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'The Enemy of the People': outlining global threats to the freedoms of expression and access to information

'The Fake News hates me saying that they are the Enemy of the People only because they know it's TRUE ... They purposely cause great division & distrust. They can also cause War! They are very dangerous & sick!' Donald Trump

In the information age, free-flowing information is vital in upholding accountability and transparency. This is recognised universally, but is labelled as 'dangerous' and 'the enemy of the people' by authoritarian leaders. Thus, governments are attempting to control social media and eliminate independent journalism, placing freedom of expression and access to information at risk. This article will outline methods of curtailing these freedoms through social and traditional media.

Social media

The right to access information is enshrined in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), providing for free expression and the right to the truth. However, with social media's growing role in political discourse, governmental influence is increasing, fashioning platforms into weapons of division and distrust.

The coalescence between social media and governance in the United States (US) has drastically affected the flow of information. This is most prevalent in Elon Musk's unconstitutional assignment to Donald Trump's cabinet in a 'tech coup' and his 'destructive' Twitter ownership. Musk has dismissed Twitter's human rights staff, reinstated 12,000 discriminatory accounts, commodified verification and removed fact-checks, drawing concerns from the UN. Meta's Mark Zuckerberg has since emulated X's changes to appease Trump's threats, manufacturing a landscape of

misinformation which is 'biased against facts and journalists'. While Trump declared this a 'win for free speech', it must be weighed against the rights to fair elections and the truth, and with Musk's misinformation playing a 'central role' in Trump's victory, governments and social media must be separated.

Deregulation has rendered platforms 'echo chambers', perhaps contravening Articles 19 and 20 of the ICCPR. This has enabled politicians to maximise their voices and silence others, evident in Truth Social's banning of liberal pages, and Nigel Farage's incitement of riots against asylum seekers. On such platforms, misinformation spreads six times faster than the truth, undermining true expression and causing *The Guardian* to withdraw from X. To protect the truth, social media's journalistic role, and other rights, legislation akin to the European Union's Media Freedom Act and transparency recommendations must be introduced.

Eastern states are also leveraging social media to conceal crimes, namely those committed by China towards the Uyghur population. Having lost control of the international press, Xi Jinping labelled the internet 'the main battlefield of ideological struggle'. China has sought to whitewash its crimes against Uyghurs by forcing Uyghurs to 'tell China's story well' via Chinese Communist Party (CCP)-owned channels boasting over 200,000 subscribers. This has oversaturated platforms with misinformation, with over a third of tweets mentioning Xinjiang Xinjiang (an autonomous territory in China home to many Uyghurs) emanating from CCP accounts. TikTok's popularity has also been employed to improve China's image, having banned Uyghurs and optimised algorithms to evangelise Chinese culture. Due to the stifled flow of information on the world's most-used



platforms, the Uyghur genocide has been ‘forgotten’. Therefore, alternative means of empowering voices, including fact-finding and condemning crimes, must be considered.

Traditional media

While social media offers a novel means of imparting information, traditional media has always ‘played an essential role in democratic society’. Article 19 of the ICCPR mandates that states respect and protect free and uninfluenced journalistic expression. However, states have taken extreme measures to silence journalists and preserve power.

George Orwell’s ‘Ministry of Truth’ in his novel *1984* attempts to illustrate the effects of state-owned media in preserving totalitarian power, which has been mirrored contemporarily. North Korea has ‘trampled on’ constitutional protections by forcing journalists to present the regime positively, whereas Kazakhstan has implemented decades of repressive laws, revoking the access of foreign and dissenting journalists, with the Kazakh Ministry of Information serving as regulator. This has prevented international awareness of abuses and sparked concern from the BBC. Russia and North Korea are further examples, with 73.6 per cent and 100 per cent of all media being state-owned, respectively. With such a monopoly over the domestic landscape, cults of personality are built around the deified incumbent, entrenching unchecked power for generations.

Censorship is also a grave concern for journalists. Israel has banned foreign media from reporting on the genocide in Gaza. This has silenced victims and prevented the international community from ascertaining the true extent of Israel’s crimes. Other states have sought to exercise control over foreign journalism, with Eritrea enforcing blackouts on independent French radio stations ran by Eritreans-in-exile to report on the state’s ongoing crimes. Furthermore, China have attempted to silence journalists and Uyghurs-in-exile through threats, sanctions and smear campaigns. To empower free domestic journalism, states must acknowledge such crimes and call for the implementation and enforcement of legislation respecting journalists’ rights.

Journalists also face physical threats to limit their expression. Mexico has held ‘Who’s Who in This Week’s Fake News’ sessions, publicly deriding reporters, leading

to attacks on journalists every 13 hours in 2022, causing 12 deaths. Similarly, Israel is conducting a ‘war on journalism’ in Gaza, having killed 169 journalists and arbitrarily arrested others. Saudi Arabia operates a similar legal framework, arresting journalists for ‘blasphemy’ and ‘harming the image of the king and the state’. The state also sanctions assassinations of dissidents such as Jamal Khashoggi, but the suppressed media landscape prevents other instances from gaining international recognition. States must raise alarm at treatment such as that of Eritrean journalist, Dawit Isaak, who has been held incommunicado in ‘appalling conditions’ since Eritrea’s 2001 descent into an ‘information desert’. This is illegal – but the stifled landscape for journalistic expression limits global awareness of such crimes. States must seize every opportunity to challenge this.

Conclusion and recommendations

Journalism and social media are not ‘the enemy of the people’. However, governments have harnessed these and restrained the flow of information to preserve power and conceal crimes by controlling social media and subjecting journalism to existential threats. The international community must unite to challenge this, implementing regulations for misinformation, and new standards for social media’s independence. States must also empower domestic journalism, working with non-governmental organisations and enforcement mechanisms to seek fairness, truth, accountability and protection.

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 58. Council of Europe, 'Freedom of Expression: Legal framework to ensure independence of the media and safeguard media pluralism' (2025) www.coe.int/en/web/freedom-expression/legal-framework-to-ensure-independence-of-the-media-and-safeguard-media-pluralism/#%7B%22253392319%22%5B1%5D%7D accessed 25 February 2025.
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Stephanie
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From voluntary to mandatory: prior consultation of local communities in energy transition projects

The global shift from fossil fuels to renewable energy sources is accelerating. Yet, the urgency of the ‘green rush’ often comes into tension with the rights of local communities. Prior consultations ensure that these historically excluded groups are informed and actively involved in energy transition planning. This article argues that prior consultations, once seen as a matter of goodwill, ought to be a legal obligation for states. Emerging legal frameworks and case law are establishing a clear expectation: governments must ensure local communities are properly consulted before granting permission for energy transition projects on their land. This article first explores ‘just transitions’ as a bridge between renewable energy demands and social sustainability. It then examines prior consultations as a human right and a meaningful social dialogue, distinguishing binding international frameworks from discretionary ones. It finally highlights how courts increasingly require states to enforce consultations with local communities.¹

Addressing climate change, including transitioning from fossil fuels to renewable energy sources, is encouraged by international and national actors.² These changes are coming rapidly, but not without cost.³ The execution of energy transition projects requires vast access to land – mainly governed by Indigenous Peoples – and the shift to a climate-neutral economy is expected to cut 80 million jobs.⁴ These challenges have caused social resistance, now forming one of the greatest inhibitors to achieving net-zero.⁵

To address the costs of energy transition, the concept of ‘just transition’ has emerged. The rights of the people most affected by the energy transition – local communities – have historically been violated.⁶ Just transitions intend to address the means to the ends – prevent and treat the social inequality brought about by the energy transition.

Making transitions ‘just’ is increasingly becoming a climate action priority, widely adopted by governments and businesses across various industries.⁷

A fundamental requirement for a just transition is prior consultation with local communities. It is generally understood that consultations should entail informed negotiations and meaningful stakeholder engagement.⁸ The direct engagement with such stakeholders reveals the needs and vulnerabilities of the communities affected by energy transition projects, protecting not only procedural rights but also the substantive human rights to life, liberty, security, health, freedom of movement, adequate standard of living, social protection and decent work.⁹

Defining meaningful stakeholder engagement in prior consultations can be challenging. International organisations have produced guidelines that help understand such expectations, highlighting that engagement should be inclusive, in good faith, accessible and mindful of potential barriers.¹⁰ Some note that consultations should involve actors with a sound grasp of climate-related issues, be recurrent and enabled by public authorities and cover all relevant policy domains.¹¹ These requirements improve consultation’s success and, in practice, grant companies and governments a ‘social licence to operate’.¹²

International frameworks emphasise the importance of inclusive decision-making to ensure fair and just development through consultations with affected communities. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) introduces the notion of Free, Prior and Informed Consent (FPIC), which is derived from the right to self-determination.¹³ UNDRIP provides that consent is required to relocate and store waste in the territory of communities, yet – for project permission granting – it states that while the goal is to

obtain consent, the actual obligation is to carry out consultations.¹⁴ Additionally, the Sustainable Development Goals (SDGs), the Rio Declaration and the International Labour's (ILO) Just Transition Principles also provide for participation of the concerned stakeholders in projects to ensure inclusive and responsive decision-making.¹⁵ Nevertheless, these frameworks remain non-binding, and can only act as a representation of the international community's definition of will to incorporate prior consultation in energy transition projects.

