HRLA Human Rights Lawyers Association

20th Anniversary Commemorative Booklet

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Edited by Avril Rushe

FOREWORD

I am honoured and delighted to be introducing this collection of contributions celebrating the HRLA's 20th anniversary. 2023 also brings significant anniversaries for the UK's Human Rights Act 1998, the European Convention on Human Rights, and the Universal Declaration of Human Rights. This publication presents commemorative insights from distinguished lawyers and human rights advocates. Our contributors come from diverse backgrounds but share a commitment to the rule of law and promoting respect for fundamental rights. As their commentaries make clear, there is much to celebrate in the work that has been done in the application of these great human rights instruments. But there have also been bitter disappointments, and the need to protect these instruments from cynicism and neglect has never been greater. With the help of our members and supporters, past, present, and future, the HRLA will continue to play its part in those endeavours. I am very grateful to each of our contributors for sharing their personal observations, and I am confident that you will enjoy reading them as much as I did.

Joe Middleton KC
Chair of the Human Rights Lawyers Association
23 November 2023

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It is an honour to serve as President of the HRLA. In its early years, almost 20 years ago, I was a member of the Committee and remember well the enthusiastic leadership of the then Chair, Jonathan Cooper, whom we all miss because of his untimely death.

I had the good fortune to work in the human rights law area in the first decade of the coming into force of the Human Rights Act (HRA). I appeared as counsel, sometimes for public authorities and sometimes against them, in some of the most interesting cases which had to be decided by the courts as they grappled with some fundamental concepts. These included the *Belmarsh* case, on detention without charge of suspected international terrorists, *Ghaidan*, still the leading authority on the strong interpretative obligation in section 3 of the HRA, and *Al-Skeini*, on the extra-territorial application of the HRA.

I was often instructed on behalf of the Government of the United Kingdom both before and after the coming into force of the HRA. I noticed that there were fewer hearings concerning the UK once the domestic courts had been able to address the issues themselves, but I still had to go to Strasbourg in some of those cases that went there even after the HRA, for example *S & Marper*, on retention of DNA samples, and *Hirst*, on prisoner voting.

One of the less noticed aspects of the impact of the HRA has been the important work, which is done by legal advisers, both within Government service and by independent members of the Bar who are from time-to-time instructed to advise Government on, for example, the compatibility of proposed policies or even legislation with the Convention rights. I had the opportunity to give such advice when I was in practice and frequently acted for the Government.

Another relatively little-known aspect of the impact of the HRA on a day-to-day basis is how it has become absorbed into the fabric of the entire legal system, often without being referred to any longer in terms. For example, the interests of witnesses and victims of crime and how they are treated in the courtroom now receive a greater prominence than perhaps they did at one time.

The greatest impact of the HRA has undoubtedly been in public law, not only in the Administrative Court but also in tribunals such as the Asylum and Immigration Chamber of the First-tier Tribunal and the Upper Tribunal. But, as a serving judge, I have noticed that human rights law points can arise in any part of our legal system, for example often in family law proceedings and even in commercial contexts such as insolvency law and tax law. It is no longer the case, if it ever was, that human rights law can be regarded as a "specialist" area, which has nothing to do with the work of practitioners in other parts of the legal system.

The Rt Hon Sir Rabinder Singh, Lord Justice of Appeal and President of the Investigatory Powers Tribunal, President of the HRLA

Happy Birthday HRLA! What an honour it was to chair the HRLA until 2022, two difficult years spanning the pandemic which curtailed activities for everyone and forced changes. Heading towards a 20th anniversary, the HRLA Executive Committee was anxious to consider its ethos and values for the next 20 years. Was it still relevant? Surely the human rights message was now the bread and butter and jam of the legal landscape and legislative framework. Human rights had well and truly been brought home.

We hit a deadline for responding to the Independent Human Rights Act Review early in 2021. Then dived into another period of activity promoting the HRA, hailing the value of an independent judiciary and for holding decision makers to account. Human rights remains an unfinished project in Britain. Was its traction really only felt by a small cadre of lawyers, increasingly vilified by nay-sayers?

The value of human rights law for ordinary citizens is the message from many disparate cases. What springs to mind usually are much publicised and brilliant cases such as the Hillsborough inquests, vindicating long years of struggle for justice by bereaved families and ultimately made possible by the investigative obligation under Article 2 ECHR. The claims against the Metropolitan Police by victims of the taxi driver Worboys brought under Article 3 ECHR: a significant case protecting the rights of women who have suffered sexual assault, rape, and domestic abuse. These are groups that the common law and legislation have struggled to protect.

From my work I would highlight the use of human rights to enhance the lives of people reliant on public services, specifically for children or people made vulnerable through disability. Battling local authorities and health bodies for services that respect the rights of people with disabilities, or children, is too often the experience of families.

HL v UK importantly identified that Article 5 demands, when protecting the liberty of those of 'unsound mind', clear due process safeguards where a compliant person lacking capacity was being *de facto* detained for treatment for mental disorder. The common law was inadequate for this. This drove key amendments to the then nascent Mental Capacity Act 2005 and spawned 'deprivation of liberty safeguards', criticised for their complexity, but ensuring that there are statutory protections, whether for the elderly with dementia in a care home, or young person with autism needing residential care, mandating regular review of restrictions of liberty in the provision of services.

In *Neary,* I acted for Steven, a young man lacking mental capacity, with autism and severe learning disability. The court held that the local authority had breached Steven's rights under Articles 5 and

8 ECHR. He was offered respite care while his father was unwell, but instead of the expected two weeks, he was kept away from his father, against his wishes, for a year without due process, court oversight or openness of a plan to place Steven into secure accommodation. Steven was compensated for this period of unlawful detention.

The HRA and ECHR are also helpful for obtaining remedies in cases where children from abusive homes are taken into care for their own safety, and where they experience more harm and abuse, and psychological damage, leaving lifelong scars and deficits in their ability to live their lives. From the frying pan into the fire. Again, in circumstances where the reach of the common law is increasingly narrowed.

There is undoubted value in achieving redress once things have gone wrong. There is more value to be added if human rights is sufficiently embedded in policy and practice to avoid harms to citizens in the first place.

Aswini Weereratne KC, Barrister at Doughty Street Chambers

As Registrar of the European Court of Human Rights since 2020, I have the privilege and the honour of leading a registry made up of approximately 700 staff members. I am responsible for the overall coordination of all administrative and judicial activities of the Registry under the authority of the President of the Court.

The 70th anniversary of the coming into force of the European Convention of Human Rights provides us with an excellent opportunity to ask what makes this international treaty so special? After all, in addition to the Convention, the Council of Europe has adopted more than 200 other international treaties covering a wide range of subjects.

To my mind it is the living instrument doctrine, developed by the Court in its jurisprudence which ensures that a treaty signed in 1950 is not static or frozen in time. It has developed along with societies. The Court has thus construed the protected rights and freedoms so as to apply to situations that were not foreseeable when the Convention was first adopted: same-sex partnerships; surrogacy; the internet, and data retention. Now important climate change cases are pending before the Court's Grand Chamber.

For more than six decades the Court has made an extraordinary contribution to maintaining democratic security and improving good governance across the European continent, including in the United Kingdom.

Indeed, it is important to recall the central role played by the UK in the drafting of the Convention. The UK was one of the first States to sign the Convention, on the day it was adopted, and was the first state to ratify it on 8 March 1951. Its influence has been manifest ever since, with early seminal judgments of the Court in respect of the UK - *Golder* (1975), *The Sunday Times* (No.1) (1979), *Tyrer* (1978), or *Young, James and Webster* (1981), for example.

Since the Convention came into force in the UK, its impact has been profound and wide-reaching, covering issues such as immigration detention, terrorism, LGBT rights, voting rights, freedom of speech, and trade union activities. From the case of *Smith and Grady* (1999), where the Court found it was a violation of Article 8 to discharge British nationals from the armed forces due to their sexual orientation, to the more recent *Big Brother Watch and Others* (2021), where the Court found that Government surveillance regimes violated the Convention.

