepúlveda & et als (n 2 above) 4-5. J Crawford 'The criteria for statehood in international law' (1976-77) 48 British Y. B. International Law 98.

<sup>4</sup> M Sepúlveda & et als (n 2 above) 4-5.

<sup>5</sup>T Buergenthal & et'al (n 3 above) 35.

social, economic and cultural rights colloquially called first and second generation rights, respectively.<sup>6</sup> Thus, it is important and remarkable in dealing with both civil and political rights, and social, economic and cultural rights at all, international, regional and national, levels. This further buttressed the doctrine that all human rights are indivisible, interrelated and interdependent in the framework of human rights law.<sup>7</sup> Second, in the last six decades, the UDHR has inspired a number of human rights treaties in the world, and formed a basis of standard and primary source of IHRI and the IHRS governing them.<sup>8</sup> This is mainly due to its comprehensiveness, and high legal and moral standard it attained through time, among other things. Therefore, it seems possible to conclude that the UDHR forms the lynchpin of the international human rights framework.<sup>9</sup>

### **C. The UDHR: adoption**

The UDHR is a result of a reaction to the horrific experience of the Second World War (WWII).<sup>10</sup> The countries all over the world, in general, and the west in particular, realized that WWII 'lay in Hitler's contempt for human rights and freedoms.'<sup>11</sup> They also noted, human rights issues should be addressed only through a change to the traditional understanding of international law on human rights matters, which left such matters to domestic arrangements in each state. Experience showed that there is a strong correlation between human rights and peace.<sup>12</sup> Hence, peaceful existence in this world needs respect for human rights and no peace may result if human rights are violated.<sup>13</sup> Therefore, as peace

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<sup>6</sup> UDHR arts 3- 21 & 22-27 mention civil and political rights, and economic, social and cultural rights, respectively. Also see 'D Olowu 'Invigorating economic, social and cultural rights in the South Pacific: A Conceptual approach' (2007) 7 (1) QUTLJJ 74.

<sup>7</sup> Vienna Declaration and Programme of Action, 1993, Part I, para 5. UN Doc. A/CONF. 157/23.

<sup>8</sup>E Re 'The Universal Declaration of Human Rights: Effective remedies and the domestic courts' (2003) 33 California Western International Law Journal 145.

<sup>9</sup>Human Rights Commission, 'Relevance of human rights as strong today as ever,' available at <http://www.scoop.co.nz/stories/PO0512/S00089.htm> , accessed on August 20, 2008.

<sup>10</sup>J Morsink The Universal Declaration of Human Rights: Drafting, Origins & Intent, (2000) cited by A Eckert (n 2 above) 21. The drafters are influenced also by the women's movement, Latin American socialism, and Cold War rivalry. Ibid.

<sup>11</sup>A Cassese Human Rights in a Changing World, (1990) 29; F de Varennnes, "The fallacies in the 'universalism versus cultural relativism' debates in human rights law" (2006) 1 Asia-Pacific Journal on Human Rights and the Law 70.

<sup>12</sup>F de Varennnes (n 11 above) 70. Also see N Rodley 'The Universal Declaration of Human Rights: Learning from Experience' (2008) 5 (1) Essex Human Rights Review 1-6.

<sup>13</sup>UDHR, Preamble, para2.

loving nations, the states in the world agreed to protect human rights through international framework, among other things. This has resulted in the drafting, negotiation and, finally, adoption of the UDHR.<sup>14</sup> Thus, UDHR has an enduring relevance as it is a reflection of our past that helps us proceed forward. It continues to tell us for the need to respect human rights in order to live peacefully and what a failure to respect would entail.

#### **D. The UDHR: world declaration**

Due to the aforementioned reasons,<sup>15</sup> the UDHR has been prepared and adopted with the participation of 58 states under the umbrella of the UN in 1948.<sup>16</sup> UN member states from Western and Eastern Europe, North America, Latin America, Asia, and Africa have participated in the process and thus, the document was the result of works of these states.<sup>17</sup> In the words of Macmillan, it is ‘the fruit of several ideologies: the melting point of diverse conceptions of man and society.’<sup>18</sup> It is a document reflecting the views and values of various parts of the world not only the western world as such.<sup>19</sup> This makes it the ‘Bill of Rights of the World.’ Therefore, it is possible to argue that the UDHR is a Declaration of the world, not of the Western world only as some claim it to be.<sup>20</sup> Though it seems wise to question how inclusive of values of the various states in the world the UDHR is due to the participation of limited number of states, for instance, only four African states have participated in the making,<sup>21</sup> it is important to note that such issue is not worth its face value for four reasons.

First, the UDHR contains human rights that are universal and that exist in the traditions and

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<sup>14</sup>UDHR, Preamble, paras 1& 2.

<sup>15</sup> See 1.2.3.

<sup>16</sup>There were 20 states from Latin America, 14 states from Asia and 4 states from Africa. See F de Varennes (n 11 above) 71. For position of the states, see Year Book of the United Nations 1948-1949, UN Publications, Sales No. 1950 I. II, 1950, pp524-537.

<sup>17</sup>--- ‘Universal Declaration of Human Rights,’ available at <http://www.un.org/rights/HRToday/declar.htm> accessed on August 25, 2008.

<sup>18</sup>M Macmillan Paris 1919: Six months that changed the world, (2003) 37; F de Varennes (n 11 above) 72.

<sup>19</sup> Morsink also says that the process by which the UDHR was drafted included a variety of social, cultural, and ideological traditions and that the final document reflects this diversity. J Morsink (n 10 above) cited by A Eckert (n 2 above) 21

<sup>20</sup>--- ‘Dignity and justice for all of us,’ p. 31, available at <http://www.nelsonmandela.org/images/uploads/SAHRC-Dignity-for-all.pdf> accessed on August 20, 2008.

<sup>21</sup> Prof Y Ghai says that of the various criticisms that go against the UDHR the criticisms relating to its claims of universality and to the very utility of the rights it contained are not grounded on acceptable reasons. See Y Ghai ‘The Critics of the Universal Declaration’ (1998/9) 12 (1) INTERIGHTS Bulletin 45-46.

custom of various societies that are not fairly represented during its adoption.<sup>22</sup> First, the lack of fair representation should not be taken to conclusively argue that the UDHR does not represent the values of societies in some parts of the world as inclusion of the values of such states is possible even if there is no fair representation. Second, though there was no fair representation, the contents of the UDHR can be summarized as entitlements that exist in the societies found in all parts of the world as process by which it was drafted included a variety of social, cultural, and ideological traditions and that the best effort has been made to make the final document reflect this diversity.<sup>23</sup>

Furthermore, incorporation of all values is still not practically feasible as it is difficult, if not impossible, to identify and include them within such short period the UDHR was adopted. Moreover, what is intended was not to come up with an instrument that contains all values of the people in all parts of the world; rather, to prepare a document of universal application that contains only some human rights values that have a common application in all parts of the world.<sup>24</sup> In other language, the UDHR portrays a point of remarkable degree of consensus by governments on the principle at least that certain rights be protected under international law regardless of disputes over their conceptualisation and application. Thus, failure to incorporate all values of all states around the world cannot afford to be a good reason to argue that the UDHR does not reflect the values of the states in different parts of the world. Nor, non-incorporation of some values of some countries in certain parts of the world cannot make a good justification to hold that the UDHR does not belong to the countries in such part of the world. It would appear logically not only appealing but also strong to say that the UDHR represents only a minimum principle for such countries. The UDHR is also not claiming that it reflects all the values of all states of the world but only some of them that can be taken as common values to all human kind around the world as its preamble proclaims.<sup>25</sup>

Second, the UDHR was a document adopted with consensus and abstinence. No single state objected to its adoption. But six Communist states led by the USSR and South Africa for

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<sup>22</sup> M Macmillan (n 18 above) 37; F de Varennes (n 11 above) 72; J Morsink (n 10 above) cited by A Eckert (n 2 above) 21.