Legally binding frameworks play a crucial role in enforcing prior consultation requirements for local communities. On a procedural note, the ICCPR, key human rights frameworks, environmental treaties, core ILO Conventions and national regulations, uphold the rights to access information, participate freely and meaningfully in public affairs and seek justice and remedies.¹⁶ On a more substantive note, other international frameworks, such as the Aarhus Convention and the ILO 169 Convention, directly require countries to consult and engage with local communities – especially if they are Indigenous Peoples – before approving energy transition projects.¹⁷ Furthermore, the European Union (EU) Corporate Sustainability Due Diligence Directive (CSDDD) also requires the meaningful engagement of stakeholders – giving them access to information and justice and addressing barriers to effective engagement.¹⁸ Although mainly directed towards companies, EU Member States are required to transpose the directive into national law.¹⁹

Over the past decade, case law increasingly highlights and protects local communities' right to prior consultation in energy projects. Pioneered by Latin American countries, the global expansion of successful case law reflects growing expectations for national and local governments to enforce prior consultation before granting project approval. Often, the court decisions require the governments to halt companies' project plans and licences, requesting for consultations to be carried out as conditions for their resumption.

Courts have upheld the right to local consultations as a procedural, constitutional and international human right. Prior consultations have been framed as an essential procedural requirement under domestic laws and agreements, particularly

related to environmental permits or regulatory approval processes. In several cases, including those in Australia, Chile, Indonesia and Taiwan, courts have found that inadequate consultation with local communities constituted a breach of procedural guarantees in national legislation.²⁰ In Colombian, Ecuadorian and Brazilian cases, courts have pointed to the Indigenous Peoples' constitutional rights to self-determination, cultural integrity and autonomous governing and territory.²¹ In these same cases, and additionally in Guatemalan and Argentinian ones, the courts highlighted international law human rights guarantees, such as the ILO Convention 169, the American Convention on Human Rights and UNDRIP, when demanding proper consultations with the local community.²² While courts may rely on different legal grounds – whether procedural guarantees, constitutional protections or international human rights standards – their rulings consistently reinforce the obligation to conduct meaningful consultations with local communities before proceeding with energy transition projects.

Notes

- 1 It is important to note that this article mainly focuses on the responsibility states, not companies, have in ensuring meaningful prior consultations in energy transition projects. This is because while companies are expected to engage with communities, the ultimate responsibility for conducting prior consultations lies with the government, and they are expected to require that consultations are conducted by companies, as reinforced by decisions from international bodies such as the Inter-American Court of Human Rights. See *Maya Q'eqchi'*, 'Indigenous Community of Agua Caliente v. Guatemala' No Series C No 488 (Inter-American Court of Human Rights 2023).
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- 4 Tokelo Shai and Haley St Dennis, 'What Is Just Transition?' (Institute for Human Rights and Business, 2023) www.ihrb.org/resources/what-is-just-transition; Vigya Sharma and Mayank Aggarwal, 'Can Meaningful Consultation and Consent Advance Fair and Equitable Large-Scale Renewable Energy Development? Reflections from India' (April 2025) 85 *Energy for Sustainable Development* 01613 <https://doi.org/10.1016/j.esd.2024.101613>; 'Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All' (International Labour Organisation, 2015) www.ilo.org/publications/guidelines-just



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- 5 'Just Transitions Dialogue: Exploring the Need for International Rules Based on Local Realities' (Wilton Park, 7 October 2022) www.wiltonpark.org.uk/app/uploads/2023/01/WP3012-Report.pdf; 'The Cost of Green Conflict' (Institute for Human Rights and Business) www.ihrb.org/projects/the-cost-of-green-conflict.
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 - 7 The term 'just transition' is embedded in the preamble to the Paris Agreement and national commissions for just transitions have been created in in Canada, Germany, Scotland, Australia, Ireland, New Zealand the US (Appalachia), South Africa, the EU and the UN; Raphael J. Heffron, *Achieving a Just Transition to a Low-Carbon Economy* (Cham, Switzerland: Springer International Publishing AG, 2021); 'Just Transitions Dialogue: Exploring the Need for International Rules Based on Local Realities' (Wilton Park, 7 October 2022).
 - 8 United Nations Human Rights Office of the United Nations High Commissioner and International Labour Organisation, 'Key Messages on a Just Transition and Human Rights' (2023), www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/v4-key-messages-just-transition-human.pdf.
 - 9 This is not an exhaustive list: Hana Müllerová et al, 'Building the Concept of Just Transition in Law: Reflections on Its Conceptual Framing, Structure and Content' (2023) 53(4) *Environmental Policy and Law* 275–88 <https://doi.org/10.3233/EPL-230012>.which has recently greatly expanded in the climate debate, expressing the demand to adopt and implement climate policies leading to decarbonisation in a way that maintains equity and justice. Building on previous research on the concept of just transition in other disciplines of social sciences, and on the concept's appearance in international climate law instruments and law literature, we analyse the just transition in the field of law. We seek to clarify its conceptual framing, to define its meaning, and to determine its position and limits in law. We then examine it vertically (for each level of law
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 - 11 'The Role of Social Dialogue and Tripartism in a Just Transition towards Environmentally Sustainable Economies and Societies for All' (International Labour Organisation, August 2022) www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_858810.pdf.
 - 12 Müllerová et al, 'Building the Concept of Just Transition in Law: Reflections on Its Conceptual Framing, Structure and Content' (2023) 53(4) *Environmental Policy and Law* 275–88.which has recently greatly expanded in the climate debate, expressing the demand to adopt and implement climate policies leading to decarbonisation in a way that maintains equity and justice. Building on previous research on the concept of just transition in other disciplines of social sciences, and on the concept's appearance in international climate law instruments and law literature, we analyse the just transition in the field of law. We seek to clarify its conceptual framing, to define its meaning, and to determine its position and limits in law. We then examine it vertically (for each level of law
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 - 15 UN General Assembly, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (2015) www.refworld.org/legal/resolution/unga/2015/en/111816, SDG 16.7.2; 'United Nations Conference on Environment and Development: Rio Declaration on Environment and Development' (1992) 31(4) *International Legal Materials* 874–80; 'Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All' (International Labour Organisation, 2015).
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 - 17 United Nations, 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters' (1998), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XXVII-13&chapter=27, Arts 6–8; 'C169 – Indigenous and Tribal Peoples Convention' (International Labour Organisation, 1989) Art 6.
 - 18 Directive (EU) 2024/1760 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L2024/1760 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32024L1760>, Art 13.2.
 - 19 Maria Pia Sacco and Alice Cope, 'The EU Corporate Sustainability Due Diligence Directive: Key Requirements and Considerations around Alignment with the UNGPs' (International Bar Association, 30 July 2024) www.ibanet.org/EU-Corporate-Sustainability-Due-Diligence-Directive-key-requirements-and-considerations-around-alignment-with-the-UNGPs.\u0000\u8220{}The EU Corporate Sustainability Due Diligence Directive: Key Requirements and Considerations around Alignment with the UNGPs\u0000\u8221{} (International Bar Association, July 30, 2024
 - 20 *Santos NA Barossa Pty Ltd ACN 109 974 932 v Dennis Murphy Tipakalippa* No VID555/2022 (Federal Court of Australia 2022); *Company Workers Union of Maritima & Commercial Somarco Ltd a v Ministry of Energy* No 25 530-2021 (Chilean Supreme Court 2021).
 - 21 *Pirá Paraná Indigenous Council and Association of Indigenous Traditional Authorities of river Pirá Paraná 'ACAIFI' v Ministry of Environment and Sustainable Development* No T-9.312.858 (Colombian Constitutional Court 2024); *Escaleras community, FOA & JAAPE v Dundee Precious Metals y Ministry of Environment, Water and Ecological Transition* No 01371202200067 (Provincial Court of Justice of Azuay 2023); *Indigenous Kichwa communities v Ministerio del Ambiente & Genefran* No 16281201900422 (Provincial Court of Pastaza 2019).
 - 22 *Maya Q'eqchi' Indigenous Community of Agua Caliente v Guatemala; GUITIAN, Román E. c/ PODER EJECUTIVO NACIONAL Y OTRO s/ Acción de Amparo Ambiental* No 054/2022 (Corte de Justicia de Catamarca 2024). "issued":{"date-parts":["2024"]}},"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"

Navigating the controversy: the impact of unilateral sanctions on international law

Nowadays, unilateral sanctions have gained major relevance in international law, particularly when questioning their legitimacy under principles of non-intervention and state sovereignty. This article will address examples that challenge the lawfulness of unilateral sanctions and explore how state cooperation may be deterred. On the one hand, the recent re-imposition of sanctions against Iran¹ and Cuba.² On the other hand, the Executive Orders issued by the President of the United States (US) imposed sanctions against the International Criminal Court (ICC).³ In principle, unilateral sanctions are measures taken to change the conduct of states violating international law without resorting to armed forces or invasion.⁴ Sanctions may involve travel and visa restrictions or prohibition on trade and investments. In practice, however, unilateral sanctions are often perceived as politically motivated, where powerful and economically strong states exceed their intended purpose.⁵ They have also negatively impacted the living conditions of civilians in targeted states, conflicting with Human Rights and Humanitarian law due to their disproportionate and discriminatory character, as expressed by the Special Rapporteur.⁶ With this in mind, this article will examine the effect of unilateral sanctions on state cooperation and compliance with international law. It will do so by addressing unilateral sanctions within the framework of international law and by exploring their ‘collateral damage’, referring to their extra-territorial reach on third states.