This anniversary is also an occasion for us to take stock of the state of human rights across Europe. We cannot ignore the worrying signs of democratic backsliding in some parts of the continent and the tragic war in Ukraine. These events remind us not only of why the Convention was originally established in the aftermath of World War II, but also that we must not become complacent in the pursuit of preserving democracy through the protection of human rights. Ultimately, the European Convention on Human Rights is an instrument of peace and stability in Europe. And this we need now more than ever.

Marialena Tsirli, Registrar of the European Court of Human Rights

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I am a partner at Wilson Solicitors LLP specialising in public law and human rights litigation on behalf of people in the UK immigration system. I trained at the firm before working at Bhatt Murphy for over a decade, returning in summer 2021. I now divide my time between my own casework and (increasingly) supervising a team of excellent solicitors and trainee solicitors. I also write and deliver training on my areas of expertise.

Since qualifying in 2010, I have specialised in representing people who have fallen victim to unlawful treatment in the hostile immigration system. I represented three highly vulnerable mentally unwell people who were detained in conditions that violated Article 3 at UK immigration detention centres. I was part of a group of lawyers that used Article 8 to enable unaccompanied children and other young refugees in France and other parts of Europe to reunite with family members in the UK. I have represented bereaved families in inquests where Article 2 ECHR plays a key role in understanding how their family members passed away in state detention.

My current work includes representing one of the lead claimants in the litigation challenging the Home Office's policy to send asylum seekers to Rwanda to have their claims processed there; working with a team on a judicial review that seeks an Article 3-compliant inquiry into events at the Manston detention facility in 2022; and acting for NGO Medical Justice in a challenge to a Home Office policy allowing it to seek second opinion medical opinions on immigration detainees.

A number of low points for human rights in the last year have arisen in the context of the Rwanda litigation – from the UK courts refusing interim relief in June 2022 to the High Court dismissing the general Article 3 challenge in December 2022. The same litigation has brought a number of high points: the European Court of Human Rights issuing interim measures which ultimately led to all of the people on the June 2022 flight being taken off it and the memorable hearing where the Lord Chief Justice announced the Court of Appeal's decision (in which he dissented) that the Rwanda policy breached Article 3 because of defects in the Rwandan asylum system.

Another high point was the publication of the report of the Brook House public inquiry, which found widespread breaches of Article 3 and systemic failings in the safeguards around the use of force and the management of vulnerability.

It is extremely concerning that the Government is repeatedly being found to breach core human rights protections such as Article 3 in the immigration system. It is all the more concerning that some members of the Government openly question the UK's commitment to these core protections. It is absolutely vital that they continue to be available to all people in the UK through the Human Rights Act and ultimately the right to take their complaint to the European Court of Human Rights.

Jed Pennington, Partner at Willson Solicitors LLP

The Strained Relations Between the UK and the European Court of Human Rights.

A few times over the recent years, the idea of withdrawing from the European Convention on Human Rights and as a result from the European Court of Human Rights was voiced by the UK Government. One can argue that this is a strategy of the Government to detract the general public from economic and other social challenges that the ruling party is unable to resolve. It seems that the European Court is used in internal politics as a target when the European Union is no longer possible in this role. However, even fully cognisant of this internal reason for the desire to withdraw, one cannot and should not leave the calls to leave the Convention system unnoticed. They need to be taken seriously. One needs to be reminded constantly how much value there is in

the European Convention on Human Rights. The European Court of Human Rights is another line of defence for human rights which can prevent irreparable harm to human rights, the rule of law and democracy. The criticism of the Court can be a part of healthy political and academic debate, but it needs to be based on facts.

Although the criticism of the Court that it is constantly interfering in the internal business of the UK Government, it is hardly so even judging from the number of cases against the UK decided by the Court recently. The European Court only published one judgment and six decisions in 2023 (valid on 30 October 2023) in cases brought against the United Kingdom. It means that the Court found only one violation in 2023. To compare, the Court published 42 judgments against Italy finding multiple violations. Despite that, as far as I know the Prime Minister of Italy has not suggested that the Government contemplates the denouncement of the Convention. It seems that the lenient approach of the European Court to the United Kingdom does not guarantee that it will be criticised less. There is no direct dependency between the criticism and the actions of the Court.

My co-editor-in-chief of the European Convention on Human Rights Law Review Dr Vassilis Tzevelekos and I designed a special issue of our journal focusing on the role of the European Convention and the European Court in the UK. This issue is expected to be published in January 2024. In this issue, we looked at the rights of LGBTI people, refugees and terror suspects, people affected by overseas operations by the UK troops and many others. It seems that the role of the Court is significant, but it is far from meddling with the everyday operation of the UK Government. The authors of the issue also try to analyse the reasons for the special relations between the UK and the European Court of Human Rights. It seems that the Court is trying to be as restrained as possible vis-à-vis the UK, and yet, receives significant portions of criticism, most of which is unfounded.

Professor Kanstantsin Dzehtsiarou, University of Liverpool

1997 seems like yesterday. I returned to the UK having spent more than a year working at the then Commission of Human Rights, followed by six months in the Human Rights Ombudsman's Office in Sarajevo. In London, a few lawyers were talking about the Human Rights Bill; there was an energy and excitement. I agreed to write a looseleaf with Ben Emmerson, who was the Editor of the Human Rights Review and was leading me in a few cases. This became Sweet and Maxwell's Human Rights Practice. It is impossible today to imagine how hard it was to find Commission Decisions and Reports. These were published in a set of reports that were available only from the

Court but which I was lucky enough to have a copy of, having been given them when I arrived there.

When the HRA came into force a flurry of new cases started. It is hard to know which ones to mention – there were so many interesting new issues - but perhaps the most influential was the case of *Wright*. Liberty instructed me to represent the mother of a prisoner who had died of an asthma attack in prison. For the first time in the UK, we made the argument that his death required an independent inquiry beyond the inquest that had taken place, which would cover all the circumstances surrounding his death and in particular, the health care he had received. No one thought it possible to get an order requiring this, but the High Court agreed and made the first mandatory order against the Home Secretary requiring a public inquiry. The inquiry discovered that doctors who had been struck off and could not practise in the NHS were permitted to practice in prisons and recommended that that practice cease, which it did. The Home Office did not appeal the High Court decision and the Article 2 issue was ultimately authoritatively determined in the famous case of *Amin*.

Since then, there have been numerous commissions, reports, reviews, conferences, panels, and discussions about replacing the HRA with a "British" Bill of Rights or some such. We have even had an attempt to table a Bill, which disappeared as quickly as it arrived. The HRA works – and everyone knows that.

It is not the law that has changed; it is the political climate. Today things look very different. Judges are on the retreat in the face of a political discourse that is hostile to human rights and indeed to judges, especially to 'foreign' judges. When faced with the enormous challenges of community relations, human rights provide a clear and explicable set of rules for politicians, which could be used by them to lead with wisdom; these are rules that would assist them to explain our collective societal responsibility for maintaining freedom and democracy – and the challenges that that poses - the compromises it requires. I need hardly say that to our detriment, that is sadly not what we are currently seeing.

Jessica Simor KC, Barrister at Matrix Chambers

I am a solicitor and founding director of the Centre for Women's Justice, a legal charity established in 2016, that aims to hold the state accountable around violence against women and girls. I continue to be associated with the veteran civil liberties firm, Birnberg Peirce, where I was employed as an assistant solicitor for nearly 20 years.

As a lawyer specialising in holding the state accountable, the Human Rights Act has been an invaluable instrument enabling successful legal claims against the police and other State bodies whose unlawful acts have violated human rights. In my earlier career, I frequently relied on the provisions of the HRA to expand accountability. This included when acting for bereaved families in inquests involving deaths in custody and at hands of police, in particular in the case of Jean Charles de Menezes shot dead by Met police officers on the London underground. It was similarly invaluable in the numerous cases I brought on behalf of immigration detainees against the Home Office and private contracted firms such as Serco. Nowhere has the HRA been more invaluable then in bolstering the rights of victims of male violence including in the landmark case of *DSD and NBV v The Commissioner of the Metropolis* [2018] UKSC 11, where I acted for victims of serial rapist taxi driver John Worboys and helped establish a duty to investigate rape and other serious crimes under Article 3 ECHR.