<sup>23</sup> M Macmillan (n 18 above) 37; F de Varennes (n 11 above) 72; J Morsink (n 10 above) cited by A Eckert (n 2 above) 21

<sup>24</sup> See UDHR, Preamble, para8.

<sup>25</sup>UDHR, Preamble, para8.

political reasons, and Saudi Arabia, for religious reason abstained from voting in its favour.<sup>26</sup> This implies that, even these states were somehow in belief that its contents were not objectionable to societies in different parts of the world.<sup>27</sup>

Furthermore, the interpretation of Islamic law (by the Saudi representative in the Third Committee as a law that prohibits change of religion which is inconsistent with the assertion in Article 18 that the right to freedom of thought, conscience and religion includes the freedom to change one's religion) that was taken as a basis for abstinence of Saudi Arabia was not accepted by other Muslim participants in the debates.<sup>28</sup> In addition, the states that abstained from voting have played an active role in the drafting process and were instrumental in the final form of several articles.<sup>29</sup> Accordingly, Mickelson says that '[f]rom the point of view of human rights advocates, this abstention could almost be regarded as providential: the pariah exception that proves the rule.'<sup>30</sup> It is also important to note that the importance of the eight abstentions should not be downplayed at the same time the eight abstentions should not be lifted to a level they should not deserve. They are significant as they show not only the unwillingness of any state to vote against the Declaration but also the assumption that, while the Declaration itself might be flawed from some perspectives, the norms embodied therein were not rejected outright by any member of the international community.<sup>31</sup>

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<sup>26</sup> K Mickelson 'How universal is the Universal Declaration?' (1998) 47 *University of New Brunswick Law Journal* 20-21; J Humphrey, *Human Rights and the United Nations*, (1984) 71-73; J Morsink (n 10 above) cited by A Eckert (n 2 above) 21. (Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR and Yugoslavia) abstaining from the vote. The UN member states which voted in favour of the declaration were Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma (Myanmar), Canada, Chile, China, Columbia, Costa Rica, Cuba, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam (Thailand), Sweden, Syria, Turkey, United Kingdom, United States, Uruguay and Venezuela.

<sup>27</sup> K Mickelson (n 24 above) 20; J Humphrey (n 24 above) 73; J Morsink (n 10 above) cited by A Eckert (n 2 above) 21.

<sup>28</sup> K Mickelson (n 24 above) 20-21; J Humphrey (n 24 above) 71-73.

<sup>29</sup> J Morsink (n 10 above) cited by A Eckert (n 2 above) 21.

<sup>30</sup> K Mickelson (n 24 above) 20.

<sup>31</sup> K Mickelson (n 24 above) 20.

Third, the regional human rights systems established in different regions of the world add upto the conclusion that the UDHR is a universal document as they make reference to it as to the enforcement of human rights in their systems.<sup>32</sup>This can also be seen from domestic laws.<sup>33</sup>

Fourth, the formulation of the UDHR shows also the fact that it is a document of the world. As far as the formulation of UDHR is concerned, human rights were deliberately grounded in the seemingly uncontroversial notion of human dignity.<sup>34</sup> This can be seen from its Preamble that refers to the ‘dignity and worth of the human person’ and Article 1, which proclaims, ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’ The concept of human dignity and worth exists in all communities around the world despite the difference in the understanding relating to the concept in each community.<sup>35</sup> The UDHR is a result of identified denominators of the concept while recognizing its peculiarities. By the same token, the status of human dignity as the source of human rights is made explicit in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which state that human rights ‘derive from the inherent dignity of the human person.’<sup>36</sup> Thus, if we say the ICCPR and ICESCR are human rights documents that reflect the human rights views of the world community as the rights they contain are grounded in notion of human dignity, then the same logic works for the UDHR.

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<sup>32</sup> See African Charter on Human and Peoples’ Rights, 1986, Preamble para4; American Convention on Human Rights, 1978, Preamble, paras 3&4; European Convention for the Protection of Human Rights and Fundamental Freedoms, 1953 as amended in 1998, Preamble , paras 1 & 2.

<sup>33</sup> For instance, Constitution of the Federal Democratic Republic of Ethiopia, 1995 (FDREC), provides that the bill of rights therein shall be interpreted in light of the UDHR among other human rights instruments. FDREC, Proclamation No. 1/1995, *Federal Negarit Gazeta*, 1<sup>st</sup> Year No. 1, Art.13 (2). To cite a practice in Africa, in Attorney General v. Unity Dow case, the Supreme Court of Botswana noted that the UDHR ‘must have formed part of the backdrop of aspirations and desires against which the framers of the Constitution of Botswana formulated its provisions.’ In addition, the UDHR has been referred in several African cases. See H Hannum ‘The status of the Universal Declaration of Human Rights in national and international law’ (1995/1996) 25 Georgia Journal of International and Comparative Law 304.

<sup>34</sup>K Mickelson (n 24 above) 22.

<sup>35</sup> K Mickelson (n 24 above) 22; J Donnelly, *Universal Human Rights in Theory and Practice*, (1989) 90; S Sucharitkul ‘A Multi-Dimensional Concept of Human Rights in International Law’ (1987) 62 Notre Dame Law Review 306-307.

<sup>36</sup> Preambles, paras, 1 & 2 of the ICCPR and ICSECR.

Finally, the UN World Conferences on Human Rights in Tehran and Vienna, which were marked by an unprecedented degree of support by the international community (including delegations from 171 States),<sup>37</sup> have made a remarkable contribution. The participants of these Conferences reaffirmed the centrality of the UDHR for human rights protection under the Proclamation of Teheran (1968) and Vienna Declaration and Programme of Action (1993).<sup>38</sup> This may be taken as official recognition of the fact that the UDHR is a world document, not of only the West. It can also be taken as a reaffirmation that has a retroactive effect that makes the UDHR a world document, at least after the Conference. Thus, the UDHR is no more the documents of the West for those who held such position. In addition, the Conferences also emphasized that human rights are universal, indivisible, interrelated and interdependent, and they should be promoted in equal manner.<sup>39</sup> This supports the argument that the UDHR reflects the understanding of human rights by the world community as it reflects such characters of human rights. Finally, the delegates in the Vienna Conference rejected arguments that some human rights were optional or subordinate to cultural traditions and practices.<sup>40</sup> The Vienna Conference thus has not only given high priority to preserving the integrity of the UDHR<sup>41</sup> but also affirmed the fact that it contains rights that are universal to the world and thereby made it a document of the world.<sup>42</sup>

### **E. The UDHR: holistic approach and aspirational beginnings**

It is important to note that UDHR is a document that is holistic in approach and aspirational in nature. It is holistic in approach<sup>43</sup> because it includes human rights that are classified as first and second generation rights. This makes it unique and that is why it is called a

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<sup>37</sup> ... 'A United Nations Priority' available at ...; see also H Hannum (n 31 above) 290.

