

TWO BARKS AND NO BITE: OF THE SHIFT OF STATES FROM WATCHDOGS TO LAPDOGS

It is year 2019: the 71st anniversary of the Universal Declaration of Human Rights (UDHR). The United Nations is roughly a year from its Diamond Jubilee, and still going strong. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children has seen 174 ratifications¹ while the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has seen 189.² And the most-ratified human rights treaty of all time – the Convention on the Rights of the Child – can boast of 196 ratifications.³ These, among others, are the giant strides that have been made under international human rights law. Despite the declarations and reservations that accompany human rights treaties in general, these are comparatively good days for the international human rights system, and we have good reason to be proud.

It is year 2019 and per the official releases of the various stake-holding organisations, at least 40 million people are victims of modern slavery (which consists of forced labour and forced marriages), with 71% of that number comprising women and children.⁴ This is more than twice of all slaves deported through the Transatlantic Slave Trade.⁵ There are officially more than 25,000 detected trafficking victims in just 97 countries.⁶ Globally, 262 million or 18% of all children, adolescents and youth aged 6 to 17 years have been out of school since 2017.⁷

It is still year 2019: twenty years after the release of the World Bank's landmark study on poverty in 1999, themed "Voices of the Poor".⁸ The participants of the study from 26 developing countries shared their individual challenges which proved to be endemic to poor people. Of these, food security, employment, inadequate access to public services, harassment and violence meted out to them were some examples – examples which also

¹ United Nations Treaty Collection; Trafficking Protocol

<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en> accessed on 4th August 2019

² United Nations Treaty Collection; Convention on the Elimination of All Forms of Discrimination Against Women <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en> accessed on 4th August 2019

³ United Nations Treaty Collection; Convention on the Rights of the Child

<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en> accessed on 4th August 2019

⁴ International Labour Organisation (ILO); Executive Summary

<http://www.ilo.org/wcmstp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575540.pdf> accessed on 4th August 2019

⁵ UNESCO; Struggles against Slavery: International Year to Commemorate the Struggle against Slavery and its Abolition <<https://unesdoc.unesco.org/ark:/48223/pf0000133738>> accessed on 4th August 2019

⁶ United Nations Office on Drugs and Crime (UNODC); Global Report on Trafficking in Persons, 2018

<https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf> accessed on 4th August 2019

⁷ UNESCO Institute for Statistics; Meeting Commitments: Are Countries on Track to Achieve SDG 4?

<<http://uis.unesco.org/sites/default/files/documents/meeting-commitments-are-countries-on-track-achieve-sdg4.pdf>> accessed on 4th August 2019

⁸ The study was published in three volumes: "Can Anyone Hear Us?", "Crying Out for Change" and "From Many Lands".

border on human rights. Again, the study highlighted how poor people were detached from the very institutions there to serve them, including the judiciary and the police. In the more recent release by the World Bank, it advocated for a shift of the definition of poverty from monetary values to include other dimensions like access to basic infrastructure, education and physical and environmental security.⁹ Admittedly, these are also, for the most part, human rights guaranteed to all persons.

In year 2019, the question we ought to ask ourselves is this: Why the great disparity between the rise in the adoption of treaties under international human rights system and the statistics that monitor implementation? The answer, as simplistic as it may sound, is “implementation”. Human rights have consistently been guaranteed in legal instruments adopted on the global, regional and national levels. Yet, this legal position has all but translated into the lives of the ordinary citizen of the developing world.

The concern of implementation of human rights is twofold: first, that states, particularly dualist states, fail to ratify treaties soon enough after signing and thus do not give it the bite of domestic law, and secondly, that after incorporation into domestic law, states fail to ensure the implementation in every day matters for the average citizen. For the purposes of this essay and for brevity sake, the focus will be on the latter:

Under human rights law, the state as duty-bearer of rights has the tripartite duty to respect, protect and fulfil these rights. The duty to respect enjoins the state to refrain from interfering with the enjoyment of the right. In line with its duty to fulfil rights, the state, in concert with other institutions like civil society, adopts legislative, administrative, budgetary, judicial, and other appropriate measures towards the full realisation and enjoyment of the rights.

The duty to protect requires the state to prevent others from interfering with the enjoyment of the right usually through regulation. In the absence of regulatory and monitoring mechanisms and the inconsistent use of the state’s monopoly in the legitimate use of force for crime prevention and enforcement of the law generally; unscrupulous persons who hinder the enjoyment of rights by others are not properly sanctioned, nor are their activities deterred. This leads to a situation where the law is only as strong as it claims it is, and not in what it actually does. By way of example, human trafficking is a crime in most statute books, yet almost every country in the world plays host, transit point or destination for trafficked persons.¹⁰

It is year 2019: high time for us to map out a strategy which will take into account the nature of international law and develop a custom-made implementation framework which will recognise and protect individuals as actors and hold states accountable. It is high time to take stock and prepare for the future – a future of rule of law and 100% enforcement in every state party’s territory.

It is year 2019, and the time is right. For, if not now, then when?

⁹ World Bank, 2018. Poverty and Shared Prosperity 2018: Piecing Together the Poverty Puzzle. Washington, DC: World Bank. License: Creative Commons Attribution CC BY 3.0 IGO

¹⁰ Ibid, n. 6