The Universal Declaration of Human Rights has been the underlying instrument for many international and regional human rights conventions and treaties enshrining fundamental human rights as they impact on different categories of people. In my own area of specialism, in addition to the ECHR, I have cited and sought to rely on CEDAW (Convention on the Elimination of all forms of Discrimination Against Women), the Palermo Protocol, the UN Convention of the Rights of Children and more recently the Istanbul Convention, all of which have expanded our understanding of individual rights and the duties of the state to uphold them.

Whilst the work of lawyers and others in bringing the human rights framework into case law and efforts to improve laws and policies has greatly enhanced opportunities to hold the State accountable, these opportunities remain under extreme threat not least from the current Government in their attempts to derogate from human rights commitments in legislative reform from the Illegal Migration Bill and the Public Order Act. Threats to withdraw from the ECHR and the Home Secretary's recent speech in the United States threatening to reform the UN Refugee Convention and suggesting that protections from discrimination for women and gays was a step too far have been a notable low point. High points over the last year have been the ratification of the Istanbul Convention (despite reservations entered into) and the shelving of Dominic Raab's Rights Removal Bill.

Harriet Wistrich, Founding Director of the Centre for Women's Justice

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Generation 2048: time to resist, disrupt, and transform

2023 marks the 75th anniversary of the Universal Declaration of Human Rights (UDHR). Born from the ashes of World War II under the shadow of the very worst of humanity, the UDHR held out the promise of a global framework for justice and the recognition of 'equal and inalienable rights' for all.

Some question the legitimacy of the UDHR. After all, it was drafted by a minority of States at a time when many of the world's population lived under colonialism. We cannot ignore this shortcoming, any more than we should neglect the critique that the modern human rights regime is a Western liberal project favouring civil and political rights over economic, social and cultural rights.

But while the UDHR was undoubtedly a victor's project, its drafting ultimately could not be controlled by the powerful alone. Smaller nations outmaneuvered the large, ensuring that the final text promised human rights for all without "distinction". The Egyptian delegate confirmed the "universality" of human rights and their applicability to persons subject to colonial rule or occupation. Women delegates from India, Brazil, and the Dominican Republic ensured that equal rights of men and women were affirmed.

And, once in play, the UDHR took on a disruptive life of its own, feeding anti-colonial initiatives the world over and inspiring regional human rights instruments in Europe, the Americas, and Africa.

The power of the UDHR ideals unleashed a force far beyond the control of those nations that had participated in its drafting. It did so because its roots ran far deeper, far wider than Paris, where it was adopted in 1948 by the General Assembly of the United Nations. From Mesopotamia to Ancient Egypt, from the Persian to the Mauryan empires, in all religious traditions, in written texts or oral traditions, in ancient, pre-modern and modern eras – human history abounds with instances of people coming together to limit the use of power and assert their rights.

Let's get the history of the UDHR right. Not by whitewashing it or by ignoring the raging double standards of its implementation. But by paying homage: to those who used its extraordinary disruptive power during struggles for liberation and equality the world over; to those who made the UDHR real and authentic, in their struggle against colonialism and <u>for</u> independence; against bigotry and for equality; against patriarchy and for gender justice; for a world of greater dignity for 'all members of the human family'.

That is what the UDHR offers to us: both confidence and inspiration. It is living proof that a global vision for human rights is possible, is doable, can be realised.

That is why we should celebrate the UDHR; why we don't capitulate to critiques of human rights; not because of who wrote it into history, but because of all those who have disrupted history with it.

On this 75th anniversary, while the world grapples with record levels of conflict, socio-political polarization, growing inequality, and the existential threat of the climate crisis, dare we re-imagine ourselves as delivering a 2048 UDHR – a UDHR for the next century of rights - a UDHR drafted by the many, not by a privileged few?

Are we ready to be that 2048 generation? The successor to those who, out of the ashes of a war-torn world, transformed history through the disruptive power of the UDHR? Or will we instead be the generation that turned a blind eye to the oppression of others so long as our own power and influence was maintained?

The UDHR legacy challenges us to go on the offensive. It demands that we **resist** the globalised, transnational and localised attacks against rights. But it also tells us this won't be enough. It asks of us too that we **disrupt** the building of world orders that reproduce historical privileges and injustices, violate rights and silence defenders; and that we **transform** global governance by re-imagining, innovating, leading.

We can, we must - build bold, visionary leadership, institutions and systems - that can protect our planet, for future generations, and from all that torments us.

Join us and together, let's become this generation 2048 that brings to life a future where human rights are enjoyed by all, everywhere.

Dr. Agnès Callamard, Secretary General of Amnesty International

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Human rights laws play a crucial role in the UK and around the world by safeguarding fundamental liberties and ensuring that individuals are treated fairly and with dignity.

I have long spoken of legal rights meaning absolutely nothing if you don't know what your rights are, and you don't even know when those rights are being taken away. Far too many of us are unaware of our broken system and the dire straits it is in.

Human rights laws serve as a vital framework to protect individuals from abuse by the State, to promote equality, and to ensure that justice is accessible to all. They empower people with the knowledge of their rights and mechanisms to enforce, them ultimately, contributing to a more just and humane society in the UK and beyond but in order to do so the Government and political parties of all stripes must ensure that our justice system is adequately resources and do more to

ensure people know their rights. Law should be taught in all schools to equip and foster a more just society.

Dr. I. Stephanie Boyce (Hon. Causa), Honorary Professor of Law, Former President of the Law Society of England and Wales

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I have worked in the field of Immigration and Asylum Law since 1989, helping asylum seekers with their claims and making what were initially known as 'applications outside of the Immigration Rules' that were based on 'compassionate grounds'. The latter concept was replaced with the introduction of the Human Rights Act (HRA) 1998 which effectively brought the European Convention on Human Rights (ECHR) into the UK's domestic Law, leading to the introduction of human rights claims.

Just before and just after the introduction of the HRA, I represented a man who was facing deportation on national security grounds and who would almost certainly have faced torture if he had been sent to the country where he feared such treatment. However, in 1996 the successful European Court of Human Rights case of *Chahal Singh* (represented by the then well-known human rights lawyer, David Burgess of Winstanley Burgess solicitors who has sadly passed away) found that there had been a violation under Article 5(4) of Chahal Singh's right to a fair judicial process and that he would suffer a violation of Article 3 if sent to India. This was the push that led to my client being released and granted permission to remain as it was accepted that every single person has the right under Article 3 of the ECHR not to be tortured or persecuted, even if the Government believed they should not be accorded refugee status under the 1951 Refugee Convention. The Chahal Singh case also led to the introduction of the Special Immigration Appeals Commission, which although still questionable in terms of legal standards, was an improvement on the lack of any meaningful judicial process for people facing removal from the UK for national security reasons.

The organisation where I work as Legal Director, Bail for Immigration Detainees (BID) focuses on the right of persons to liberty and for detention to only be used in accordance with Article 5(1)(f) of the ECHR. I have little doubt that adherence to this right is one reason why Home Office policy has, at least until now, retained this emphasis when explaining how its officials should assess the need to detain a person for immigration reasons. BID also has its Article 8 Deportation Advice Project, focusing upon the rights of individuals and their families, foreign national and British who see their rights interfered with by reason of deportation. We rely upon the European

Court and the UK courts' interpretations of Article 8, seeking to keep families together while limiting the harm that may be caused by deportation.

While we have had several successes over the past year, we are aware that the Human Rights Act is under attack and the Government is seeking to interpret its right to detain people for immigration-related reasons more widely than ever before and indeed more widely than may be authorised by the European Convention on Human Rights. So, while the Government has passed its Illegal Migration Act 2023, that includes the power to hold people in detention for as long as the Secretary of State requires to find them accommodation, BID has made submissions to the European Court of Human Rights (in the case of *A.S.K.* Application No. 43556/20) that responds to the Court's enquiry of the circumstances where immigration detention may be being used in the UK for reasons other than deportation. Our submissions rely upon the experience of many people who remain in detention (in prisons or in Immigration Removal Centres), sometimes for many months after having been granted bail by the courts, but while accommodation is sourced.