<sup>38</sup> M Sepúlveda & et als (n 2 above) 5.

<sup>39</sup> ... 'A United Nations Priority' available at

<sup>40</sup> ... 'A United Nations Priority' available at

<sup>41</sup> ... 'A United Nations Priority' available at

<sup>42</sup> In the UN Millennium Declaration 2000, the heads of state and government have resolved '[t]o respect fully and uphold the Universal Declaration of Human Rights' under paragraph 25. See UN General Assembly Resolution 55/2. This also shows that the UDHR is no more the document of the West, but that of the world.

<sup>43</sup> G Alferdsson & A Eide (eds) *The Universal Declaration of Human Rights: A common standard of achievement*, (1999) xxx.



comprehensive document unlike other human rights treaties.<sup>44</sup> It is also a remarkable feature of the UDHR that it gives equal status to both civil and political rights, and economic, social and cultural rights.<sup>45</sup> Besides together with the other International Covenants and the Optional Protocols, it forms 'International Bill of Rights'.<sup>46</sup> Therefore, it is usually said that '[t]he UDHR sets forth a framework for realization of the full scope of human rights and freedoms.'<sup>47</sup> However, this should by no means be taken to mean that the UDHR is without any drawbacks particularly with respect to its content. It is incomplete for it does not include some of the most important rights at issue today, like the right to self determination and 'certain rights for minorities.'<sup>48</sup>

By the same token, the UDHR was aspirational in nature because it was adopted as a Declaration that calls countries to aspire to enable the full enjoyment of those rights.<sup>49</sup> It is an instrument that shows the intention of the countries that adopted it, i.e. to provide for 'a common standard of achievement for all peoples and all nations.'<sup>50</sup> At this juncture, one may ask whether the UDHR remained as a mere Declaration. Though it, originally, was not adopted as an instrument with a legal force, rather as a Declaration adopted through the resolution of the General Assembly of the UN, the status of the document has been significantly changed.<sup>51</sup> Today, it 'exerts a moral, political, and legal influence far beyond the hopes of many of its drafters.'<sup>52</sup> By now, its status has changed and the UDHR has commonly been regarded as an instrument with not only legal and political force but also with moral influence, at least partly.<sup>53</sup>

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<sup>44</sup>G Alferdsson & A Eide (eds) (n 43 above) xxx.

<sup>45</sup>G Alferdsson & A Eide (eds) (n 43 above) xxix.

<sup>46</sup> United Nations Human Rights Office of the High Commissioner for Human Rights (OHCHR), '2007 Report on Activities and Results,' available at [http://www.ohchr.org/Documents/Press/OHCHR\\_Report\\_07\\_Full.pdf](http://www.ohchr.org/Documents/Press/OHCHR_Report_07_Full.pdf) , accessed on August 26, 2008, p.15.

<sup>47</sup> --- 'Does the 50-year old UDHR adequately address current human rights dilemmas?' available at [http://www.udhr.org/history/question.htm#\\_Toc397930437](http://www.udhr.org/history/question.htm#_Toc397930437), accessed on August 19, 2008.

<sup>48</sup> --- 'Does the 50-year old UDHR adequately address current human rights dilemmas?' (n 47 above).

<sup>49</sup> Declaration is a document with no direct or positive legal obligations on states.

<sup>50</sup>UDHR, Preamble, para8.

<sup>51</sup>T Buergenthal & et'al (n 3 above) 39.

<sup>52</sup> H Hannum (n 31 above) 289.

<sup>53</sup> See 1.3.1.4.

## **F. The UDHR: open-ended and forward-looking design**

By design, the UDHR is ‘an open-ended and forward-looking document.’<sup>54</sup> It is far sighted. It is designed in such a way that it can provide protection from human rights violation based on any unforeseen ground. For example, Article two provides for protection from discrimination in the enjoyment of the fundamental rights and freedoms contained under the Declaration based on various factors including ‘other status.’ By adding the phrase ‘other status’, the framers of the UDHR ‘recognized that with time other kinds of discrimination might attract public attention’ and they worked to anticipate the same.<sup>55</sup> This makes it a far sighted document. It can, therefore, conveniently address new developments with respect to discrimination in a desired manner.<sup>56</sup> In addition, it put first and second generation rights on equal footings showing that human rights need to be addressed as indivisible, interrelated and interdependent notions, which the world has realized only recently and yet failed to act accordingly. Furthermore, it has envisioned the need to adopt comprehensive enforcement mechanisms in order to realize human rights promises.<sup>57</sup>

## **II. Significance and relevance of the UDHR**

It is indisputable that the UDHR is a significant Declaration. It has brought many noticeable changes in the world since its adoption.<sup>58</sup> Thus, it is a document of innumerable significance. Similarly, the significance and relevance of the UDHR may be entertained from different perspectives. However, here I will deal with its relevance from the perspectives of its nature or significance and the reality on the ground, respectively.

### **A. Relevance of the UDHR: from its significance (nature)**

I believe that the UDHR is significant and relevant today for the following reasons.

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<sup>54</sup> --- ‘Does the 50-year old UDHR adequately address current human rights dilemmas?’ (n 47 above).

<sup>55</sup> --- ‘Does the 50-year old UDHR adequately address current human rights dilemmas?’ (n 47 above).

<sup>56</sup> See, for instance, D Catania ‘The Universal Declaration of Human Rights and sodomy laws: A Federal Common law right to privacy for homosexuals based on customary international law’ (Winter 1994) 31 American Criminal Law Review 289.

<sup>57</sup> UDHR, Preamble & Arts 28-30.

<sup>58</sup> G Alferdsson & A Eide (eds) (n 43 above) xxviii.

## **1. The UDHR: the first international recognition of human rights for all and a guide for their realization**

The UDHR ‘was the first international recognition that *all human beings* have fundamental rights and freedoms.’<sup>59</sup> This shows that human beings should be entitled to certain basic rights regardless of where they are, their race, sex, or other status.<sup>60</sup> This makes the UDHR relevant even today as people in some parts of the world are suffering from gross human rights violations.<sup>61</sup> The rights proclaimed to be entitlements for all human beings alike under the UDHR have different reality in different parts in the world today. The pledge to “promote ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’” will be difficult to realize without the UDHR.<sup>62</sup> Hence, like it was in 1948, we need the UDHR as it contains principles that can be used as guide for the protection of human rights in all corners of the world today.