Exploring unilateral sanctions in the framework of international law

In international law, unilateral sanctions – also known as unilateral coercive measures – remain controversial as there is no clear definition under international law, as opposed to multilateral sanctions, defined

in the UN Charter in Chapter VII.⁷ As established in Articles 39 and 41 of the UN Charter, the UN Security Council (UNSC) can recommend and implement measures as it sees fit to ‘maintain and restore international peace and security’.⁸ Although no clear definition exists for unilateral sanctions, the Special Rapporteur on unilateral coercive measures referred to the definition established by the Human Rights Council Resolutions 27/21⁹ and 45/5.¹⁰ Unilateral coercive measures refer to economic and political measures implemented by one or a group of states to compel another state to ‘subordination of the exercise of its sovereign rights, with a view to securing some specific change in its policy’.¹¹ This is different from Article 41 of the UN Charter.¹²

A recent instance of concern over the enforcement of unilateral sanctions is the Executive Order issued by Trump, which imposed sanctions against any individual or entity engaging with the ICC’s investigations related to US individuals and US allies.¹³ The US argued that the ICC does not have the jurisdiction to issue arrest warrants¹⁴ against Israeli Prime Minister Benjamin Netanyahu, as neither the US nor Israel are State parties to the Rome Statute.¹⁵ Nonetheless, both the ICC and civil society expressed their concern on how this may undermine the Court’s independence and impartiality in advocating for justice and safeguarding victims’ access to justice.¹⁶ From this standpoint, it can be asserted that the Arrest Warrants do not violate any international law norm but rather adhere to the Court’s mandate.¹⁷ Nevertheless, the US issued the Executive Order against the ICC. This raises the question of whether state parties will continue to cooperate with the ICC as they did before sanctions, particularly considering the extraterritorial scope of unilateral sanctions. Likewise, whether corporations providing services the Court (eg technological assistance) will continue to do so remains uncertain.



Collateral damage of unilateral sanctions: their extra-territorial scope

Unilateral extra-territorial sanctions – also known as ‘secondary sanctions’ – derive from unilateral sanctions. However, they broaden their scope by targeting third states that are neither the sanctioning state nor the sanctioned state.¹⁸ For example, certain EU corporations discontinued transactions with Iran due to the re-imposition of US Sanctions. As a result, businesses often terminate their relations with targeted states to avoid sanctions that can negatively influence them, mainly considering the US’s economic power in the world.¹⁹

As mentioned by Schmidt, a few of the current unilateral sanctions against Iran are deemed to be extraterritorial as they forbid non-US and non-US entities from transacting with Iran, making several EU businesses withdraw from relations with Iran.²⁰ Similarly, in 2019, when the US decided to re-establish sanctions on Cuba.²¹ In this instance, the EU argued that these sanctions had extra-territorial reach, as EU states are non-US nationals or entities, yet their trading relations with Cuba were negatively impacted.²² Therefore, the EU stated that this form of sanctions violates international law and affects the interests of the Union.²³ It can be contended that unilateral sanctions have often been used to coerce other states’ policies, challenging states’ sovereignty.²⁴ Additionally, unilateral extraterritorial sanctions when targeting third states further raise questions of lawfulness concerning the principle of non-intervention.²⁵ When third states comply with extra-territorial sanctions, it can be argued that they fail to adhere to international law as they implement them without confirming their legitimacy.²⁶

Conclusion

While unilateral sanctions are generally intended to change the conduct of states breaching international law, the current enforcement of unilateral coercive measures may not fully align with international law. Nonetheless, states often comply with this form of sanctions, which can limit their ability to cooperate and adhere to international law. In Part II, the negative effect that unilateral economic sanctions have on international law was examined, and how their enforcement may hinder state cooperation with international law. This was

demonstrated in the Executive Order issued by Trump imposing sanctions against ICCs, raising the question of whether states will continue to cooperate as they did before with the ICC and how this may undermine the ICC’s work, particularly in safeguarding the victim’s access to justice.²⁷ This evidenced how unilateral sanctions may discourage state cooperation with International Law. In Part III, the extraterritorial reach of unilateral sanctions resulting in the compliance of third states was explored, which impacts them even though they are not directly subject to the unilateral sanctions. This further raises concerns about their legitimacy as third states may feel pressured to comply with the sanctions to avoid similar coercive measures.

Notes

1. Reimposing certain Sanctions with respect to Iran (Executive Order 13846), 6 August 2018.
2. Council of the European Union, ‘Declaration by the High Representative on behalf of the EU on the full activation of the Helms-Burton (LIBERTAD) Act by the United States’ (Press Release 327/19) (2 March 2019).
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7. UN Charter (24 October 1945), Arts 39 and 41.
8. UN Charter (24 October 1945), Arts 39 and 41.
9. UN Human Rights Council, ‘Resolution on Human Rights and Unilateral Coercive Measures’ (A/HRC/RES/27/21) (3 October 2014).
10. UN Human Rights Council, ‘Resolution on Human Rights and Unilateral Coercive Measures’ (A/HRC/RES/45/5) (6 October 2020).
11. UN Human Rights Council, ‘Resolution on Human Rights and Unilateral Coercive Measures’ (A/HRC/RES/27/21) (3 October 2014) and (A/HRC/RES/45/5) (6 October 2020).
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Aoibhin Spriggs

September 2024

K and L v Staatssecretaris van Justitie en Veiligheid: whether 'westernised' women are refugees

On 11 June 2024, the Court of Justice of the European Union (CJEU) issued a decision on the recognition of women as members of a 'particular social group' in *K and L v Staatssecretaris van Justitie en*

Veiligheid.¹ The question referred was whether 'westernised women' were members of a particular social group and could therefore qualify for refugee status. Westernised women for the purposes of the case were women



who, because of their identity and lifestyle acquired in the host country, fear persecution when they return to the home country.

The international legal framework

The definition of a refugee is provided by international law. Under Article 2(d) of the European Union Qualification Directive ('Directive 2011/95'),² a refugee is a third country national who has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group. Per its preamble, it is intended to fully apply the 1951 Convention relating to the status of refugees ('the 1951 Refugee Convention'), a UN treaty which provides a universal definition of the term refugee, similar to that in the Directive.³

International law also protects the rights of women. The Council of Europe Convention on preventing and combating violence against women and domestic violence ('the Istanbul Convention')⁴ deals with the unique difficulties which migrant women face. Under Article 60, the parties must ensure that each of the grounds in the 1951 Refugee Convention is interpreted in a gender-sensitive manner. The Convention on Elimination of Discrimination Against Women (CEDAW)⁵ is a United Nations treaty adopted in 1979. It monitors and promotes the elimination of discrimination against women.

The facts of the case

K and L, two teenage sisters of Iraqi nationality, arrived in the Netherlands in 2015. They lived in the Netherlands for five years as the family's initial applications for protection were being examined. During that time, they were part of a society that values gender equality, and they adopted these values. They submitted that they would be incapable of renouncing those values if forced to return to Iraq.

The question referred: meaning of a particular social group

Article 10(d) of the Directive sets out the standards for qualification as a refugee, including fearing persecution because of membership of a particular social group. Under the Directive, a group is a particular social group when they meet two cumulative

conditions. First, the internal element – they share an innate characteristic or a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. Secondly, the external element, that they have a distinct identity because it is perceived as being different by the surrounding society.

The Court first outlined a gender sensitive interpretation. The Court used the Istanbul Convention as one of 'relevant treaties' under Article 78(1) of the Treaty on the Functioning of the European Union (TFEU)⁶ to interpret EU Asylum Law.⁷ This builds on a previous ruling of *WS*, which held that the Directive must be interpreted considering both CEDAW and the Istanbul Convention.⁸ Article 60(2) of the Istanbul Convention requires a gender sensitive interpretation to each of the convention grounds, and to provide gender sensitive status determination procedures.