BID celebrates the Universal Declaration of Human Rights, a declaration which is recognised as customary International Law, which influences regional human rights instruments and national laws.

Pierre Makhlouf, Legal Director at Bail for Immigration Detainees

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A political sword of Damocles has been hanging over the Human Rights Act since before its enactment. Today ministers who appear never to have heard of the Refugee Convention continue to blame the HRA for every difficulty they encounter in relation to immigration or asylum. They also tend to forget that any legal weapons they forge are likely one day to end up in the hands of their opponents.

This is why it's worth remembering that when the legislative and political captains and kings have departed, the common law remains. In the years before the HRA came into effect, George Daly, a long-term prisoner, was subjected to repeated cell searches going well beyond what was necessary or proportionate. Three of the era's greatest law lords – Bingham, Steyn and Cooke – made it clear that there was no need to await the coming into force of Article 8: the common law could protect an individual in Daly's situation from abuses of custodial power.[1]

With such a base to build on, the Human Rights Lawyers Association is going to be needed and valued for a long time to come.

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[1] *R v Home Secretary, ex p. Daly* [2001] UKHL 26

Sir Stephen Sedley KC, Barrister at Cloisters Chambers, Former Judge of the Court of Appeal of England and Wales

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Marking 70 years since it came into force, the question of whether Britain, a founding member, will withdraw from the European Convention of Human Rights is firmly back in the political mix. Leap from 2016 into 2023 and it might seem as though escaping the constraints of international treaty obligations has been the decade's default answer to big political questions that are easier to solve by blaming foreign judges.

There are, of course, many serious consequences that would flow from such an exit, not least the impact on Britain's international standing, credibility, and influence. The question of what would replace a treaty of such constitutional significance has proven difficult to answer satisfactorily over a decade of searching. Any replacement now would have to contend with the complexity and scale of the cross-border challenges with which all legal systems will have to grapple over coming years. Climate change, AI, the accountability of supra-national organisations – to name but a few. The world around us is becoming more complex, not less; the challenges are becoming more inter-connected, not less. Playing our part in the international order and its frameworks mean that we cannot live in an isolated legal vacuum either. International rules and law govern so many parts of our lives invisibly. The ECHR has done that too – with generations now growing up not even realising that rights they take for granted have been grappled with, developed and assured through the Strasbourg Court. The "living instrument" role of the Convention is a critical part of keeping the law dynamic and relevant to modern day life, which is changing at unfathomable speed.

Britain continues to play a role in the Convention's development – with British judges, lawyers and arguments influencing the Court's case-law. Shut it out, and Britain not only has to find and create new systems for itself, but it gets shut out of the ability to influence important decisions which may nevertheless affect it. We can't close our borders to ideas, technology or climate change. In Tom Bingham's seminal work on the Rule of Law, his eighth and final principle as to the foundations for the rule of law is that a State is required to comply with its obligation in international law, just as in national law.

We can argue for change and reform within, where it may be necessary. We can build effective national systems even whilst contributing to an international safety net, which protects our own citizens. Strasbourg affords us all – even if imperfectly – with a means of accountability against

powerful Governments, providing a long term, sustainable, and supranational approach to human rights, contrasting with the short-termism of daily politics.

These important anniversaries are a good time for Britain to renew its political commitment to international law as a force for good. We don't need to look to history for the lessons of the past. The present shows us we must stand together and force a path forwards. In that, I will remain a cautious optimist.

Schona Jolly KC, Barrister at Cloisters Chambers

I specialise in LGBTQ+/Queer Refugee and Migration Law and was called to the Bar on 14 October 1999 (Inner Temple). My practice involves strategic litigation, academic, and policy driven approach to migration and LGBTQ+ rights in the UK, and internationally. Queer Refugee cases include *DW (homosexual men: persecution: sufficiency of protection) Jamaica CG* [2005] UKAIT 000168 (gay men and perceived gay men at real risk of persecution in Jamaica), *NR (Jamaica)* [2010] INLR 158 (sexual identity is current identity, first article in Daily Mail (July 2009)), *HT (Cameroon)* (CA, 2008) ((as sole counsel) granted permission to appeal out-of-time to Court of Appeal, where Tribunal hearing was in Glasgow, jurisdiction issue decided later), and *G v G* [2021] UKSC 9 (interplay between Hague Convention and Refugee Convention (intervenor Southall Black Sisters)). Currently awaiting decision/judgment from Strasbourg Court in *HA v the United Kingdom*, Application Mo. 30919/20, lodged July 2020 (Palestinian UNRWA refugee from camp in Lebanon, challenging incompatibility of Article 1D of the 1951 Refugee Convention and 1967 Protocol with Article 3 ECHR, leading Haydee Dijkstal, Head of International Law, 33 Bedford Row, instructed by Vanessa Delgado, Duncan Lewis Solicitors).

I consider that Article 14 UDHR Right to Seek and Enjoy Asylum and the positive and negative rights protections in the ECHR, provide the swords and shields in the legal batteries between the individual from unlawful state action.

In my view, we need to curb the excesses of government actions, specifically where they have large majorities in parliament providing a perception of a green light to legislate (irrespective of which party is in government). Improvements to human rights law must include a ban on conversation therapy.

The high point of my year in human rights work was on 6 November 2023 when a gay South African client interviewed by the Home Office, the interview concluded at 10:30am and

he was granted refugee status just after 4pm. A week later when he received his BRP card, with tears of joy he said, '*Thank you for saving my life'*.

For me the low point of the year in human rights law was on 17 November 2023 when the former Home Secretary called for emergency legislation to push through the Rwanda plan. Need to draw on Lord Atkins' dissent in *Liversidge v Anderson* [1942] 2 AC 206, providing the framework to enable judicial intervention in times of (actual) national emergencies (dissent endorsed by Lord Diplock in *I.R.C. V Rossminster Ltd* [1980] AC 952, at 1011).

Dr S Chelvan, Head of Immigration and Public Law, 33 Bedford Row Chambers and Adjunct Professor, Southampton Law School

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I am really sorry that I will not be with you. I am arguing a long running human rights case in the Cayman Islands.

I wish I could say that all the work of the HRLA and its members over the last 20 years meant that it had become unnecessary because the protection of human rights is guaranteed. Of course, the opposite is the case. I suspect that last year was the worst year in the HRLA's 20 years for human rights in the UK.

Most of the challenges to human rights are well known. I thought I would focus on one that is less well known in England and Wales but has caused widespread anger and distress in Northern Ireland. The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 provides impunity for murderers and torturers. Some of those who enjoy impunity will be State agents.

The European Court of Human Rights has said on numerous occasions that:

An adequate response by the authorities in investigating allegations of serious human rights violations may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of impunity, collusion in or tolerance of unlawful acts. (e.g. *Al Nashiri v Poland* Application No: 28761/11 at [495]).

There is an obvious risk that the failure to prosecute criminals in Northern Ireland will undermine confidence in the rule of law. Confidence in the rule of law is not something that will be easy to rebuild in a post-conflict society.

The political process failed to prevent the 2023 Act (despite near universal opposition in Northern Ireland). It is now down to the lawyers to challenge it, demonstrating the important role that HRLA members play in our society.

Hugh Southey KC, Barrister at Matrix Chambers

I am a partner in Irwin Mitchell's Public Law and Human Rights Department, specialising in mental capacity law, education, and judicial review.

Throughout my career, I have focussed on practising social welfare law; this inevitably required me regularly to rely directly upon the ECHR, in my earlier pre-HRA 1998 years of practice when I specialised in immigration and asylum. I then subsequently frequently pleaded the HRA 1998.

In more recent years, a highlight case of mine was *A and B v Secretary of State for Health* [2017] UKSC 41 in which I acted for a mother and daughter from Northern Ireland who challenged the then policy of the Secretary of State for Health which prohibited women from Northern Ireland accessing abortion services on the NHS. We pleaded that the issue of accessibility to abortion services and the ability of a woman to have autonomy over her reproductive rights engaged Articles 3, 8, and Article 14. The Court of Appeal held that Article 8 was engaged, and the Supreme Court held that Article 14 was engaged, when read with Article 8. A and B lost by the slimmest of margins, but the Government subsequently changed its policy, quoting the Supreme Court decision as providing the necessary authority for it to do so. A subsequent successful application to the ECtHR resulted in A and B recovering damages.