## **2. The UDHR: its relevance to the UN Charter**

The UDHR is relevant today as it is an instrument consisting of norms and principles against which the ‘human rights provisions of the United Nations Charter’ are interpreted and enforced.<sup>63</sup> It is true that the UN Charter (the Charter) contains several provisions related to human rights.<sup>64</sup> But it does not contain the list of these rights.<sup>65</sup> It only makes a general reference to human rights without the mention of these rights. The reference was necessitated by the fact that human rights were the major concerns at the time the Charter was adopted and the need to recognize these rights as enforceable under international law was pressing.<sup>66</sup>

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<sup>59</sup> OHCHR, ‘Universal Declaration of Human Rights,’ available at <http://www.ohchr.org:80/EN/UDHR/Pages/60UDHRIntroduction.aspx> accessed on August 19, 2008. Emphasis mine.

<sup>60</sup> UDHR, Preamble, & arts 2 & 7.

<sup>61</sup> OHCHR, ‘Universal Declaration of Human Rights,’ (n 59 above).

<sup>62</sup> E Re (n 8 above) 142.

<sup>63</sup> G Alferdsson & A Eide (eds) (n 43 above) 41. For some cases and resolutions of the UN Security Council, see E Schwelb ‘An Instance of enforcing the Universal Declaration of Human Rights: Action by the Security Council’ (Jan., 1973) 22 (1) *The International and Comparative Law Quarterly* 161-163; M Sepúlveda & et als (n 2 above) 5.

<sup>64</sup> See UN Charter, Arts 1, 13, 55, 62, 68 & 76; E Re (n 8 above) 141.

<sup>65</sup> E Re (n 8 above) 141.

<sup>66</sup> E Re (n 8 above) 141.

The task of elaborating and coming up with the list of rights that are deemed to be fundamental human rights, 'International Bill of Rights', was entrusted to the UN Economic and Social Council (UNESCO).<sup>67</sup> The UNESCO established a Human Rights Commission (HRC) in 1946 that was mandated to carry out this task.<sup>68</sup> The HRC decided that the Bill of Rights would be presented in two parts,<sup>69</sup> the first being a declaration to be approved by States at the UN General Assembly meeting and having only a 'moral force.'<sup>70</sup> Though it has a mere moral force, such declaration is to be proclaimed with a view to convey a message to the people and states of the world that 'this is what we hope human rights may mean to all peoples in the years to come.'<sup>71</sup> The second part of the Bill of Rights would be a covenant in the form of treaty.<sup>72</sup> Accordingly, the HRC had come up with the UDHR as the document that serves as the first means of presenting elaboration of the fundamental human rights articulated under the Charter and the Bill of Rights in 1948. Therefore, the UDHR is 'an authoritative interpretation of the Charter of the highest order [or the UN Charter].'<sup>73</sup>

This truth was further buttressed by the observation of the International Law Association (ILA) made in 1994. ILA noted that the UDHR 'is universally regarded as an authoritative elaboration of the human rights provisions' of the Charter.<sup>74</sup> The UDHR has also been considered as a Declaration imposing obligations that emanate from the concept of human dignity as recognized by the Charter and the Declaration itself.<sup>75</sup> Therefore, it consists in the rights the world community has pledged to respect under the Charter.<sup>76</sup> From these facts, it is

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<sup>67</sup> E Re (n 8 above) 141.

<sup>68</sup> M Sepúlveda & et als (n 2 above) 5; E Re (n 8 above) 141.

<sup>69</sup> E Re (n 8 above) 141.

<sup>70</sup> E Re (n 5 above) 141.

<sup>71</sup> The Struggle for Human Rights: Address by Mrs. Franklin D. Roosevelt, U.S. Representative to the Commission on Human Rights, Sept. 28, 1948, Dep't St. Bull., Oct. 10, 1948, at 457 quoted in E Re (n 8 above) 141.

<sup>72</sup> E Re (n 8 above) 141.

<sup>73</sup> H Hannum (n 31 above) 323.

<sup>74</sup> H Hannum (n 31 above) 323. H Hannum 'The status of the Universal Declaration of Human Rights in national and international law' (1998/9) 12 (1) INTERRIGHTS Bulletin 3-8.

<sup>75</sup> H Hannum (n 31 above) 323.

<sup>76</sup> H Hannum (n 31 above) 319.

apparent that the UDHR has been significantly transformed from aspiration to fundamental obligations that constitute part and parcel of states' obligations under the Charter.

As part of the Charter, the UDHR is a document relevant today in the maintenance of international peace, and universal respect for human rights and fundamental freedoms. To say that the UDHR is outdated is to make the human rights provisions and concept of the Charter outdated. It is relevant today and represents the first concrete step to fulfilling the pledge to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all' under the Charter.<sup>77</sup> Therefore, principles of UDHR are what states have pledged to protect to people in their territory under the Charter. Accordingly, UN Member States must implement the rights under the UDHR in order to discharge their obligations under the Charter. Consequently, whether states are living up to their obligations under the Charter or not is evaluated based on the progress and achievement in light of the UDHR.

### **3. The UDHR: on UN human rights conventions**

With respect to the UN human rights conventions (HRCs), the significance and relevance of the UDHR should be seen from two dimensions: from States parties to such conventions (MSC) and from states that are not parties to such conventions (NMSC). To begin with the first dimension, the UDHR is significant and relevant to specific HRCs and to MSC as it is a document that establishes *a minimum standard of rights* for all human beings in all parts of the world at all times.<sup>78</sup> It provides for the minimum standards of human rights as contained under those specific UN HRCs and ratified by MSC. As it provides for a standard which is a minimal requirement for peaceful and dignified existence of human beings, the rights under the specific UN HRCs and the obligations of MSC are to be interpreted in line with the contents of the UDHR.<sup>79</sup> The minimum standards of protection under UN HRCs are set out under the UDHR and MSC are required to give higher degree of protection or at least maintain the level of protection under the UDHR, but can by no means go below the standard UDHR sets out.

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<sup>77</sup> E Re (n 8 above) 142.

<sup>78</sup> F de Varenes (n 11 above) 71; See also M Mutua 'Standard Setting in Human Rights: Critique and Prognosis' (2007) 29 Human Rights Quarterly 547-630.

<sup>79</sup> For national cases citing the UDHR, see H Hannum 'National Cases Citing the Universal Declaration of Human Rights' (1998/9) 12 (1) INTERRIGHTS Bulletin 47-49. In the State versus H. Williams and others case, the Constitutional Court of South Africa has tended to say that the UDHR is the minimum standard which the bill of rights under the constitution provides for. CASE NO: CCT/20/94.

However, though the rights enshrined under the UDHR represent minimum standards of human rights, the implementation of these rights remains to be nothing but a promise on paper.<sup>80</sup> Looking in to the records of human rights violations and the awareness of the people all around the world about human rights, UDHR is far from realization of the protection it promised to offer to the people of the world.<sup>81</sup> The reality on the ground shows that the contents of the UDHR are nothing but ‘a luxury or a wish-list.’<sup>82</sup> Therefore, it is not a document out of date, rather is a document that needs due attention even sixty years after its adoption if human beings are to live with dignity, international peace and order is to prevail, and friendly relationship among nations should be achieved. In the words of Menchu R., ‘the Universal Declaration of Human Rights is a goal. It is a goal that has still not been achieved and one that we must work toward.’<sup>83</sup> Therefore, it is a document of contemporary importance as it is a goal that we need to achieve to make the world a place where ‘the greatest fulfilment of human potential,’<sup>84</sup> a promise which is at the heart of the UDHR, is a reality.