With regards the first element, the Court held that the applicants lived in a Member State during their formative years, cementing their belief in equality, so it became part of their common background. The Court took an intersectional approach, considering the age of the applicants and emphasising that they were in the Netherlands during a phase of their life in which a person's identity is formed,⁹ even though their time there was limited. The CJEU and the Advocate General¹⁰ also held that the identification with the value of gender equality may be a belief so fundamental to identity that a person should not be forced to renounce it.¹¹

The applicants also fulfilled the external criteria, as it was possible that they may be perceived as being different because of social, moral or legal norms in their country of origin.¹² The Advocate General stated that girls and women who believe in gender equality may be perceived as transgressing social mores in Iraq due to manifestations of that belief, taking a gender sensitive approach.¹³ However, the CJEU emphasised that it would be for the member state to determine whether they are in fact perceived as different from their surrounding society.

'Western values'

The question referred to 'western norms and values'. This is both a vague term and a politically charged one. The Advocate General Opinion made preliminary objections to the terms 'western lifestyles'

and ‘westernised women’ as overly broad, given that the east and the west are diverse regions.¹⁴ The vagueness of the term was also addressed in the UK Upper Tribunal in *YKMA* (westernisation), with Judge Bruce suggesting it has not been closely defined because we ‘know it when we see it’.¹⁵

The Advocate General stated that in the context of a discussion of values, the application of terms eastern and western ‘perpetrates a false dichotomy that constitutes part of a divisive dialogue’.¹⁶ The CJEU reinterpreted ‘western norms and values’ to refer to the fact that the women identified with the value of equality between women and men, without objecting to the term. Raimondo argues that the CJEU therefore implicitly equates westernisation with equality between men and women.¹⁷ This allows commentators such as Perrins to argue that the Court has said ‘Middle Eastern cultural norms are dangerous to Western Women’.¹⁸ This perhaps demonstrates Crawley’s critique of asylum law as relying on racialised representations of Black and Muslim men as perpetrators of violence against women.¹⁹

Looking forward

The gender sensitive approach of the Court in determining refugee status is to be welcomed and identifies the particular needs of women asylum seekers. However, the CJEU should take a more intersectional approach, considering the use of racialised language carefully, and how terms such as ‘western’ and ‘eastern’ values may contribute to harmful stereotypes.

Notes

1. Case C-646/21 *K and L v Staatssecretaris van Justitie en Veiligheid* EU:C:2024:487, [2024] 4 WLR 69, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0646>.
2. Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L337/9 <https://eur-lex.europa.eu/eli/dir/2011/95/oj>.
3. Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (‘the 1951 Refugee Convention’) www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees.
4. Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (‘the Istanbul Convention’) (entered into force 1 August 2014) <https://rm.coe.int/migrant-women-and-istanbul-convention/1680925865>.
5. Convention on the Elimination of Discrimination Against Women (CEDAW) (entered into force 3 September 1981) www.un.org/womenwatch/daw/cedaw/cedaw.htm#:~:text=French%2C%20Russian%20%2C%20Spanish-,The%20Convention%20on%20the%20Elimination%20of%20All%20Forms%20of%20Discrimination,bill%20of%20rights%20for%20women.
6. Consolidated Version of the Treaty on European Union [2008] OJ C115/13.
7. Case C-646/21 *K and L v Staatssecretaris van Justitie en Veiligheid* EU:C:2024:487 at para 36.
8. Case C-621/21 *WS v Intervjuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* EU:C:2024:47 at para 37, [2024] 4 WLR 67.
9. Case C-646/21 *K and L v Staatssecretaris van Justitie en Veiligheid* EU:C:2024:487 at paras 44–45.
10. Case C-646/21 *K and L v Staatssecretaris van Justitie en Veiligheid* EU:C:2024:487, Opinion of Advocate General Collins.
11. Case C-646/21 *K and L v Staatssecretaris van Justitie en Veiligheid* EU:C:2024:487 at para 44, and Opinion of Advocate General Collins at para 38.
12. Case C-646/21 *K and L v Staatssecretaris van Justitie en Veiligheid* EU:C:2024:487 at para 48.
13. Case C-646/21 *K and L v Staatssecretaris van Justitie en Veiligheid* EU:C:2024:487, Opinion of Advocate General Collins at paras 46–48.
14. Case C-646/21 *K and L v Staatssecretaris van Justitie en Veiligheid* EU:C:2024:487 at para 18.
15. YMKA (‘westernisation’) [2022] UKUT 00016 (IAC) <https://tribunalsdecisions.service.gov.uk/utiac/2022-ukut-00016>.
16. Case C-646/21 *K and L v Staatssecretaris van Justitie en Veiligheid* EU:C:2024:487, Opinion of Advocate General Collins at para 18.
17. Giulia Raimondo, ‘Beyond Protection: Gender Equality in K, L (C 646/21)’ (*Verfassungsblog*, 5 July 2024) <https://verfassungsblog.de/beyond-protection/>.
18. Laura Perrins, ‘The ECJ’s Accidental Admission about the Middle East’ (*Gript*, 12 June 2024), <https://gript.ie/perrins-the-ejcs-accidental-admission-about-the-middle-east/>.
19. Heaven Crawley, ‘Saving Brown Women from Brown Men? “Refugee Women”, Gender and the Racialised Politics of Protection’ (2022) 41(3) *Refugee Survey Quarterly* 355–380.



Mathur v Ontario: justiciability of climate Charter claims in Canada

Brought in 2019 by seven young climate activists, *Mathur v Ontario* is a landmark case – the first constitutional climate case in Canada to be heard and ruled on merits. The applicants argued that the provincial government’s decision to lower its 2030 greenhouse gas (GHG) emissions reduction target violated their rights under the Canadian Charter of Rights and Freedoms (the ‘Charter’). Recently, the parties have appealed to the Supreme Court of Canada¹ and if leave is granted, it will be the first time that a climate case is heard at the country’s top court.

While the Supreme Court’s decision on leave is pending, *Mathur* remains a significant case, as it established that climate Charter claims are justiciable – meaning that the issues are suitable for judicial determination.² Government bodies increasingly use non-justiciability arguments to avoid judicial review of climate policies, with courts in Canada taking differing opinions. As climate litigation continues to increase, this remains a pressing issue.

This article examines the justiciability of climate Charter claims in *Mathur* and similar cases in Canada, exploring its implications.

Mathur v Ontario: background

The key issue was the enactment of the Cap and Trade Cancellation Act 2018 (CTCA) by the Ontario government. This legislation revoked the Climate Change Mitigation and Low-Carbon Economy Act 2016, which set the 2030 emissions reduction target in Ontario to 37 per cent below 1990 levels.³ A plan introduced under the CTCA⁴ significantly lowered the target to 30 per cent below 2005 levels by the year 2030.

The applicants challenged the constitutionality of the CTCA, arguing that the revised target was inadequate to address climate change risks, which violated their right to life, liberty and security of the person⁵ and the right to equality⁶ under the Charter. They sought the respondent

to establish a scientifically backed target and revise its climate plan to align with international standards.

The respondent contended that the case was not justiciable, arguing that granting the requested relief would constitute judicial overreach into the executive’s policymaking authority. The Ontario Superior Court of Justice (OSCJ) recognised that the case was justiciable, however, it concluded that the applicants’ Charter rights were not breached (*Mathur 2020*).

On an appeal by the applicants, the Ontario Court of Appeal agreed that the case was justiciable and the respondent, through the CTCA, ‘voluntarily assumed a positive statutory obligation to combat climate change’ by setting the plan and target, which must be ‘Charter compliant’. However, the OSCJ did not determine whether these complied with the Charter, leaving the appellants’ Charter claims unresolved. Therefore, the appellate court ordered a rehearing (*Mathur 2023*) – this order has been appealed to the Supreme Court and cross-appealed by the applicants.⁷

Justiciability of climate Charter claims

In *Mathur 2020*, the OSCJ addressed justiciability by referring to a Supreme Court of Canada’s ruling that affirmed ‘when a policy is translated into law or state action, those laws and actions are subject to scrutiny under the *Charter*.’⁸ Based on this, the OSCJ noted that the applicants challenged a ‘specific’ state action – ss 3(1) and 16 of the CTCA and the emissions reduction target – and therefore their claims were justiciable. However, the court found one question to be non-justiciable: determination of Canada’s and Ontario’s ‘fair share’ of the remaining carbon budget, as this lacked sufficient legitimacy for judicial review.

The courts in climate cases including *Mathur* determine justiciability based on whether the climate action involved a specific law or state action. In the past, the courts

have dismissed broad climate claims as non-justiciable – for instance, a case challenging government inaction in setting GHG emissions reduction target to address climate change, without contesting a specific law.⁹

Furthermore, in *La Rose*¹⁰, a case relied on by the respondent in *Mathur 2020*, the Federal Court held that the climate Charter claims brought against the Government of Canada were non-justiciable as the issues involved were ‘so political [...] including questions of public policy approaches’ that were not suitable for judicial review. The young applicants in *La Rose* challenged Canada’s legislative actions and approval of GHG-emitting projects, arguing that these actions breached Canada’s obligations under the Paris Agreement and corresponding domestic laws.¹¹

However, citing *Mathur*, the Federal Court of Appeal reversed the *La Rose* ruling on justiciability (the ‘*La Rose Appeal*’).¹² The court noted that the claims should not be rendered non-justiciable only because they are complex or controversial or reflect a political choice. The political choices have been ‘crystallized’ into law such as the Green Gas Pollution Pricing Act 2018, the preamble of which affirmed Canada’s commitment to reducing emissions per the Paris Agreement and therefore these could be reviewed by the courts for Charter compliance.