Currently, I regularly plead, in particular, Articles 5 and 8 in deprivation of liberty and welfare cases in the Court of Protection. The court takes its duties seriously in determining the impact upon vulnerable individuals who lack capacity when their civil liberties are potentially infringed. My practice is a regular reminder of the essential need to hold public bodies to account for decision-making that impacts the most fundamental rights of individuals.

I sit on the Law Society (TLS) Human Rights Committee and contributed to its response to the 2022 MOJ consultation on the Bill of Rights, which was thankfully subsequently withdrawn. The prospect of the Government placing restrictions on the judiciary was extremely worrying, as were other proposals, including making judicial remedies conditional upon conduct and removing positive obligations on public bodies.

The actions of the current Government in further restricting the rights of refugees through its Illegal Migration Act 2023; seeking to remove asylum-seekers to Rwanda and stifling democratic rights to protest are all stark reminders of the essential need for the ECHR and HRA.

Recent renewed debate by factions of the Government for the UK to leave the ECHR are reminders that we cannot be complacent. Whilst a change in government may be on the table in the near future, it remains vital to fight for maintaining the HRA and our commitment to the

ECHR. Governments come and go, but entrenching the international and domestic legal frameworks for protecting civil liberties is paramount.

Angela Jackman KC (Hon), Partner at Irwin Mitchell

I am a barrister, writer and speaker specialising in public international law and international criminal law at Doughty Street International. My practice is often focused on armed conflict and mass atrocity crimes and sits at the intersection of law and politics. We now know – through decades of research since the atrocities of the Second World War – that rights violations and crimes during armed conflict and mass atrocities have long gestation periods. They are often rooted in deep structures of inequality or discrimination. These are political as well as legal problems. The pre-cursors, therefore, to the human capacity for the commission of heinous crimes are witnessed by breaches of individual rights within the UDHR and the ECHR. These are readily identifiable, measurable, and immediately remediable, long before the worst of humanity is realised, but we fail to do so again and again. We need only look at the proliferation of international crimes today, which had a direct and irrefutable link to the breakdown of rule of law and human rights. Today, in the UK and world-wide there is political contestation over individual rights due to political expediency. There ought not be any, for upholding these fundamental rights are what stand between us and the worst of humanity. The drafters of the UDHR and ECHR knew this and three quarters of a century later we ought never take to take these conventions for granted.

Aarif Abraham, Barrister at Doughty Street Chambers

For nearly forty years, I have been practising criminal law, training at the Bar then as a prosecutor with the CPS and the SFO and later in private practice, founding the law firm Corker Binning at the turn of the century.

During all my time as a lawyer I have also been a strong supporter of JUSTICE, the cross-party human rights and law reform charity which is also the British section of the International Commission of Jurists. JUSTICE and the HRLA are partners in a common cause, and I am very happy to contribute this short message on the important work of the HRLA in my current role as Chair of JUSTICE's board.

The two momentous anniversaries of the UDHR and the ECHR being celebrated at the same time as the 20th birthday of the HRLA, is a timely reminder of why all lawyers need to recognise their role in protecting human rights. The HRLA is needed now more than ever before to defend the

rights of all people around the world to protection from overbearing and sometimes violent action by Governments and State bodies. The world is a more unstable place than at any time in recent memory and all lawyers can and must play their part in protecting basic rights and ensuring that, in these most difficult of times, the temptation to give in to political pressure to dispense with awkward legal restrictions and even to breach international agreements is strongly resisted both here in the UK and around the world. We all need to speak out when politicians seek to undermine basic rights or call them into question for political gain.

In terms of the current state of human rights in the UK, I cannot do better than to draw attention to the recent JUSTICE recent report on the threats to the Rule of Law in the UK https://files.justice.org.uk/wp-content/uploads/2023/08/31123029/JUSTICE-The-State-Were-In-Addressing-Threats-Challenges-to-the-Rule-of-Law-September-2023.pdf. Among the 20 recommendations are the protection of human rights from recent legislation which undermines those rights like the Illegal Migration Act 2023; enhancing parliamentary scrutiny of new law and protecting lawyers and the judiciary from political attacks.

The report sets out very well the serious challenges we all face as UK lawyers to set our politicians on a path which enhances the value of human rights rather than seeking to limit them or even strike them down. I am very pleased that Corker Binning joined the HRLA this year and I encourage all law firms to do so today!

Peter Binning, Founder of Corker Binning

Adopted in the wake of the horrors of WWII, the UDHR reaffirmed the inherent dignity and equality of all people and called for the protection of human rights through the rule of law. Whilst originally conceived as a non-binding *"common standard of achievement"*, its provisions would inspire a wealth of binding international human rights treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Certain provisions, norms such as the prohibition on torture, would become universally recognised norms of international law from which no derogation can be permitted.

It is a tragic reality that today, both in the UK and abroad, the rights and freedoms enshrined in the UDHR still prove elusive to so many. Domestically, a crumbling and underfunded criminal justice system undermines the fair trial rights of defendants. Abroad, violent conflagrations in Africa, the Middle East and elsewhere deprive civilians of the right to life, the protection of which

is necessary for the enjoyment of all other human rights. The tragic effects of many of these conflicts ripple through communities in the UK.

Whilst the rights and guarantees in the UDHR have not been universally obtained, the words and hopes of the document continue to be an inspiration to us all. Whether we are addressing injustices in the UK or agitating for the rights of those abroad, the UDHR continues to be a document of immense significance and a crucial touchstone in the fight against inequality.

Tetevi Davi, Barrister at 1MCB Chambers

If there was a need for an association of human rights lawyers 20 years ago, there is even more of a need now. In the post Brexit world, which is peppered with the dangerous rhetoric of populist politicians who fail to provide the resources necessary for protecting human rights, there is an even greater need for the judiciary to stand firm and to protect this country's international human rights commitments and the similar values that are embedded in the common law system. The role of human rights lawyers and organisations such as the HRLA and their support of the judiciary in that endeavour, is vital to the interests of the nation and its people. Without the lawyers, the courts are nothing.

Manjit S. Gill KC, Barrister at No5 Chambers

Nationalism and crude majoritarianism can be seductive notions, especially in hard times. But in a world threatened by war, hateful prejudice, attacks on independent institutions and the dilution of democracy, the supranational adjudication and enforcement of individual rights are priceless assets which, if carelessly handled, will be fatally diminished. Congratulations to the UNDHR and the ECHR on their anniversaries – and thanks to the HRLA for helping guard the flame.

Lord David Anderson of Ipswich KBE KC, Barrister at Brick Court Chambers

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The Importance of the Human Rights Act 1998 in Coronial Law

I have seen fundamental changes in the investigation of death in the last two decades since the implementation of the HRA. I set out some of those changes below.

Inquests serve as crucial investigations into sudden and unexpected deaths in England and Wales, holding those in power accountable for decisions that lead to unnecessary loss of life. Proper investigations are fundamental to a democratic system, ensuring transparency and justice. Prior to the Human Rights Act 1998 (HRA), however, these expectations often went unmet.

Pre-HRA Challenges: Before the HRA, inquests lacked timeliness, fairness, disclosure, and equality of arms. The scope of inquests was narrow, failing to hold the state accountable. Landmark cases like *R v HM Coroner for North Humberside and Scunthorpe* (1995) QB 1 highlighted this limitation, emphasising 'how' but not 'why' a person died.

Impact of the HRA: The HRA, incorporating the European Convention on Human Rights (ECHR) into English law, brought transformative changes. Article 2 of the ECHR imposed positive obligations on the State: the 'systems duty' to protect life, the 'operational duty' to mitigate immediate risks, and the 'investigative duty' to probe deaths involving State actions.