Concomitant to this, with respect to MSC, the UDHR is relevant and significant as it thereby serves as a parameter of measurement for it provides a minimum standard of human rights and basis of interpretation for the same. It serves as a parameter to measure the ‘performance of governments’ in relation to the protection of human rights and discharge of their obligations under specific UN HRCs by relevant bodies including the UN.<sup>85</sup> Whether a government upholds human rights or not is adjudged based on the scores it gets in relation with the standards UDHR sets. Hence, whether MSC are living up to their obligations under

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<sup>80</sup> Amnesty International, ‘Amnesty International Report 2008 Foreword,’ p.4, available at <http://thereport.amnesty.org/document/47>, accessed on August 23, 2008.

<sup>81</sup> G Alferdsson & A Eide (eds) (n 43 above) xxv.

<sup>82</sup> --- ‘The Universal Declaration of Human Rights: 1948-2008,’ available at <http://www.un.org/events/humanrights/2007/>, accessed on August 29, 2008.

<sup>83</sup> --- ‘Human rights at fifty,’ available at <http://www.commongroundradio.org/shows/98/9849.html>, accessed on August 20, 2008.

<sup>84</sup> L Arbour ‘Statement by High Commissioner Louise Arbour on the Occasion of Human Rights Day, 10 December 2007,’ available at [http://nepal.ohchr.org/en/resources/Documents/English/statements/HC/Year2007/2007\\_12\\_10\\_HRDAY\\_E.pdf](http://nepal.ohchr.org/en/resources/Documents/English/statements/HC/Year2007/2007_12_10_HRDAY_E.pdf), accessed on August 21, 2008.

<sup>85</sup> G Alferdsson & A Eide (eds) (n 43 above) xxv.

the various UN HRCs or not is evaluated based on the progress and achievement in light of the UDHR.

Coming to the second perspective, the UDHR serves as a parameter to measure the 'performance of governments' of NMSC by the UN and other relevant bodies in the same fashion as MSC.<sup>86</sup> Similarly, the evaluation as to whether governments in NMSC uphold human rights or not is made on the basis of the standards set out under the UDHR and resolutions on same are entered based on the score they get in relation with those standards. Like MSC, the principles under the UDHR are what NMSC have pledged to protect to the people in their territory under the Charter. Hence, whether NMSC are living up to their obligations under the Charter or not is evaluated based on the progress and achievement made in light of the contents of the UDHR.

Therefore, the UDHR provides a minimum standard of human rights for all states (MSC and NMSC) though the sources of the human rights obligations may differ. The sources of human rights obligations for MSC are the Charter, the UDHR and the various HRCs; whereas, the sources of the human rights obligations for NMSC are only the Charter and the UDHR. Regardless of this, the UDHR provides for the minimum standard of protection of human rights in all UN Member States.

Finally, the UDHR serves some other purposes with respect to both NMSC and MSC. In particular, it serves as an instrument to evaluate the legitimacy of a government.<sup>87</sup> This is because there is an obvious correlation between legitimacy and human rights protection. In most cases, the higher a government scores in the evaluation for respect of human rights, the more legitimate it is. A government can not claim legitimacy where it commits gross violation of human rights.<sup>88</sup> Therefore, the UDHR is still a relevant instrument as it serves the purpose of measuring governments' performance in the field of human rights and degree of legitimacy.

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<sup>86</sup> G Alferdsson & A Eide (eds) (n 43 above) xxv.

<sup>87</sup> G Alferdsson & A Eide (eds) (n 43 above) xxv.

<sup>88</sup> G Alferdsson & A Eide (eds) (n 43 above) xxv.

#### **4.The UDHR: aide to interpretation of domestic legislation**

With respect to domestic legislation, the UDHR provides an aid to a constitutional or statutory interpretation.<sup>89</sup> As some of its principles form part of rules or norms of customary international law, it is relevant in interpreting domestic legislation and constitutions.<sup>90</sup> It most often provides an aid to interpretation of provisions of domestic legislation in particular affecting human rights.<sup>91</sup> For instance, in various African states, the UDHR has been used as an aide to interpret the contents of the rights enshrined in the bill of rights under domestic constitutions.<sup>92</sup> In addition, the UDHR has been referred in several cases in African states.<sup>93</sup> Moreover, the constitutions of some countries like Ethiopia provide that any human rights and fundamental freedoms provisions therein shall be interpreted in light of the UDHR among other instruments.<sup>94</sup> Therefore, as an instrument that gives aid to constitutional and statutory interpretation, the UDHR remains relevant today.

#### **5.The UDHR: legislative, administrative and judicial acts, and democratic reforms**

To begin with, the influence of the UDHR on legislative, administrative and judicial acts makes it significant and relevant today. Legislative acts in different parts of the world and national constitutions have been greatly influenced by the principles of the UDHR.<sup>95</sup> The influence varies from direct reproduction of the rights it contains into domestic constitutions to getting inspiration to formulate and guarantee rights enshrined under the constitutions.<sup>96</sup>

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<sup>89</sup> Read Y Shany 'How supreme is the supreme law of the land? Comparative analysis of the influence of international human rights treaties upon the interpretation of constitutional texts by domestic courts' (2006) 31 (2) Brook Journal of International Law 341-404.

<sup>90</sup> E Re (n 8 above) 154.

<sup>91</sup> H Hannum (n 31 above) 303; CASE NO: CCT/20/94.

<sup>92</sup> For instance, the case of THE STATE versus HENRY WILLIAMS and others, the Constitutional Court of South Africa, the Constitutional Court has used the UDHR in order to interpret the contents of the rights under the bill of rights of the constitution. CASE NO: CCT/20/94. In the Attorney General v. Unity Dow case in Botswana, the Supreme Court noted that '[t]he Universal Declaration must have formed part of the backdrop of aspirations and desires against which the framers of the Constitution of Botswana formulated its provisions.' H Hannum (n 31 above) 303-304.

<sup>93</sup> For national cases citing the UDHR, see H Hannum (n 79 above) 47-49.

<sup>94</sup> FDREC (n 31 above), Art13 (2).

<sup>95</sup> H Hannum (n 31 above) 313-315.

<sup>96</sup> H Hannum (n 31 above) 313-315.



Second, it is possible to see that in some African states like Ethiopia, Botswana, Mauritius and South Africa, the UDHR, together with other IHRI, influence the acts of the judiciary as courts have been resorting to the UDHR to get assistance in the interpretation of provisions of the Bill of Rights under their respective constitutions.<sup>97</sup>

Third, the UDHR is significant and relevant today as it influences administrative acts. Particularly, it serves as a basis for formulation and enforcement of policies by the executive organs of governments. It has been submitted that both administrative policies and enforcement of domestic laws may either advance or undermine the norms of human rights.<sup>98</sup> Therefore, states need to have regard to these rights in the formulation and implementation of policies and laws. The norms and principles under the UDHR are significant in this regard because policies are directions to achievement that need to be geared in line with internal interests and international obligations and the UDHR provides such obligations broadly. Accordingly, the principles adopted in the UDHR are progressively more utilized by governments of different states in formulating foreign policies and in deciding on matters of development assistance.<sup>99</sup>

Therefore, the impact of the UDHR on the acts of the three classic organs of a government, which we should not underestimate, ascribes contemporary relevance and significance to the instrument.