The British Columbia Supreme Court took a similar position in *Sierra Club*¹³, ruling that the issue whether the provincial minister’s non-fulfillment of its reporting obligations and emission reductions plans under the Climate Change Accountability Act (CCAA) violated Charter rights was justiciable. The Court noted that the issue in question was based on the interpretation and enforcement of the CCAA rather than a policy question. However, this case was also later dismissed on merits.

It is essential that in climate litigations, the courts like in *Mathur*, *La Rose Appeal* and *Sierra Club* facilitate judicial review of climate actions by aligning the contested government’s actions with existing climate legislations, rather than interpreting them as mere political decisions. Additionally, as climate litigations are likely to increase in Canada, future cases must also ensure that the claims are based on specific laws, as much as possible, to facilitate justiciability and Charter scrutiny.

Conclusion

Ensuring greater accessibility to climate litigation is essential to hold governments accountable for their climate policies, which cannot be hidden under the guise of policymaking. The *Mathur* case marks a significant development in Canadian climate litigation by affirming that climate Charter claims are justiciable. While it is uncertain whether justiciability issue will be addressed by the Supreme Court¹⁴, the observations in *Mathur* are noteworthy and it would be interesting to see the future developments in this case.

Notes

- 1 Ecojustice, “Our case deserves urgency” – youth plead with highest court for prompt resolution in historic climate case’ (28 January 2025) <https://ecojustice.ca/news/our-case-deserves-urgency-youth-plead-with-highest-court-for-prompt-resolution-in-historic-climate-case/> accessed 12 March 2025
- 2 For general meaning of ‘justiciability’, see *Highwood Congregation of Jehovah’s Witnesses v Wall* [2018] SCC 26 [2018] 1 SCR 750, p 34-35.
- 3 The Climate Change Mitigation and Low-Carbon Economy Act 2016, s 6(1).
- 4 The Cap and Trade Cancellation Act 2018, s 3(1); Government of Ontario, ‘A Made-in-Ontario Environmental Plan’ (2020, updated 2022) <https://www.ontario.ca/page/made-in-ontario-environment-plan> accessed 12 March 2025
- 5 The Charter of Rights and Freedoms, s 7.
- 6 *Ibid.*, s 15.
- 7 The copies of the appeals are not yet publicly available.
- 8 *Canada (Attorney General) v PHS Community Services Society* [2011] SCC 44 [2011] 3 SCR 134, p105; *Chaoulli v Quebec (Attorney General)* [2005] SCC 35 [2005] 1 SCR 791, p 89.
- 9 *Environnement Jeunesse v. Attorney General of Canada* [2021] QCCA 1871.
- 10 *La rose v Her Majesty the Queen* [2020] FC 1008.
- 11 Greenhouse Gas Pollution Pricing Act 2018; Canadian Net-Zero Emissions Accountability Act 2021.
- 12 *La Rose v His Majesty the King* [2023] FCA 241.
- 13 Climate Case Chart, ‘*Sierra Club of British Columbia Foundation v Minister of Environment and Climate Change Strategy*’ (2022) <https://climatecasechart.com/non-us-case/sierra-club-of-british-columbia-foundation-v-minister-of-environment-and-climate-change-strategy/> accessed 12 March 2025
- 14 Since the copies of the appeals are not yet publicly available, it is not known if justiciability issue is part of the leave application.



The importance of user-generated evidence in human rights and accountability

Thousands of photographs and videos are taken every day, some which document war crimes and crimes against humanity, but others document police brutality or illegal deforestation. It goes without saying that not all of this footage can be used to hold individuals, groups, governments or corporations accountable for offences captured by user-generated evidence; however, even though this evidence cannot be utilised for accountability, it can nonetheless be a powerful tool. Such evidence can be used to amplify marginalised voices and provide a more diverse array of evidence with individuals capturing footage of whatever they deem significant, and spreading this information for the world to see.¹ Although, alongside this is the opportunity for mis/disinformation; we are in an age where photos and videos can not only be edited and photoshopped, but can also be completely falsified using artificial intelligence to create images of whatever the user likes – with the rise of technology comes benefits but also huge barriers to justice.

Mobile phones represent some of the most crucial technological advances in obtaining justice due to the accessibility for people to capture evidence.² They have been used to document instances of police brutality and, in cases such as that of George Floyd, the footage was seen across the world and the perpetrators were held accountable. However, scholarship discussing the use of video evidence in exposing such brutality and state violence, places an emphasis on the little success of holding perpetrators accountable.³ A study of police body cameras in Washington, DC established that the cameras did not make a great difference in police behaviour.⁴ Therefore, whilst open-source information is being collected globally every day and is beneficial at least on a level of raising awareness, there is still room for improvement with regards to accountability and thus, achieving justice.

Digital evidence has transformed our ways of learning about mass human rights

violations and holding perpetrators to account. With the Russian invasion of Ukraine, open-source information depicting a changing landscape in the years preceding the invasion, gave the international community a head-start in predicting the events which would unfold over the next three years.⁵ There are many benefits to open-source information, providing a voice to individuals who otherwise would not be heard, documenting atrocities which otherwise could go unnoticed in the media, especially where investigators are unable to access certain areas. It can also provide professionals with an overview of situations which then allows them to identify focal points for investigations.⁶

Photo and video evidence captured by eyewitnesses has been being used in court proceedings for many years. 2013 marked the turning point with open-source information being used by the International Criminal Court in the case of *Prosecutor v Gbagbo*.⁷ Before 2013, open-source information such as reports produced by the media or non-governmental organisations (NGOs) was brought into proceedings to rely on as evidence with little verification. However, when there became an over-reliance on such footage by the Prosecutor, with open-source information being used as leading evidence as opposed to that of a supplementary nature, the ICC's Pre-Trial Chamber placed an emphasis on the need for verification.⁸

There is discussion amongst scholars and NGOs about the need for a methodology to identify and verify open-source information when being used for accountability. Part of the verification is ensuring an identifiable chain of custody of the user-generated evidence, effectively proving where the evidence came from and who had access to it before its use in court. Methodologies ensure work is carried out to the highest ethical and legal standards to make open-source evidence admissible in court proceedings.⁹ Technical tools such as the eyeWitness to Atrocities camera app allow users to capture

footage which is then embedded with the necessary metadata to ensure its validity. The eyeWitness camera app is saving investigators time and resources, enabling a focus on reviewing and analysing footage rather than verifying. The eyeWitness camera app was used to document footage in the Democratic Republic of the Congo (DRC), of two commanders of the Democratic Forces for the Liberation of Rwanda committing crimes against humanity, who were then prosecuted by a military tribunal in the DRC using such evidence.¹⁰ The eyeWitness app therefore eradicates the need for a methodology to establish a chain of custody, making verification far simpler, allowing user-generated evidence to hold perpetrators accountable.

Open-source information can also be gathered retrospectively, with a use for evidence depicting the scenes of the aftermath of atrocities, rather than individuals needing to capture evidence as the events unfold. This emphasises the importance and flexibility of user-generated evidence in court, rather than just the written statement of a bystander who may or may not remember what actually happened on the day in question. Such evidence can create a historical record of conflicts and represent the scale of the impact on individuals and communities, for example with more hours of footage having been documented than hours of the actual Syrian conflict itself.¹¹

Verified user-generated information has the possibility of being used in courts as a replacement for witness testimony, as the information is a digital version of what otherwise would be a written or oral witness testimony. This would prevent the testimony from being subject to human error, such as the fallibility of human memory and perception, possibly making the road to justice that bit easier. However, the need for efficient verification is vital; hence, tools such as the eyeWitness to Atrocities camera app, ensures user-generated evidence can be used in court to hold perpetrators accountable.

Notes

- 1 Daragh Murray, Yvonne McDermott and K. Alexa Koenig, 'Mapping the Use of Open Source Research in UN Human Rights Investigations' (2022) *Journal of Human Rights Practice* 554–576, 562 <https://academic.oup.com/jhrp/article/14/2/554/6573245> accessed 27 February 2025.
- 2 Sandra Ristovska, 'The Rise of Eyewitness Video and its Implications for Human Rights; Conceptual and Methodological Approaches' (2016) *Journal of Human Rights* 347–358, 354 www.tandfonline.com/doi/abs/10.1080/14754835.2015.1132157 accessed 27 February 2025.
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- 4 Petersen, 'Ubiquitous Video, Objectivity, and the Problem of Perspective in Digital Visual Evidence' (2021) *Law and the Visible* 17–36, 18, 19.
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- 9 Ristovska, 'The Rise of Eyewitness Video and its Implications for Human Rights; Conceptual and Methodological Approaches' (2016) *Journal of Human Rights* 347–358, 351.
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Fake evidence, real consequences: justice in the age of deepfakes

In recent years, legal professionals have increasingly embraced artificial intelligence (AI) as a transformative force, recognising its potential to enhance both client services and legal practice. In response to these advancements, several jurisdictions – including the United Kingdom (UK),¹ Singapore,² New Zealand³ and Hong Kong⁴ – have introduced guidelines promoting the responsible use of AI in courtrooms. These frameworks emphasise the necessity of understanding AI's capabilities while remaining vigilant about its associated risks. The United States Guidance for Use of AI in Courts,⁵ for instance, discusses the challenges in the courtroom as judges grapple with evidentiary issues related to digitally enhanced evidence as well as the emergence of 'deepfakes'.