ECtHR's Role: Crucially, the European Court of Human Rights (ECtHR) in *McCann v United Kingdom* (1996) 21 EHRR 97 emphasised the need for effective official investigations following deaths. Subsequent cases like *Jordan v United Kingdom* (2003) 37 EHRR 2 and *R (Middleton) v HM Coroner for Western Somerset* (2004) 2 AC 182 further refined standards, emphasising independence, effectiveness, and involvement of victims' families in investigations.

Equality of Arms: Equality of arms, ensuring procedural fairness, became a focus. *Jordan* criticised the lack of disclosure in Northern Ireland's inquests, acknowledging families' disadvantages. Rule 13 of the Coroners (Inquests) Rules 2013 granted bereaved families the right to key document disclosure, promoting fairness.

Legal Aid and Access to Justice: Legal aid availability shifted significantly post-HRA. Previously absent, legal aid for inquests became a reality from November 2001, aligning with the UK's ECHR obligations. Regulations following *R (Khan) v Secretary of State for the Home Department* (2004) 1 WLR 971 empowered families to seek legal representation, ensuring a more equitable process.

Conclusion: The HRA's implementation has revolutionised coronial law. Families, once disadvantaged, are less so now and have access to crucial information and legal representation, promoting fairness and justice. While progress has been made, there's room for more improvement. Nevertheless, the HRA's impact in levelling the playing field cannot be overstated, marking a significant stride toward a more just and equal society when it comes to the investigation of State related deaths.

Professor Leslie Thomas KC, Barrister at Garden Court Chambers, Professor of Law at Gresham College and visiting Professor of Law at Goldsmiths

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How can I not mention Gaza?

I am a human rights law professor at LSE and a Barrister at Matrix Chambers. I knew Jonathan Cooper - he was one of my very closest friends and a person I admired enormously.

What would Jonathan have made of the bombardment of Gaza? He knew his human rights and rarely if ever tailored them to the demands of the powerful. I doubt that in his eyes proportionality entailed the destruction of a people or the forced movement from their homes with barely a pretence that they are ever to return. And all done with the enthusiastic support of the 'freedom-loving' Global North. Let no supporter of the Israeli action in Gaza ever again speak with civilised smugness of "the rule of law" and "universal human rights". Let no "liberal democracy" that is supporting or enabling Israel's collective punishment of Palestinians in Gaza ever again presume to be a defender of the dignity or the innate value of every human person. Let us refuse to celebrate any brief pause in the relentless destruction of Gaza brokered by this or that US diplomat or the arrival of a lorry or two of aid or the release of this or that foreign passport holder from the clutches of Hamas. Universal human rights can now only survive by carving out an independent space for global co-operation in the future, free of the hypocritical embrace of the brutal 'civilised' world.

Professor Conor Gearty KC (Hon), Barrister at Matrix Chambers and Professor at the London School of Economics

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Congratulations to the Human Rights Lawyers Association on your 20th anniversary. I know you are also celebrating the 75th anniversary of the Universal Declaration of Human Rights, so it may be fitting to share my thoughts on that landmark in the evolution of international human rights protection.

There are few historical developments more significant than the realisation that those in power should not be free to torture and abuse those who are not. The Universal Declaration of Human Rights, adopted in the aftermath of genocide by the Nazis, described limits on the power of the state by defining the human rights that every individual is entitled to by virtue of being human. As French jurist René Cassin, one of the Universal Declaration's framers, argued: *'we do not want a repetition of what happened in 1933, where Germany began to massacre its own nationals, and everybody . . . bowed, saying "Thou art sovereign and master in thine own house"'.*

The Universal Declaration is the centrepiece of the modern human rights infrastructure set up following the second world war. It was adopted a day after the Genocide Convention, within months of the Geneva Conventions, and while the Nuremberg trials of Nazi leaders were ongoing. It was quite a feat to obtain consensus from the 58 nations that then formed the United Nations on a list of universal rights. And when Eleanor Roosevelt presented it to the UN General Assembly she did so with the ambition that it would become the 'Magna Carta' for all of mankind.

The Declaration's goals are as relevant today as when they were first adopted a lifetime ago, and their attainment remains elusive and urgent. Women are still denied equal treatment, a scourge that holds back half the population in countries across the globe. Journalists are put behind bars for simply reporting the truth. Survivors of genocide like the Yazidis and the Rohingyas still wait a judicial reckoning.

Having defined universal rights, States must do more to make sure they are enforced. The Declaration was meant to prevent the repetition of 'barbarous acts' that 'outraged the conscience of mankind' – but this cannot happen unless violators are punished for such acts. That means that, just like the Nazi leaders who were held accountable for their crimes at Nuremberg, human rights abusers today must face justice for their crimes.

Soviet Foreign Minister Andrei Vyshinsky described the Universal Declaration at the time it was adopted as *'just a collection of pious phrases'*. There are few objectives more worthwhile than proving him wrong. And we all have a part to play. As one of the Declaration's drafters, Eleanor Roosevelt, said: *"Where, after all, do universal human rights begin? In small places, close to home…[W]ithout concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world"*.

Amal Clooney, Barrister at Doughty Street Chambers, Co-founder of the Clooney Foundation for Justice

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The Struggle for Human Rights Continues

By autumn, the world has seen the tinderbox of domestic and international politics and disputes spark with tragic consequences. A rupturing of the uneasy cooperation between Moscow and the West erupting on European soil, an invasion prompting a concerted effort from both sides of the Atlantic to get supplies to the frontline. Conflict and untold suffering in the Middle East. Power shifts and political fighting in China and the US, playing out against a backdrop of attacks on human rights. It is 1948 and having spoken powerfully in Paris about the Struggle for Human Rights, Eleanor Roosevelt – one of my heroes – is leading the work to draft the Universal

Declaration of Human Rights, which would be adopted by the UN General Assembly on 10 December.

75 years on, and as we also celebrate 70 years since the European Convention on Human Rights came into force and the 20th birthday of the Human Rights Lawyers Association, the parallels are many, the struggle continues, and the progress made must be recognised but also assiduously protected. We must do so not just in the corridors of power, but – as Roosevelt said memorably on the UDHR's tenth anniversary – in small places, close to home: our neighbourhoods, our schools and colleges, our workplaces, *"where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination"*.

Let me single out just two of the trends I have been fortunate to see up close in my career: first, the march towards equal rights for women and development of discrimination law; and second, the mainstreaming of international human rights as a specialist legal discipline and foundational organisational framework for business. On each of these, progress has been slow and uneven, hard-won and transformational. At times we have been able to focus on how equality and corporate accountability should work in practice, but all too often we find ourselves still labouring to persuade that these are goals worthy of pursuit.

Across vast swathes of the world, women's participation and indeed leadership in political, economic, social and cultural life today is unrecognisable to the position 75 years ago. In 1949, another of my heroes, Rose Heilbron, became one of the first two women King's Counsel (later Queen's Counsel), after some 350 years of that title being bestowed upon men. Today, young girls – indeed all children – have many more women role models in more senior positions in more walks of life, and they can set their sights accordingly ever upwards.

However, while that contrast is topical on this anniversary of the UDHR, striving for equality requires a comparison not to the struggle of women in the past but to the privileges and opportunities available to men today. From bodily autonomy and access to healthcare, through freedom from violence and harassment, equal pay and disproportionate unpaid care burdens, equality remains a painfully long way off even in those countries where we have already come the furthest. This is the work of all of us, and the current and future generations of human rights lawyers will be at the front of the march.

The UDHR recognised the fundamental duty of the State to protect human rights, and Roosevelt spoke of the need for concerted citizen action to uphold these rights, including in the factory, the farm, and the office. Today we are also grappling with the responsibility of business to respect these rights and to safeguard our shared environment. The UN Guiding Principles on Business and Human Rights – the "Ruggie Principles" to those of us lucky enough to have known their

author – have become the global authoritative standard on the private sector's role in preventing and addressing adverse impacts on human rights. Guidelines from the OECD complement these "UNGPs" with a more direct application to environmental issues as well as practical sector-specific recommendations.