Finally, the UDHR is relevant and significant today as it offers guidance to democratic reform. It is relevant on the point of democratic reforms. As different countries particularly in Africa are struggling to bring about democracy for their people, it helps these countries as it provides ‘a fundamental statement of rights, either binding on a state as customary law or serving as an inspiration for interpreting domestic law,’ which are significant in consolidating democracy in Africa.<sup>100</sup> In addition, the UDHR provides that the protection of human rights through the principle of the rule of law, which is one of the principles of democracy, is necessary, and if this is not entrenched in a country, the people may resort to a rebellion

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<sup>97</sup> See n 91, n 92 & n 93 above.

<sup>98</sup> H Hannum (n 31 above) 316.

<sup>99</sup> H Hannum (n 31 above) 316.

<sup>100</sup> H Hannum (n 31 above) 313-315.

against tyranny and oppression to ensure it.<sup>101</sup> The UDHR has, therefore, significant influence in the formulation of human rights standards and democracy at the national level in such countries.

## **6. The UDHR: part of customary international law**

The UDHR is part of customary international law, which is a source of public international law.<sup>102</sup> The repeated and consistent reliance on, and resort to the UDHR by the UN, inter-governmental organizations, and governments ‘leads to the conclusion that the Declaration or, at the very least, some of its provisions, have become principles of customary international law.’<sup>103</sup> This makes, at least, some rights under the UDHR form rules of customary international law,<sup>104</sup> i.e., *erga omnes* duties (duties that exist with respect to matters that concern all states) of states.<sup>105</sup> Moreover, these rights have acquired the status of duties that represent ‘a well-recognized peremptory norm under the doctrine of *jus cogens*, which binds all nations under international law,’ and which are non-derogable.<sup>106</sup> Several international law jurists have come to such conclusion and so does the ILA. The ILA has concluded that ‘many if not all of the rights elaborated in the ... Declaration ... are widely recognized as constituting rules of customary international law.’<sup>107</sup> Therefore, the UDHR is still relevant as it contains a set of principles of customary international law that applies to all states today.

## **C. Some of the realities on the ground that make the UDHR relevant today**

Under this section, the relevance of the UDHR would be appraised based on the second

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<sup>101</sup> The UDHR, Preamble, para3.

<sup>102</sup> I Brownlie Principles of Public International Law, 5<sup>th</sup> ed (1998).

<sup>103</sup> T Buergenthal & et'al (n 3 above) 42.

<sup>104</sup> The UN Human Rights Committee mentioned some rights as forming part of customary international law. They can be related to the UDHR provisions: Prohibition of slavery and torture or cruel, inhuman or degrading treatment or punishment (arts 4&5); arbitrary deprivation of life, and arrest and detention (arts 3 & 9); denial of freedom of thought, conscience and religion (art18); presumption of guilt of a person (art 11(1)); marriage (art 16 (1)); and the right to a fair trial (art 10). See General Comment 24, 1994

<sup>105</sup> E Re (n 8 above) 153.

<sup>106</sup> E Re (n 8 above) 154.

<sup>107</sup> H Hannum (n 31 above) 319.

perspective: some realities of the world. These realities are important in showing the relevance of the UDHR today as they prove that it is particularly relevant to tackle a number of issues. I will discuss some of the specific issues subsequently.

### **1. The UDHR: the rise of new rights**

In recent years, various new rights are emerging. These rights include the right to development and the right to freedom of religion. Here, I will deal with the right to development as the right to freedom of religion<sup>108</sup> is a right that is distinct from the classic understanding of the notion of human rights and at its infancy, and needs deeper research.

Coming to the right to development, it is possible to say that it is one area of modern human rights concern as with poverty human beings would be compelled lead degrading life.<sup>109</sup> Though the issue of the right to development has got emphasis about three decades ago, it is still not enjoyed by the vast majority of the population of the world. However, the UDHR has provided for the right, though indirectly. It contains a number of elements that became central to the international community's understanding of the right to development as it attaches importance, for example, to the promotion of social progress and better standards of life, the right to participate in public affairs and the right to an adequate standard of living.<sup>110</sup>

The relevance of the UDHR today is not limited to indirect recognition of the right to development; rather, extends to the realisation of the right as well. Because, though the '[r]esponsibility for development must primarily be shouldered by the developing nations themselves,' it needs international cooperation and participation of all members of the community.<sup>111</sup> Thus, the benefit such cooperation and participation may offer towards the realization of the right to development should not be undermined. The UDHR provides these

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<sup>108</sup> It is a right that says religions should be free from critics, disgrace and association with a specific unapproved act. It emerged due to the common trend of associating certain religion with an act of terrorism after the 9/11 terrorist attack. See a statement made by H.E. Mr. Ali Reza Moaiyeri Ambassador and Permanent Representative of the Islamic Republic of Iran Before the Sixth Resumed Session of Human Rights Council on the Occasion of 60th Anniversary of Universal Declaration of Human Rights, Geneva – 10 December 2007

<sup>109</sup> I Hadiprayinto 'Poverty the right to development and international human rights law' p.1, available at <http://www.civitatis.org/pdf/povertyhr.pdf>, accessed on August 13, 2008.

<sup>110</sup> I Hadiprayinto (n 108 above) 10; D Türk 'The right to development' (1998/9) 12 (1) INTERIGHTS Bulletin 42-43.

<sup>111</sup> S Chowdhury & et al (eds) The Right to development in international law, (1992) 154.

methods as means of realization, among others.<sup>112</sup> Categorically, it provides that the right to development would be realized through cooperation with the UN, all peoples and all nations, every individual and every organ of society, and the peoples of Member States themselves and among the peoples of territories under the jurisdiction of Member States, among other means.<sup>113</sup> This shows that the UDHR is far sighted. It also shows that it is not only a response by the world to the realities immediate to WWII but also it is a response relevant to today's challenge of many countries, particularly of Africa, Asia, Eastern Europe and Latin America.

At this juncture, it is important to mention that the relevance and significance of the UDHR with respect to the right to development is astonishingly glaring as it is an instrument possessing a special place in the international order. It is a Declaration that significantly differs from the UN Declaration on the Right to Development, 1986 (DRD). The UDHR is often regarded as an instrument of strong moral, legal and political force and also its provisions, at least some, form part of international customary law unlike the DRD. The DRD is a mere declaration with no such degree of moral, legal and political force. This also makes the UDHR acquire considerable importance with respect to the right to development and relevant today.

## **2. The UDHR: relevance to globalization**

Unlike the time when the UDHR was adopted, the world is in the era of globalization today. Globalization opens a door for more regular interaction of people 'across national and cultural borders.'<sup>114</sup> This has made the interaction among people and states complex. For instance, cultural identity is put at risk due to cultural domination of one group (of the western world) over the culture of the other parts of the world. Furthermore, technological transfer has caused issues relating to intellectual property interests. Cross-boundary movement of human beings has also dramatically increased thereby causing issues related to the relationship between such people and the host state, and drawing attention on the manner

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<sup>112</sup> UDHR, Preamble, para6.