Deepfake technology refers to the modification or fabrication of realistic audio, videos or images using advanced software. The first major success of this technique was the launch of FakeApp⁶ in 2018, a tool designed to swap one person's face with another's. Its rising popularity stems from its accessibility and affordability, making it easier for individuals with strong computing skills and high-performance graphics processing unit (GPU) systems to create highly convincing fake images and videos.⁷ Open-source software such as FaceSwap⁸ utilises deep learning algorithms to manipulate visual content seamlessly.

This technology has been utilised for positive purposes in the past. For instance, it enabled football star David Beckham to speak in nine different languages for a campaign against malaria.⁹ In the healthcare industry, it has shown promising potential by safeguarding patient privacy – allowing the generation of synthetic data instead of sharing real medical records.¹⁰ However, despite these benefits, deepfake technology poses a serious threat if not properly regulated. It can be exploited to create false news and commit fraud.¹¹ Deepfake content may take various harmful forms,

including non-consensual pornography, political disinformation and cyberbullying.¹² In military contexts, deepfakes could be weaponised to deceive personnel with falsified maps or images, potentially leading to catastrophic consequences.¹³ Moreover, it has been used to fabricate statements from world leaders, posing a direct threat to global stability.¹⁴

The growing prevalence of deepfakes presents a serious challenge in legal proceedings, particularly when digital evidence – such as images, videos or audio – is introduced in court. Digitally enhanced evidence differs from traditional modifications, such as zooming in on an image or adjusting video speed, because AI-driven enhancements may alter the original content by generating missing pixels or sounds based on algorithmic predictions.¹⁵ This raises concerns about the authenticity of digital evidence, as fabricated materials can be presented as real, or genuine evidence may be falsely accused of being manipulated. In such cases, expert testimony may be required to verify authenticity, potentially leading to prolonged legal battles, increased litigation costs, and a wider access-to-justice gap.¹⁶

The courtroom battle against deepfakes

The rise of deepfake technology presents a formidable challenge to justice systems across jurisdictions. Researchers¹⁷ analysing the British criminal justice system's awareness of deepfake technology found it to be vulnerable and largely unprepared to address this evolving threat. A major concern is the pervasive lack of awareness among legal professionals, leaving the system unprepared for the complexities deepfakes introduce. This risk is further amplified by the technology's ease of access, rapid dissemination and low barrier to entry, making it increasingly difficult to grasp its full societal and legal implications.¹⁸ Addressing this issue demands urgent attention,

proactive policy measures and a concerted effort to bolster the justice systems' resilience against digital deception.

The existence and production of deepfakes is likely to impact the judicial systems globally in the following manner:

Erosion of public trust in judicial systems

The rise of deepfake technology poses a significant threat to public confidence in judicial systems. A 2021 study conducted by the Center for Humans and Machines at the Max Planck Institute for Human Development, in collaboration with the University of Amsterdam School of Economics, highlights the difficulty of identifying deepfakes.¹⁹ The participants struggled to distinguish deepfakes from authentic media. The research found that participants struggled to detect deepfakes, often misidentifying them as genuine rather than questioning real content as potentially manipulated. This cognitive bias, coupled with an overestimation of one's ability to detect deepfakes, even after receiving specialised training, further complicates the issue.

The sheer prevalence of deepfakes, combined with the influx of both legitimate and manipulated digital content, may foster widespread scepticism among jurors, making it increasingly difficult to discern reliable sources of information.²⁰ When jurors and legal professionals begin to question the authenticity of visual evidence, the foundation of the justice system – built on trust in verifiable proof is significantly undermined. Thus, the mere existence of deepfakes, erodes this 'inherent' trust placed on video and image-based evidence.²¹ Ultimately, deepfakes have the potential to corrode the judicial process, weaken the rule of law, and foster uncertainty in legal proceedings.²²

The influence of visual evidence on case outcomes

Visual evidence has long played a pivotal role in shaping legal verdicts. According to studies, jurors presented with both oral testimony and video evidence retain information 650 per cent more effectively than those exposed solely to verbal accounts.²³ This statistic underscores the

powerful impact of visual media on fact-finding and decision-making within the courtroom.

The integration of deepfake technology into legal disputes introduces a profound challenge: the possibility of fabricated visual evidence influencing case outcomes. If courts cannot reliably differentiate between authentic and manipulated media, wrongful convictions or acquittals may become more frequent. Moreover, the mere suspicion that a piece of evidence could be falsified may lead to unwarranted dismissals of crucial, legitimate visual proof.

Fabrication of evidence in court

One of the most alarming threats posed by deepfake technology is its potential to alter or fabricate evidence presented in court. This is particularly concerning given the significant weight placed on video and image-based evidence, especially in cases where a witness is absent and visual evidence serves as the primary source of testimony, commonly referred to as the silent witness theory.²⁴

A recent criminal trial in Washington state²⁵ highlighted these risks when a digitally enhanced video was deemed inadmissible. The court's decision was based on expert testimony, which revealed that the AI tool used to enhance the video artificially generated approximately 16 times the number of pixels compared to the original footage. The algorithm and enhancement methods employed were neither reviewed nor validated by any forensic video expert. The expert further testified that this AI-driven enhancement process introduced false visual details, thereby altering the meaning of the video – an outcome deemed unacceptable within the forensic video community.

Given the potential for deepfake technology to manipulate evidence, courts may need to reevaluate existing rules of evidence to adapt to this evolving threat. Until such reforms are implemented, judges should mandate expert testimony to assess the authenticity and reliability of contested audio, video and image-based evidence rather than relying solely on traditional admission standards. Additionally, to reduce scepticism surrounding visual evidence, courts may apply the pictorial evidence theory, wherein a witness attests that a video or image is an accurate and faithful representation of actual events or serves as a visual illustration of oral testimony.²⁶ This

approach could help reinforce the credibility of video evidence while mitigating concerns about digital manipulation.

The road ahead

Technology is advancing at an unprecedented pace, introducing new dimensions and challenges with each passing day. Among these advancements, deepfake technology has seen significant improvements, making it increasingly difficult to detect fabricated content.

Overall, combating the challenges posed by deepfake technology requires a multifaceted approach. Raising awareness about deepfakes is crucial, not only among legal professionals but also among the general public. Education plays a pivotal role in mitigating the erosion of trust caused by deepfake technology and reinforcing the integrity of justice systems.²⁷ Public awareness initiatives can help individuals recognise and critically assess potentially deceptive content, ultimately reducing the impact of misinformation.

The European Parliamentary Research Service (EPRS) report suggests that, in certain cases, deepfakes could be prosecuted under copyright law, demonstrating how existing civil and criminal regulations may be adapted to address this issue.²⁸ However, there is no universal consensus on this approach. Some experts advocate for the introduction of new legislation and stricter regulatory measures to govern the use and distribution of deepfakes.²⁹ Establishing rigorous protocols for verifying digital evidence in court is imperative. Implementing standardised procedures for authenticating videos, audio recordings and images will help safeguard the credibility of evidence, ensuring fairness and accuracy in judicial proceedings.

Legislative reform must also keep pace with technological advancements. Explicit legal provisions addressing the creation and dissemination of deepfakes are essential. Additionally, existing digital privacy laws should be revised to address the unique challenges posed by this evolving technology, ensuring a robust and relevant legal framework capable of countering emerging threats.³⁰

Furthermore, continuous research and development in deepfake detection technology are necessary to stay ahead of increasingly sophisticated manipulation techniques. As creators of deepfakes refine

their methods, detection systems must evolve accordingly to effectively identify and expose fraudulent content. Strengthening detection capabilities will enable the criminal justice system to verify digital evidence more reliably, thereby preserving trust in legal proceedings.³¹

Thus, by proactively addressing these challenges, we can mitigate the risks associated with deepfakes and safeguard the integrity of information in an increasingly digital world.

Notes

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Edidiong Umoh

Borderless crimes, bordered laws: seeking redress for deep-fake pornography in international law

The explosion of the development and use of artificial intelligence (AI) has introduced several innovations, one of which is deep-fakes. Deep-fake technology refers to the creation of AI-generated visual content of a person carrying out an act they did not naturally do. It also employs technology to superimpose the face or characteristics of one person on another

to depict the former acting the latter. Pornography constitutes 95 per cent of deep-fake content; this has become a shadow pandemic of violence against women and girls.¹ Deep-fake technology first gained notoriety in 2017 when a Reddit user created and posted pornographic videos of singer Taylor Swift on Twitter. The footage had been reportedly viewed 47 million times in one day.²



Existing regulatory efforts

At this stage, the regulation of deep-fake is rather fragmented. This section will examine the legal framework of select jurisdictions regarding this issue.

