

## **DOSSIER LSA/CRN1 2020: CONTENTIONS AND INNOVATIONS IN *PROTECTING HUMAN RIGHTS***

### ***Dossier organizers:***

*Fernanda Duarte*

*Rafael Mario Iorio Filho*

*Anne Richardson Oakes*

*Alice Storey*

### **INTRODUCTION**

**ANNE RICHARDSON OAKES**

The assertions contained in the Universal Declaration of Human Rights and accepted by the General Assembly of the United Nations in the aftermath of the second world war had transformative effect not only because they recognised that human rights inherent in everyone by virtue of a shared humanity but also because they became the basis for an international rule of law “in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”<sup>1</sup>

Nearly seventy five years later, this universalised expression of a commitment to human rights has generated a body of international treaty obligations that recognises that responsibility for protecting rights guarantees transcends the limitations of national governments and must be assumed by the international community at large. This recognition in turn has been accompanied by the establishment of an institutional implementation and compliance monitoring framework that ensures that human rights concerns now routinely feature in international diplomacy and political engagement. Global attention to attacks against the Rohingya in Myanmar, the response to the Khashoggi murder involving Saudi Arabia, and the widespread condemnation of the Chinese Government’s treatment of the Muslim Uighurs and of political activists in Hong Kong is a direct reflection of the significance that human rights now play in the international political arena.

Human rights discourse, it is clear, now sits at the centre of a globalised consensus concerning the theory and practice of contemporary democratic governance and has become arguably “*the* ascendant ethical language of contemporary global law and politics.”<sup>2</sup> It has also

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<sup>1</sup> United Nations and the Rule of Law, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>.

<sup>2</sup> ANNA GREAR, REDIRECTING HUMAN RIGHTS (2010) (emphasis in the original).

driven a resurgent interest in constitutionalism, judicial review and the work of constitutional courts that has a global spread and invigorates and informs comparative study and scholarly and judicial dialogue. The papers abstracted in this collection contribute to this dialogue.

Presented virtually to the Law and Society 2020 annual meeting at a roundtable organised by Professors Jon Yorke of the Centre for Human Rights, Birmingham City University U.K. and Fernanda Duarte of Estácio de Sá University, Rio de Janeiro, these papers represent work in progress and extend the collaboration between the Post-Graduate Law Program of the University Estácio de Sá/PPGD-Unesa (with support of the Post-Graduate Administrative Justice Program of the Fluminense Federal University/PPGJA-UFF) and the Centre for American Legal Studies, School of Law at Birmingham City University, (with support of the Centre for Human Rights, School of Law at Birmingham City University).

Storey (BCU) sets the scene with an overview of the monitoring processes of the UN Human Rights Council's Universal Periodic Review (UPR). Established in 2006, when the UN Human Rights Council was set up, the UPR has become an innovative mechanism for monitoring the human rights records of all 193 UN Member States and moreover one which is unique. It provides States with the opportunity to report on the actions they have taken to improve human rights in their countries and to consider and respond to the representations of their fellow Member States. It also recognises a significant role for civil society organisations to participate in the review by the submission of stakeholder reports. Storey draws on her experience of the UPR Project at BCU to encourage scholars who seek to put their research to purposeful effect to consider participation in this mechanism which affords a significant opportunity to make a real difference to the cause of advancing human rights observance throughout the world.

Duarte and Iorio (Estácio and UFF) pick up the challenge with specific reference to the position of migrants and their families in Brazil. They note that, despite seven recommendations that were made in the 2017 UPR of Brazil, the country has yet to sign and ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. They note that, following these recommendations, there was a legislative response in the form of what is generally known as the New Migration Law intended to confer some measure of human rights protection on migrant workers. The statute however makes no mention of workers' families. The extent to which this can be considered a satisfactory response to the PR recommendations will be up for consideration at the next UPR of Brazil, now due to take place in 2022.

Yorke (BCU) comments on the position of the death penalty as a human rights issue in Myanmar. His research reveals an incremental engagement with the international community on this issue. He comments on the Myanmar National Human Rights Commission's *Workshop on the Death Penalty* which took place in 2017 and notes that despite the disappointing response to its UPR 2015 commitments to establish democratic institutions, make justice sector reforms, and promote and protect the rights of women, there is reason to be optimistic that, in

relation to the death penalty at least, real progress has been made and that further progress can be expected.

The work of all four scholars abstracted in this collection demonstrates a shared commitment to the value of human rights discourse and a belief in its capacity to materially improve the conditions of life for much of the world's population. These papers were presented against the background of the coronavirus pandemic which presents considerable challenges for governments of every complexion across the globe. As these governments respond with measures that seriously impact economic and social activity and materially change the way in which we lead our lives, human rights vigilance has never been more important. Restrictions once in place can prove difficult to reverse. As these papers demonstrate, there are opportunities for scholars to use their research to participate in this vigilance. It is the responsibility of scholars to take them.