<sup>113</sup> UDHR, Preamble, paras 6 &8.

<sup>114</sup> N Englehart & et al 'Observing human rights in an age of globalization,' in *Constructing Human Rights in the Age of Globalisation*, M Monshipouri & et al (eds) (2004) x.

of regulation of such relationship.<sup>115</sup> Similarly, the numbers of non-state actors like Multilateral Corporations and human rights abuses by them have steadily increased. Consequently, issues relating to the relationships of victims of such abuses and the non-state actor have arisen.<sup>116</sup>

These and other similar complex relationships between and among states, non-state actors and people need rules that govern them. It goes without saying that such rules have various aspects. The human rights standards and norms embedded under the UDHR that 'have gained prominence as a universally recognized set of norms and standards' may help us in formulating the rules that should be adopted to govern relationships that would arise as a result of globalization as they increasingly inform all aspects of our relations as individuals and as collective members of groups, within communities and among nations.<sup>117</sup> Moreover, the UDHR seems to impose the duty to respect human rights not only on states but also on non-state actors and individuals.<sup>118</sup> This makes the UDHR a document that can guide our relationships even at the era of globalization, after sixty years of its adoption. At this era of globalization, it is more important to respect the values and cultures of others, respect human dignity, provide justice and live with sense of brotherhood among mankind. Multilateral Corporations and developed states, in particular, must consider this fact in their relationship with other states. This is a spirit clearly enunciated under the UDHR and makes it relevant today.

### **3. The UDHR: on new scientific fields**

Today, the world is witnessing scientific advancements in various fields. Various entities including states and intergovernmental organizations have either established research institutes, financially helped them, or both.<sup>119</sup> Some of the results of such scientific researches

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<sup>115</sup> Human Rights Today: Introduction, available at <http://www.un.org/rights/HRToday/>

<sup>116</sup> Technically, non-state actors are called human rights 'abusers' when they contravene human rights rules.

<sup>117</sup> --- United Nations, 'Human Rights Today: A United Nations Priority,' available at <http://www.un.org/rights/HRToday/> accessed on August 20, 2008.

<sup>118</sup> UDHR, preamble & arts 29-31.

<sup>119</sup> See N Lenoir 'Universal Declaration on the human genome and human rights: The first legal and ethical framework at the global level' (Summer, 1999) 30 Columbia Human Rights Law Review 537.

are capable of direct application to humans.<sup>120</sup> But, the manner of applying such research outputs and using human beings in researches needs regulation as it has to do with human dignity.<sup>121</sup> Therefore, a guide on how to apply to human beings of biomedicine, biotechnology and others for therapeutic, and diagnostic and scientific purposes is necessary.<sup>122</sup> The UDHR is relevant to guide this need as it provides a mechanism by which the technological advancement should be directed: advancement in line with 'human worth and dignity.'<sup>123</sup> Human beings should not be lowered to the level of things while invention, experimentation and application of these technologies as that undignifies them.<sup>124</sup> Human value and dignity should be at the centre of any invention, application and demonstration. This is what we read from the UDHR and makes it relevant today.

#### **4. The UDHR: SEC Rights**

The majority of the population of the world in general and Africa in particular lives in poverty. In sub-Saharan Africa, there is extreme poverty due to reasons like rapid population growth and limited job creation.<sup>125</sup> This reality has impacted on the realization of the promise UDHR has made to these people.<sup>126</sup> The UDHR promises that people shall be in a position to at least afford their daily subsistence.<sup>127</sup> It further puts that such entitlement is not subject to the defence of the economic standard of the states distinct from the case of civil and political rights, but to be realized in the same way and degree to these rights.<sup>128</sup> Because it puts socio economic rights on equal footings with civil and political rights, and adopts the same means

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<sup>120</sup> N Lenoir (n 118 above) 537.

<sup>121</sup> UDHR, Preamble, paras 1 & 5, & arts1-7.

<sup>122</sup> K Mahoney & P Mahoney (eds) Human rights in the twenty-first century: A global challenge, (1993) 854.

<sup>123</sup> UDHR, Preamble, paras 1& 5, & art 1.

<sup>124</sup> K Mahoney & P Mahoney (n 122 above) 854-856.

<sup>125</sup> Economic and Social Council 'Report of the Secretary General: Strengthening efforts at all levels to promote pro-poor sustained economic growth, including through equitable macro-economic policies,' p.5, available at <http://www.un.org/Docs/ecosoc/meetings/2007/docs/07%20Thematic%20Report.FINAL.Website.pdf> , accessed on August 24, 2008.

<sup>126</sup> See J Olka-Onyang 'Economic and social human rights, the Universal Declaration and the new millennium: What prospects for change?' (1998/9) 12 (1) INTERRIGHTS Bulletin 11-12.

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<sup>128</sup> UDHR, Preamble.

and degree of realization. This position of the UDHR has been further endorsed through interpretation of the ICSECR by the UN Human Rights Commission.<sup>129</sup> This makes the Declaration a document that contains rights that are relevant and that need to be realised today. In addition, the UDHR is the only instrument that provides for property right unlike the ICCPR and ICESCR.<sup>130</sup>

### **5. The UDHR: to conflict situations**

In recent years, there are a number of conflicts that deprived people from peaceful place of existence in different parts of the world and particularly in Africa. The people in such areas are not only deprived of peaceful environment but also exposed to suffer from the companion 'gross human rights abuses' such as rape, torture, conflict-related deaths from hunger and disease, and forced displacement.<sup>131</sup> The UDHR provides that recognition of the inherent dignity and of the equal and inalienable rights of the persons in these conflict ridden areas is the only way to peace.<sup>132</sup> It also implies that conflict situations may be avoided only through the respect and protection of human rights.

It is also important to note that sufferings from gross violation of human rights are not limited to the places where conflicts are alive. They exist in places where conflicts have been resolved too as in such places (Liberia, Sierra Leon and Angola) human rights consequences of conflicts endure affecting economic and social development, and the political field.<sup>133</sup> Therefore, the UDHR is still relevant to these places as it provides the means to sustainable peace: human rights that are 'the foundation of ... peace.'<sup>134</sup>

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<sup>129</sup> See the General Comment here.

<sup>130</sup> UDHR, art17.

<sup>131</sup> Amnesty International 'The state of the world's human rights,' pp.4-5, available at <http://thereport.amnesty.org/document/101>, accessed on August 19, 2008.

<sup>132</sup> See UDHR, Preamble, para 1.

<sup>133</sup> Amnesty International (n 131 above) 3.

<sup>134</sup> UDHR, Preamble, para 1.