The European Union

The Artificial Intelligence Act³ of the European Union (EU) is heavily based on product safety regulation rather than human rights violation; hence, it prioritises transparency of the use of AI in its regulation. However, that is not the only issue arising from the use of AI. This makes the Act a technology regulation rather than a human rights legislation.⁴

The issue of deep-fake porn is better addressed by the Directive on Combating Violence Against Women,⁵ as it is focused more on the victims. Article 5(1)(b)⁶ requires Member States to criminalise the circulation of deep-fake pornography based on the following conditions:

- (a) There must be material that makes it seem that a person is engaged in sexually explicit activities, produced, manipulated or altered to look so.
- (b) It needs to be made accessible to the public by way of information and communication technologies without the consent of the portrayed person.
- (c) This conduct must be likely to cause serious harm to the portrayed person.

While it does not provide absolute protection for victims, the Directive ensures that the offender is punished, and the aggrieved has a right to compensation.

The United States

Given the recent nature of deep-fake technology, the legal framework of the United States (US) is still limited to federal laws, including provisions under Title 18 of the US Code⁷ which imposes accountability on offenders for activities including communication involving ransom, extortion, kidnapping threats, cyber-harassment, cyberstalking, unauthorised access to a computer and stalking as interstate domestic violence. In this regard, the Malicious Deep Fake Prohibition Bill⁸ was intended to curb the issue of deep-fake porn. However, the bill was introduced just prior to expired by the end of 2018 with no cosponsors.⁹ The US has signed a law concerning the use of

deep-fake content to influence elections and campaigns.¹⁰

China

In China, the Cyberspace Administration has prohibited unauthorised creation of deep-fakes, mandating that AI-generated content be labelled as such.

Current challenges to regulation

In the face of this unprecedented issue, the law is scrambling to properly regulate this phenomenon. In properly regulating this, it is important to consider all the challenges involved with the current legislation.

Primarily, deep-fake sex videos are a new form of sexual privacy invasion, violating a cornerstone of human agency and autonomy. It has very broad ramifications, including sexual humiliation and exploitation, physical, mental or financial abuse of individuals and workplace discrimination. These ramifications give it grounds for being a gross human rights violation worthy of legal redress.¹¹ However, given its more recent emergence in the legal sphere, regulation of deep-fake technology is dicey.

Attribution

The first challenge denotes the appropriate attribution of redress and responsibility. Here, it is relevant to draw a parallel between revenge and deep-fake pornography for the purpose of identifying the elements and parties involved. In formulating this approach, it is important to identify the rights and duties of all the parties involved, including:

- (a) The victim who was targeted with the content.
- (b) The actual owner of the image used in creating the content.
- (c) The platform such content is posted on: it may prove challenging to impose liability on the platforms hosting such content if they are not willing to react to the requests to remove the content. Will the platform be obligated to remove such content after they have explicitly labelled it as AI-generated?
- (d) Identifying the perpetrator, in a scenario where they are different, is it the person who created a deep-fake or uploaded it to the site and distributed it online?

Jurisdiction and choice of law

Noting that this issue is one that extends across state borders, regulation faces the significant issue of determining which country's laws should apply when deep-fake content is created in one jurisdiction, hosted in another and viewed globally. This is further complicated by the lack of a harmonised international legal framework specifically addressing deep-fake pornography, as evidenced by the fragmented approaches.

Enforcement

Cross-border enforcement is hampered by varying legal standards and definitions across countries, making it difficult to implement consistent regulatory measures. This is particularly evident in the context of platform liability, where questions arise about whether and how platforms can be compelled to remove content, especially when operating across multiple jurisdictions. Even in cases where specific regulations exist, enforcing these regulations on an international scale presents significant challenges.

Validity of claims

Sceptics like Chesney and Citron propounded the theory of the 'Liar's Dividend' connoting individuals using the claim of deep-fakes to escape accountability for their own actions.¹² A case that demonstrates this theory is the 'Deep-fake Mom Case'. In this case, Raffaella Spone, allegedly created and posted a deep-fake video of her daughter's cheerleader rival vaping in an effort to tarnish her image. However, the forensic investigation failed to confirm the video was indeed deep-fake.¹³ This draws attention to another issue, as to what happens to a victim if they fail to prove that the video is fake.

Conclusion

To regulate borderless issues such as deep-fake technology, it is necessary to address issues of extraterritorial jurisdiction and

international cooperation. It is also necessary to adopt a universal Convention, similar to the Convention on Cybercrime (Budapest Convention),¹⁴ which was codified as an effort to harmonise domestic criminal law governing cyberspace with the community of nations to promote a mutual obligation to assist in the sharing of information and streamline efforts of investigation.

Notes

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Sexual violence as a weapon of war in Sudan¹

'We are receiving shocking reports of sexual violence against women and girls, including rape. And in the aftermath of such cruelty and brutality, the women and girls are left with little or no medical and psychosocial support. There must be zero tolerance for sexual violence. All perpetrators must be held accountable.'

Volker Türk, UN High Commissioner for Human Rights (5 July 2023)²

Introduction

International law mandates an absolute prohibition of sexual and gender-based violence (SGBV).³ Before the conflict, an estimate of more than three million women and girls in Sudan were at risk of SGBV. According to the World Health Organisation (WHO), the number increased to an estimate of 4.2 million people when the conflict broke out.⁴ Newer reports indicate that over 6.7 million people are at risk of SGBV, highlighting it as one of the most urgent human rights issues in Sudan.⁵

While human rights law applies both during peace and conflict, humanitarian law specifically governs situations of armed conflict. Under Article 27 of the Fourth Geneva Convention, women 'shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault'.⁶ However, since the outbreak of conflict in April 2023, women and girls have been systematically victims to conflict-related sexual violence (CRSV). According to the Rome Statute, sexual violence can amount to crimes against humanity and war crimes in non-international armed conflicts.⁷

The widespread use of CRSV

The United Nations (UN) has reported widespread allegations in the areas most affected by the conflict, including Khartoum State and the regions of Darfur and Kordofan.⁸ From 15 April to 15 December 2023, the Office of the High Commissioner for Human Rights (OHCHR) received 58

credible reports of CRSV, involving at least 118 victims, mostly women and girls. This included 'rape, gang rape, attempted rape and other forms of sexual violence, as well as trafficking for the purpose of sexual exploitation and forced prostitution'.⁹

In two of the cases identified by the UN, members of the Sudanese Armed Forces (SAF) were identified as the attackers.¹⁰ However, the main perpetrators¹¹ of the attacks were men dressed in the uniform of the Rapid Support Forces (RSF) or otherwise affiliated with the group. This reflects the main trend, as most CRSV is committed by RSF or allied militias.¹²

Women seeking safer locations are particularly at risk of sexual violence, making it critical to increase aid reception sites for internally displaced people in Sudan and neighbouring countries.¹³ In addition, internally displaced women and girls, especially in Darfur, have been directly targeted, including incidents of abductions with victims being held in inhumane conditions and subjected to ill-treatment and other reported incidents which may constitute war crimes.¹⁴

After the 2004 conflict in Sudan, reports revealed devastating numbers of CRSV.¹⁵ The issue of underreporting continued, due to factors such as stigmatisation, reprisals and cultural norms relating to honour.¹⁶ Since the outbreak of conflict, challenges such as the intensity of violence, lack of electricity and the collapse of public services and the legal system, further inhibit access to victim support, including medical care and legal assistance.¹⁷ WHO and UN agencies, such as the United Nations Population Fund (UNFPA), United Nations High Commissioner for Refugees (UNHCR) and United Nations Children's Fund (UNICEF), are working to help victims. However, humanitarian access and direct attacks on health facilities continue to pose significant challenges, and the number of officially documented cases remain low.¹⁸

Conclusion

The use of sexual violence as a weapon of war has intergenerational effects on the victims, their families and the surrounding community.¹⁹ The situation in Sudan mirrors the broader trend of increased frequency and brutality of violence against women and girls during conflict.²⁰

These incidents represent grave violations of humanitarian and human rights law, including breaches of Sudan's obligations under the Geneva Conventions, and may amount to international crimes under the Rome Statute.²¹ CRSV in Sudan, used as a deliberate tactic of war to terrorise civilians, demands immediate and uncompromising accountability to break the cycle of brutality, and restore justice and dignity to the survivors.²²

Notes

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- 10 United Nations High Commissioner for Human Rights and the Expert on Human Rights in the Sudan, 'A/HRC/55/29: Situation of human rights in the Sudan' (4 March 2024).
- 11 In 83 per cent of the cases, cf United Nations High Commissioner for Human Rights and the Expert on Human Rights in the Sudan, 'A/HRC/55/29: Situation of human rights in the Sudan' (4 March 2024).
- 12 United Nations High Commissioner for Human Rights and the Expert on Human Rights in the Sudan, 'A/HRC/55/29: Situation of human rights in the Sudan' (4 March 2024); 'Amnesty International Report 2023/24: The State of the World's Human Rights' (Amnesty International, April 2024) www.amnesty.org.uk/resources/state-worlds-human-rights-2024 accessed 28 February 2025, p 354.
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Sara Molinari

Italian debacle: can the ICC trust State Parties?