As often happens with good "soft law", this guidance is being crystallised into national and regional law, and, at the international level, negotiations on a binding treaty on business and human rights continue slowly in the background. In company policies, civil society campaigns, government action plans and court judgments, the language of the UNGPs and OECD Guidelines is reshaping the corporate governance and accountability landscape. Business voluntarism has delivered neither the change nor the level playing field that we desperately need. Effective regulation is required. For all the reactionary anti-woke, anti-ESG, antiquated political posturing we are seeing, this responsible business conduct train has left the station. The younger generations, in particular, are on-board and adamant that it should be a one-way journey.

It has been a privilege and a joy to work on these matters alongside exceptional friends and colleagues throughout my career so far, as a barrister and now as part of Omnia Strategy. It is an honour to contribute these thoughts alongside esteemed human rights allies, to continue working with them and others on these critical challenges, and to wish a fond "happy birthday" to the HRLA. Here's to the next 20 years.

Cherie Blair CBE KC, Founder & Chair of Omnia Strategy LLP, Founder of the Cherie Blair Foundation for Women

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I have worked with and been inspired by our international human rights framework for thirty years since being called to the Bar. 1994 was an exciting time for human rights. The end of apartheid in South Africa owed as much to human rights as anti-colonial movements and this was reflected in a late-twentieth century new constitution that owed so much to the Universal Declaration of Human Rights and core value of human dignity.

Two years later, I found myself working as a government lawyer in the Home Office advising on legislation, policy and litigation - including in the Strasbourg Court which notwithstanding the organic development of the common law, was the only place where people in the UK could seek vindication of their Convention rights. Even in that period prior to the 1997 Labour Government and the exquisite constitutional compromise that became the Human Rights Act, successive

governments had brought the humanity of the ECHR to immigration policy, via a series of policy instructions to officials.

A new government with a more proactive human rights and constitutional reform agenda created enormously exciting challenges for the young lawyer that I was. Decades of Strasbourg challenges now paved the way for gay equality and victims' rights. The 1998 Human Rights Act was not brought into force until less than a year before the horror of the twin towers atrocity. Still, in the difficult years that followed, it provided a vital bulwark against understandable knee-jerk reactions and empowered our world-renowned judiciary with the ability to hold the executive to account and on rare and extreme occasions, to ask Parliament to think again.

By this time, I had taken the leap from Whitehall to Liberty, becoming its director in 2003. There, I coordinated our intervention in the legendary *Belmarsh* case against indefinite internment without charge and successfully challenged over-broad suspicion less stop and search powers. However, these and other important human rights victories often took many years to achieve. Perhaps even more important, was the cultural shift in so much of both policy-making and public service delivery with concepts of proportionality, equal treatment and our old friend dignity being more readily embraced by those in day-to-day authority, if not in all quarters of politics and the media.

Parliament too has become more confident in human rights assessments of relevant legislation, in particular. As a peer for the last seven years, I have been heartened by the way in which so many legislators - including non-lawyers - and across all parties, have sought to use human rights to frame their arguments. No wonder our very continuing involvement in a post-war rules-based settlement that Britain was so instrumental in creating, is now under threat from the populist far right.

Baroness Shami Chakrabarti, Member of the House of Lords, Former Director of Liberty

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When I was first at the Bar, I had little to do with human rights law. But my political career has, to my surprise and some amusement, come to be dominated by debates over the value of the ECHR and the HRA and to be the direct cause of my being dismissed as Attorney General by David Cameron in 2014. All this was perhaps fated, as my father, who was both a barrister and an MP, had been the chair of the Legal Affairs and Human Rights Committee of the Council of Europe. I had been to Strasbourg as a teenager and sat in on its work and gained an understanding of the value and purpose of the Convention, which was of course in part to give much better effect to the principles in the UDHR.

So, unlike many of my Conservative parliamentary colleagues, I welcomed the incorporation of the ECHR into our domestic law through the HRA and its application since. The benefits of the ECHR are obvious and overwhelming. It has over the course of its years of operation been a driving force in improving human rights standards across our continent. To name but a few, these include ending State discrimination against children on the grounds of illegitimacy, the criminalisation of homosexual acts, the blanket retention of DNA obtained by the Police from persons neither charged nor convicted, corporal punishment, excluding opposite sex couples from civil partnership laws, and the presence of military officers sitting as judges in civilian courts. Furthermore, in its development the UK was seen as its prime mover and creator and until recently as its prime promoter - a success for our soft power on the international stage and an example of how a country with an established reputation for upholding and developing the rule of law can spread those benefits beyond its borders as well as benefitting itself domestically.

This is why the current fashion in government to criticise the ECHR and the operation of the HRA must be countered. They are certainly not perfect and individual decisions of the ECtHR can be open to criticism just like some from our domestic courts. The law and its interpretation are, as man-made constructs, inevitably as fallible as we are ourselves. But that is not a good reason to resile from, repeal, or try to wriggle out of them. Doing so will not in most cases help our government achieve legitimate policy goals one bit.

So, we are right to celebrate these multiple anniversaries. The good news is that I am convinced that for all the current political turmoil they are here to stay if we speak up for them.

Dominic Grieve KC, Barrister at Temple Garden Chambers, Former Attorney General for England and Wales

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The 75th anniversary of the Universal Declaration of Human Rights (UDHR), the 70th anniversary of the European Convention of Human Rights (ECHR), and the 25th anniversary of the passing of the Human Rights Act (HRA), spawning the HRLA, provide a welcome moment to celebrate. But coinciding, as they are, with the appalling events we are witnessing in Gaza, Palestine, and Israel, this is also a time to take stock. So much success combined with such devastating failures!

The treaties, enforcement mechanisms, standards, and principles which the UDHR has spawned over the last seven decades would have been unimaginable to its drafters, even at their most optimistic. One of these was the ECHR whose successes as a backstop for millions of people across 46 countries across Europe have included landmark LGBTQ+ rights, the last resort for

asylum seekers threatened with deportation, and establishing a range of protections for the victims of crime. It has been so effective at prioritising humanity over nationality, and universalism over nativism, that our government is now threatening to withdraw from the Convention altogether.

For 40 plus years the ECHR was largely a distant, mostly invisible, treaty in the UK, only known to human rights lawyers who would magic it up when all else failed. This started to change after the HRA was passed a quarter of a century ago. For most of its life, successive governments have tried to undermine or repeal the Act. This political opposition was in direct proportion to the effect of the HRA on rights and freedoms in the UK. Its successes include introducing the first explicit privacy and protest rights into UK law, narrowing the scope of broad anti-terrorism measures, and providing family life protections that extend to migrants and other non-British nationals, who would otherwise have no recourse under UK law. Now our government is in a standoff with the Supreme Court, effectively threatening that if they declare that Rwanda is not a safe country to offshore asylum seekers to, it will not just be the Rwandan scheme that falls, but our human rights protections with it.

Yet amidst three quarters of a century of human rights gains, probably far exceeding the expectations of the drafters of the UDHR, their most optimistic vision of a world where human dignity is universally respected, appears to be in tatters. The lessons learned from the terrible global events which preceded its drafting, including the clinical mass murder of millions of human beings – those *"barbarous acts which have outraged the conscience of mankind,"* as the Preamble put it - were the antecedents of the rights the Declaration proclaimed.

But the UDHR was not written for the past as it could not be undone. It was drafted for a moment like now. Since 1948, there have horrifyingly been more genocides in different parts of the world. But as we mark these momentous anniversaries, the distressing atrocities and appalling loss of life in Gaza, Israel, and Palestine, including of hundreds of children, represent the glaring failure of international humanitarian and human rights law to prevent, or even mitigate against, the most egregious human rights abuses and crimes against humanity. And it was humanity, rather than nations, that was most in the sights of the drafters of the UDHR. They adopted a set of principles for *'all peoples,'* addressed to *'every individual and every organ of society'* because they knew that courts, treaties, and declarations on their own could not fulfil their moral vision for our future world. The UDHR tasks *us all* with the responsibility to demand that our governments and international bodies respect and protect the fundamental human rights that we are here to celebrate. For, as prime drafter René Cassin put it, the UDHR is applicable '*to everyone or to no one.*'

Professor Francesca Klug, Visiting Professor at the London School of Economics

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I practice from Serjeants' Inn Chambers and specialise in the areas of mental capacity, mental health, education and health and social care, and am instructed in cases which routinely involve significant human rights issues. I have appeared in several high-profile cases in those areas, particularly cases concerning life and death decisions of children and adults. Between 2019-2022, I sat on the executive committee of the HRLA and saw directly the important work done to increase the knowledge and understanding of human rights law, especially through education and training.