## **6. The UDHR: new conventions**

The UDHR is an instrument that has inspired many specific binding human rights conventions. It is also believed that it continues to do so. Because it is framed broadly and comprehensively. For instance, it recognizes the right of freedom from fear and want, which is neither precise nor well elaborated in the existing jurisprudence.<sup>135</sup> This notion may be taken as a basis to proclaim specific conventions that state the matters and circumstances that enable human beings enjoy the freedom from fear and want. For example, the UDHR could be taken as instrument that requires industrialized countries endangering the environment to reconsider their actions as they are putting human beings in fear of climate change and the resulting challenges to their lives such as Tsunami and hurricanes. Consequently, a convention that obliges states to enable human beings enjoy the freedom from fear and want may be proclaimed on such matters. It will continue to inspire other rights like the right to peace based on Article 28.<sup>136</sup>

## **7. The UDHR: on human rights ‘abusers’**

Non-state actors are not signatories of any human rights instrument. However, they are often involved in acts that infringe human rights. For instance, Multi-National Corporations may emit wastes that may pollute the environment and armed opposition groups may recruit children into their armies. Are such non-state actors responsible for their acts? This issue is not well settled today. Many international lawyers argue that non-state actors are not the subjects of international law, as a result, cannot ratify human rights treaties and therefore, are not directly responsible for any human rights abuse.<sup>137</sup> However, they are indirectly responsible through the state. The state assumes the duty to protect human rights not only from violation by the government and its organs but also by others, including non-state actors.<sup>138</sup> Thus, the state is required to ensure that non-state actors in their territorial jurisdiction would not abuse human rights. This has been the prevalent view in international

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<sup>135</sup> UDHR, Preamble, para2.

<sup>136</sup> F Schuurman (ed.) *Globalization and development studies: Challenges for the 21st Century*, (2001) 91-92.

<sup>137</sup> See, A Clapham, *Human rights obligations of non-state actors* (2006).

<sup>138</sup> *Ibid.*



law writings in general and international human rights law framework in particular.<sup>139</sup> Despite few but remarkable incidents moving to introduce changes, this view still persists.

However, this understanding has no any support under the UDHR. The UDHR provides that every individual and every organ of society shall strive to promote respect for human rights and fundamental freedoms by teaching and education of these rights and freedoms, and to secure the universal and effective recognition and observance of the same by progressive international and national measures both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction.<sup>140</sup> This suggests that states, non-state actors and even individuals are required to respect human rights and assume responsibility in case of their violation. Thus, the UDHR is relevant today as it can be employed in overcoming the challenges on the move towards imposing direct responsibility on non-actors for human rights abuses they may cause.

### **8. The UDHR: comprehensive enforcement mechanism**

The UDHR provides the manners of enforcement of human rights in general. It says that the enforcement of human rights needs the entrenchment of the rule of law in all states;<sup>141</sup> promotion of social progress and better standards of life in larger freedom, and the determination to promote same;<sup>142</sup> states' effort to promote universal respect for and observance of human rights and fundamental freedoms either independently or in cooperation with the UN;<sup>143</sup> teaching and education to promote respect for human rights and fundamental freedoms both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction by every individual and every organ of society;<sup>144</sup> progressive international and national measures with a view to secure the universal and effective recognition and observance of human rights and fundamental freedoms both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction by every individual and every organ of society.<sup>145</sup> Thus, UDHR

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<sup>139</sup> Ibid.

<sup>140</sup> UDHR, Preamble, para8 & arts 28-30.

<sup>141</sup> UDHR, Preamble, para3.

<sup>142</sup> UDHR, Preamble, para5.

<sup>143</sup> UDHR, Preamble, para6.

<sup>144</sup> UDHR, Preamble, para8.

<sup>145</sup> UDHR, Preamble, para8.

provides for a comprehensive mechanism that need to be adopted if the terrible reality of human rights violations may be changed as it not only provides a more comprehensive list of human rights but also envisions a comprehensive means of realization of human rights: cooperation, international and national measures, and participation of all people, states and organs of the society.<sup>146</sup>

### **9. The UDHR: on human relations**

The UDHR is relevant today as it provides a guide for human relations. It puts that human relations should be conducted in a way that recognizes the inherent dignity and equal and inalienable rights of all members of the human family.<sup>147</sup> It reiterates that respect of human dignity and worth of the human person, equality of men and women, and human rights is the fundamental that underlies peaceful and just human relations.<sup>148</sup> Human relations should also be conducted in such a way that promotes development of friendly relations among nations.<sup>149</sup> In addition, it provides that the states, every individual, and every organ of the society are required to not only respect and protect human rights and fundamental freedoms but also to cooperate in order to ensure the promotion and protection of the same in their relationships.<sup>150</sup> It also puts that these duties of states, every individual, and every organ of the society are not limited to territorial relations; rather, they extend to relations beyond national borders.<sup>151</sup>

### **11. The UDHR: on human dignity discourse**

The UDHR dictates a dignified life for all. However, many people in Africa and in other parts of the world live without access to the basic requirements of a dignified life due to various reasons like political instability, conflict, corruption and under-investment in basic social services.<sup>152</sup> The UDHR is relevant to the people in these areas as it incorporates rights that

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<sup>146</sup> See A Byrnes 'The implementation of rights' (1998/9) 12 (1) INTERRIGHTS Bulletin 9-10.

<sup>147</sup> UDHR, Preamble, para1.

<sup>148</sup> UDHR, Preamble, paras 1 & 5.

<sup>149</sup> UDHR, Preamble, para4.

<sup>150</sup> UDHR, Preamble, paras 6 & 8.

<sup>151</sup> UDHR, Preamble, para8.

<sup>152</sup> Amnesty International (n 121 above) 4.

enable them to live in a dignified way.

Be that as it may, today, human dignity argument is forwarded with respect to various issues. For example, it has been argued that death penalty has to be abolished for it is against human dignity and worth. The UDHR is relevant in relation to the fairness and ‘respect for humanity’ argument against death penalty.<sup>153</sup> The UDHR provides that a state ‘must treat its members with respect for their intrinsic worth as human beings’ and with fairness even when it punishes them.<sup>154</sup> This makes it in the forefront of the current human dignity discourse especially in relation to abolishment of the death penalty.

## **Conclusion**

Based upon the concrete observations and reasons pointed out in the discussion, one can easily conclude that the UDHR is relevant today. States need to work towards the realization of the promise under the Declaration and make the world a place safe for all. Being the mother instrument that gives fruit through the specific treaties, it becomes relevant today. To consider the UDHR as outdated is to consider the human rights provisions of the UN Charter as outdated. It is equally to let the other human rights treaties lose their life as the UDHR is the root and the trunk while these treaties are only its branches that need its support and live for it lives. Furthermore, the UDHR is relevant to guide the various aspects of our life as it can be used as a guide with respect to globalization, new rights, scientific researches, human relations, maintain of peace, resolution of conflicts and the like. Similarly, the UDHR helps as providing the core minimum of human rights that are dealt with specific binding conventions and instrument of interpretation of the rights under such conventions. It also provides the core minimum rights granted to human beings on areas with no binding conventions and the obligations of all states. Similarly, it is relevant to NMSC on the protection of rights that have binding conventions but not ratified. In addition, the UDHR is relevant as a means of measurement of human rights protection by governments. Finally, the UDHR continues to be relevant as an instrument that inspires new conventions today and in the future.

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<sup>153</sup> H Steiner & P Alston International Human rights in context: Law, politics and moral, (2<sup>nd</sup> ed.) (2000) 36-38.

<sup>154</sup> H Steiner & P Alston (n 153 above) 36-38.



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