

# HUMANRIGHTS

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## LAWYERS AND THE UNIVERSAL DECLARATION OF HUMANRIGHTS

THE INTERNATIONAL COMMUNITY CELEBRATED the 60th anniversary of the Universal Declaration of Human Rights (UDHR) on December 10, 2008. Drafted in the aftermath of the Holocaust, the UDHR launched the modern international human rights movement with its Article 1 declaration that “[a]ll human beings are born free and equal in dignity and rights,” and has been a beacon of inspiration in the development and implementation of human rights law around the globe. Since the UDHR was adopted in 1948, the international community has promulgated numerous human rights conventions, amplifying the breadth and content of civil, political, economic, social, and cultural rights, and ensuring such rights extend unequivocally to historically marginalized populations, including women, persons of color, children, refugees, indigenous peoples, and persons with disabilities. While the international community rightly celebrates the UDHR, the anniversary also presents an opportunity to rededicate ourselves to fulfilling the UDHR’s aspirations, for still millions of individuals are subjected to human rights abuses on a daily basis.

More specifically, the UDHR’s anniversary provides lawyers and bar associations the occasion to assess their role in fulfillment of the human rights ideal. Lawyers and human rights have had an imperfect relationship over time. Lawyers have been some of the greatest advocates for human rights, playing significant roles in developing and enforcing human rights law at the international, national, and local levels. Today this law compels governments to ensure the rights of their populations and provide remedies for those whose rights have been violated. Over the years, however, lawyers have advocated not only in furtherance of the human rights ideal, but also in opposition. Lawyers have aided governments in developing the legal rationale for slavery, segregation, and other human rights violations. As the international community pauses on the UDHR’s 60th anniversary to assess progress, lawyers and bar associations have the opportunity to do the same.

Lawyers and bar associations might use this anniversary to revisit lawyers’ role vis-à-vis human rights. Reconsideration of the lawyer’s role and responsibilities will inevitably spark debate. Some within the profession will maintain that legal systems work properly only when lawyers are available to assist “both” sides of any dispute. In fact, such arguments resonate in the human rights community, as the right to counsel and access to the courts are core human rights issues. Defending an individual who is presumed innocent until proven guilty differs, however, from arguing in support

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of racial segregation or articulating a narrow definition of torture that enables human rights abuses.

Preserving the fundamental principles of justice and the legal profession, such as access to impartial tribunals and the right to counsel, does not require lawyers to be "neutral" as to the human rights ideal. Indeed few, if any, attorneys today would suggest that the role played by attorneys who argued in favor of the institution of slavery was a noble fulfillment of the ideals of the profession.

In examining the lawyer's role with respect to human rights, recent efforts within the international human rights arena might offer one promising avenue worthy of consideration. In recent years, new "mainstreaming" efforts have been undertaken to move more effectively toward gender equality. For example, the Beijing Declaration and Platform of Action launched a mandate for all governments and non-governmental actors to mainstream a gender perspective into all policies and programs. The essence of gender mainstreaming initiatives is to go beyond a state in which a single individual or government entity is tasked with considering gender issues or reviewing the impact of select new policies on women to one in which gender equality is considered at every stage by every individual and entity. As the International Labor Organization explains, "[m]ainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated." Similar efforts have been advanced in the children's rights arena, including, for example, a children's rights sensitive approach to urban development developed by UNICEF. The process involves contemplating the impact on children of each decision at each stage in urban planning and also involving children's perspectives in the process.

These examples offer a model for considering the role of lawyers with respect to human rights. For a small percentage of lawyers, human rights are a full-time focus. For most, however, human rights advocacy and lawyering are tasks undertaken as part of a pro bono practice or not at all. Mainstreaming of human rights in the profession could spark two important developments.

First, mainstreaming of human rights would mean that all lawyers must consider human rights in their work. I teach a course on children's rights at Georgia State University College of Law. Near the end of the course, I discuss post-law school plans with students. Recognizing that most students will not practice children's rights law full time, I explain to them that whatever they choose to do,

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there are children's rights issues that can benefit from the particular expertise they develop. Whether one focuses on criminal law, trusts and estates, labor and employment law, corporate law, or another field, there are children's rights issues that can utilize that experience. "Mainstreaming" human rights in the legal profession could help facilitate the involvement of every member of the bar in the furtherance of human rights for all.

Although getting all lawyers involved in human rights alone would be a momentous achievement, mainstreaming means more than having all lawyers engaged in pro bono legal service. Mainstreaming would include considering human rights principles during one's core practice. Recent work by lawyers on corporate social responsibility offers valuable examples. Lawyers working with corporate clients have been able to represent their client's best interests while furthering human rights. This model needs to be expanded so that human rights can be mainstreamed in the work of all practice areas.

The importance of human rights is highlighted in the opening preambular paragraph of the UDHR, which affirms that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." As a profession, the law aims to ensure justice; indeed the American Bar Association's motto is "Defending Liberty, Pursuing Justice." As the Universal Declaration of Human Rights underscores, to defend liberty and pursue justice, the legal profession must also serve the human rights ideal. ♦