During the past year, my first year in silk, I have been involved in a number of important cases. Of note is the case of Indi Gregory which has received significant public interest in the UK and abroad, particularly in Italy. I was instructed by a hospital Trust which was providing intensive care and treatment to a young baby who had an exceptionally rare neurometabolic disorder and other complex diagnoses. Various treatments had been attempted to no avail. We argued that the right to life protected by Article 2 ECHR, one of the most fundamental provisions in the Convention, was not absolute and had been rebutted on the specific facts, such that life sustaining treatment should not continue to be given, and that palliative care only would be in the child's best interests. The primary argument was that ongoing treatment would be futile and burdensome; the latter being particularly important as there was evidence that the child was in pain.

The application, which was before the High Court, made its way to the Court of Appeal three times, and an application was also made by the father to the European Court of Human Rights at one stage. During the proceedings, the child was granted Italian citizenship, treatment at an Italian paediatric hospital was offered, and various applications were made by the child's father, including to the Consulate of Italy which resulted in a decree authorising certain actions that were contrary to orders made by the UK courts.

What was notable was the significant difference in how the UK courts interpreted Article 2 compared to Italy. The position in the UK is that the right to life may be outweighed if the pleasures and the quality of life are sufficiently small and the pain and suffering and other burdens are sufficiently great. The alternative view centred on the fact that medical care was a parental decision, and that life sustaining treatment should continue if it prolonged life, even for a short time.

Although the questions for the court in these difficult life and death cases are questions of law, such applications give rise to moral and ethical issues which are of fundamental importance to society. This case is perhaps a good example of how anxious scrutiny was properly given to the

sensitive issues raised, both by the High Court and the Court of Appeal on several occasions prior to the proceedings concluding.

Emma Sutton KC, Barrister at Serjeants' Inn Chambers

I am truly sorry that I am not able to be present in person to celebrate with you the 70th anniversary of the European Convention on Human Rights and the 75th anniversary of the Universal Declaration of Human Rights.

Throughout my career, human rights has been at the heart of my practice. I worked at the Refugee Legal Centre advising and representing asylum-seeker and then for Tower Hamlets Law Centre on migration and family reunion work centring on Article 8 ECHR and Somali Family Reunion.

I was lucky enough to be able to join Garden Court Chambers in November 1998 just as the Human Rights Act 1998 was passed into law (although of course it was not commenced for another almost two years).

The obvious highs and low points in the last year or so arise from the Rwanda case. Coming so close to very vulnerable asylum-seekers being removed – late at night – some shackled to the plane - is a night that will live long in my memory – that this was being done in our name in this manner is shocking. The Court of Appeal granted an injunction for two of my clients. Had any person been removed the final outcome might have been very different. Last week's judgment from the Supreme Court in *AAA and others* – which is a total vindication of more than 70 years of human rights principles which the UK signed up to and brought into domestic legislation.

I have relied on human rights principles and Article 3 ECHR in particular in so many successful cases of vulnerable Afghan asylum-seekers who again were only saved from removal due to a real risk of serious harm by charter flight by Court intervention.

Using human rights arguments permits innovation and allows the 'living instrument' doctrine to have meaningful purpose. In the case of a migrant who died in immigration detention we were able to use the procedural obligations under Article 3, along with the public law principles to prevent the removal of potential witnesses to the death prior to the inquest and permitting the Coroner to get access to the relevant evidence.

The Supreme Court in the deport first, appeal later, case of *Kiarie and Byndloss* allowed the development of the use of the procedural obligations under section 6 HRA 1998 to carry the argument as to whether a person from abroad could have a fair and effective appeal. The robust principled application of the law here was an important victory for the rule of law.

Going forwards for the next 70 years we must remember why these important rights were developed and are an essential part of our democratic and social history and why we must not allow for their erosion.

Sonali Naik KC, Barrister at Garden Court Chambers

Current state of Human Rights in the UK

We are currently in a precarious place when it comes to protecting the basic rights of some of the most vulnerable people in our society. The rhetoric from this government designed purely to appeal to large parts of their base, concocting policies that are anti-immigrant, hostile, and racist has been relentless. For many years now, it has been difficult to tell what is simply rhetoric, and what is in fact, actual workable policy. But too often we see the most egregious assaults on human rights law – whether it is a brutal policy or passing the cruellest primary legislation designed to cause maximum harm.

What is shocking in all of this is the government's growing desperation and obsession with pulling out of the ECHR. Their attempts through the Illegal Migration Act to nullify Interim Measures- something that was pivotal for us in stopping that first Rwanda flight last year should terrify anyone who has a basic respect for the Rule of Law.

A high point for Human Rights this year

Of course, our win at the Court of Appeal in the Rwanda challenge. At the time of writing this, we are awaiting the judgment of the Supreme Court. The Court of Appeal's majority decision was a stark, considered judgment that put human rights at its centre in considering whether the policy was lawful. The majority of the Court of Appeal was right to reconsider the decision of the Home Secretary that Rwanda was a safe third country, consistent with Article 3 ECHR standards. The Court held that the lower court failed to address or recognise the relevance of centrally important issues and evidence (e.g. UNHCR's evidence on in-country *refoulement* and defects in the refugee status determination ("RSD") system; the independence of the Rwandan judiciary; and the Israel-Rwanda TCTA). We can only hope the Supreme Court agrees with that position.

Human Rights – the future

We have seen in recent global conflicts that it is so very important to truly understand and have respect for the concept of human rights. It is, I would say, a core component of what makes us compassionate, caring human beings. It is always difficult to hold on to hope when oppressive Governments are so relentless. But there is hope. Young human rights lawyers are coming through.

They are passionate and hard working. They are here to protect those rights and despite all the obstacles in their way, they build on hope and stand up for those at the very edge.

Toufique Hossain

Public Law Director at Duncan Lewis Solicitors

René Cassin from the grave...

(Caroline Cassin from the René Cassin family imagined what René Cassin might say today)

Since the age of 6, I have had my eyes focused on the Fatherland and justice in this world.

At 26 years old, on August 1, 1914, I threw myself into the Great War

At 27, I received machine gun fire at War; *"I think I'm done*".

At 33 years old, I perceived the nature of the Nazi regime and understood the powerlessness of the League.

At 40, I boarded the Ettrick liner with Raymon Aron and joined General de Gaulle in London.

At 80, I received the Nobel Peace Prize for having written the Universal Declaration of Human Rights, and I told them this: *"Today, where there is no respect for human rights and freedom, there is no peace either. Every day, young people fall on the battlefields. Every day, prisoners are taken to prison and torture chambers. They fight and suffer for the ideals of the Declaration of Human Rights. Peace, everyone must seize it every day."*

Today, I rise from my grave to tell you this:

No, my family is not doing well when babies are killed and burned in their mother's arms while their fathers protect them with their bodies.

No, my family is not doing well when 260 20-year-olds are in plastic bags dancing in the open to celebrate a peace festival.

No, my family is not doing well when entire families have their heads cut off one by one.

No, my family is not doing well when terrorists seize causes to justify their crimes.

No, my family is not doing well when international and Human Rights organizations remain silent.

No, my family is not doing well when we grant a country victim of terrorism the right or not to defend itself.

Who are we to grant the right to anything?

Who are we when we look at what will constitute a crime against Humanity tomorrow?

Who are we when our children ask, *"What did you do then"?*

So, what did you do with the inheritance I left you?

Peace, everyone must seize it every day.

My family is not doing well because my family is *"le genre humain".*

René Cassin

Caroline Cassin, Founder of René Cassin Heritage

The HRLA is grateful to No5 Chambers for the sponsorship of this commemorative booklet

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