On 19 January 2025, the Italian police arrested the International Criminal Court (ICC) suspect, Osama Elmasry Njeem, in Turin. The ICC Pre-Trial Chamber had issued the arrest warrant the previous day, for crimes against humanity and war crimes committed at Mitiga Prison in Libya. The ICC Registry promptly submitted the arrest request to six States Parties to the Rome Statute, including Italy.¹

The suspect remained in custody while authorities notified both the Prosecutor General in Rome – the competent judicial authority under the Italian ICC cooperation law (Law 237/2012) – and the Minister of Justice (MoJ).² On 21 January 2025, 'without prior notice or consultation with the Court, the suspect was released from custody and transported back to Libya'.³ On the same day, the MoJ issued a press release stating he was 'still evaluating the formal transmission of the request to the Prosecutor General'.⁴ The expulsion was executed based on a decree issued by the Minister of the Interior due to national security issues.⁵

Procedural issue...

The Court of Appeal of Rome (Court) ordered the release based on a procedural interpretation. Elmasry was arrested on a police initiative, and while this is allowed under the extradition norm (Art 716 code of penal procedure (CPP)), the Court ruled that ICC-related arrests must follow a different procedure, outlined in Article 11 Law 237/2012.⁶

Following this reasoning, the police cannot arrest the recipient of an ICC arrest warrant when transmitted through diplomatic channels or EUROPOL/INTERPOL, as it must await the request

for a precautionary measure from the Prosecutor General (Art 11).⁷ The rationale is that Law 237/2012, in the eye of the Court, is a *lex specialis*. However, Article 11 does not specify arrest procedures, and Article 3 allows gaps in the law to be filled by general extradition rules.⁸ Additionally, this contravenes the principle laid down in Article 91(2)(c) of the Rome Statute, which establishes that surrender requirements should not be more burdensome than extradition procedures given the ICC's distinct nature.⁹

The Court also declined to place Elmasry in precautionary custody, citing the MoJ's silence, and his absent exchange (*interlocuzione*) with the Prosecutor General.¹⁰ Indeed, the Court could have imposed custody regardless of the decision on the arrest. However, an input from the MoJ was necessary and could have remedied the situation. It is 'difficult to understand what prevented the Minister of Justice from acting', writes Chantal Meloni, Italian criminal lawyer and professor at the Università degli Studi di Milano Statale.¹¹

The Court's interpretation of Law 237/2012 appears controversial and contrary to the cooperative objective of the law itself. Furthermore, the MoJ's inaction raises doubts on the position of the Italian government.

... or political ties?

Italy's decision to release Elmasry raises suspicion about whether other interests prevailed over justice. This doubt is not unfounded given Italy's 2017 bilateral agreement with Libya which includes 'financial support to curb the flow of migrants from Africa'.¹²

In support of this, Luca Poltronieri Rossetti, a researcher in international law at the Sant'Anna School of Advanced Studies in Pisa, highlights that the MoJ's 'passive behaviour' seems to suggest a lack of urgency in executing the ICC's request.¹³ In his last declarations in front of Parliament, he justified himself by challenging the ICC arrest warrant's validity. He pointed out that, while the arrest warrant was requested for crimes committed from February 2015, both the Preamble and paragraph 100 cited February 2011 as the starting date. He argued that the ICC's subsequent correction to 2015 (in paragraph 100), in the public corrected version of the arrest warrant, demonstrated the acknowledgement of this error. To further support his position, he referenced Judge Socorro's dissenting opinion, which questioned the ICC's jurisdiction over the alleged crimes.¹⁴

This reasoning can be easily dismantled. First, the Minister is confusing two very distinct concepts: jurisdiction and alleged crimes. While the Security Council's referral in February 2011 established the ICC's jurisdiction over crimes in Libya, the specific crimes Elmasry is accused of began in February 2015. If the Minister had concerns over the document's accuracy, the proper response would have been to contact the ICC directly for clarification – not to reject the warrant altogether. Moreover, Judge Socorro's dissenting opinion questioned whether Elmasry's alleged crimes fell within the 2011 jurisdiction, but never suggested any date-related errors. Second, and most importantly, Article 59(4) Rome Statute and Law 237/2012 prohibit national authorities from verifying whether the arrest warrant was properly issued.¹⁵

Additionally, the statement on his consideration of transmitting the request to the Prosecutor General was released once the plane, that would have repatriated Elmasry, was already flying from Rome to Turin.¹⁶

Overall, in Rossetti's view, the decision to expel Elmasry immediately appears to be an international political decision authorised at the highest governmental level. The Court's decision has only added a 'patina of technical legitimacy' to a possibly premeditated outcome to maintain ties with Libya.¹⁷

What now?

After this debacle, Italy could face various consequences.

At a domestic level, Prime Minister Meloni, the MoJ, the Minister of the Interior and another government official have been notified of the opening of a criminal investigation for their misconduct in the case.¹⁸

At an international level, first, a procedure of non-compliance under Article 87(7) Rome Statute could be initiated. In this case, Italy would be the first European State to be scrutinised for failure to cooperate and arrest a suspect.¹⁹ Additionally, the UN Security Council, upon referral of the Pre-Trial Chamber, could consider issuing a binding resolution or adopt sanctions. However, based on previous situations, this is unlikely to happen.²⁰ Lastly, since the case also involves the crime of torture, Italy is also in breach of its obligations under the Convention Against Torture (CAT). Consequently, Italy's responsibility 'could be upheld by the International Court of Justice on the initiative of any other CAT's State Party'.²¹

Beyond immediate consequences, Italy's behaviour sets a worrying precedent and a clear example of double standards and lack of commitment to the ICC project.²² The entire system of cooperation between State Parties and the ICC is being put into question, and the growing fear, given also the historical moment, is that the work of the ICC will be increasingly hindered.

Notes

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Ronahi Bozarslan

Language as a weapon: reforming the Genocide Convention to include linguistic targeting

The Genocide Convention (GC) 1948¹, although considered the cornerstone of international law on genocide, overlooks cultural and linguistic targeting as a means to eradicate one of the protected groups. Raphael Lemkin, who coined the term 'genocide' and provided a draft definition, argued that intangible cultural structures, eg, language, may serve as means to destroy common patterns of certain national groups, amounting to genocide.² The Kurdish language in Turkey has been especially targeted, and this suppression has had profound effects on the cultural survival and well-being of the Kurdish people.³ In this article, I argue that the GC must be reformed to explicitly recognise linguistic targeting as

a form of exterminating a group's national identity and culture, with references made to different relevant international documents. By failing to do so, the Convention overlooks a critical aspect of cultural and overall survival of a group, leaving minority groups vulnerable to sustained forms of cultural erasure.

The Genocide Convention and linguistic targeting

Article II of the Genocide Convention defines genocide as 'acts with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group' including: killing, causing serious bodily or mental harm, inflicting conditions to

destroy the group, imposing measures to prevent births and forcibly transferring children to another group.⁴ However, the Convention does not address linguistic targeting, despite evidence that language suppression threatens the survival of ethnic or national groups.⁵ Linguistic targeting can involve both overt actions, such as banning a language in public and educational spheres, and more subtle forms of cultural assimilation that gradually erase a group's language over time.⁶

Situation of the Kurdish language in Turkey

The Kurdish language, particularly the Kurmanci dialect, is spoken by millions of Kurds in Turkey, but has long been suppressed by the Turkish government. Since 1923, Turkey has promoted a monolingual, monocultural vision of national unity, excluding Kurdish identity and language from that framework. For much of the 20th century, Kurdish was banned in public life and Kurdish literature, music and media were prohibited.⁷

Article 42 of the Turkish Constitution restricts mother tongue education and designates Turkish as the only mother tongue of the nation, making Turkish the primary language of instruction.⁸ Additionally, the Constitution only recognises three non-Muslim groups as minorities: Armenians, Greeks and Jews. As a result, the status of Kurds remains a central political issue in Turkey.⁹ Kurdish-speaking children have been, and still are, forced to study only in Turkish, and speaking Kurdish in schools carries a punishment.¹⁰

While there have been recent legal reforms allowing some Kurdish language courses in universities, these have been insufficient and challenges remain as these are underfunded and marginalised. A bill proposed in May 2024 to expand mother tongue education in Kurdish was rejected by the Turkish Parliament.¹¹ Cultural centres and language cafes have also faced resistance, including closures and police interventions.¹² This shows that Kurdish linguistic rights are not just a matter of policy but a deeply political issue tied to national unity concerns in Turkey.

Forced assimilation of Kurds through education in Turkey

Forced assimilation policies aimed at erasing minority distinctiveness, have been prevalent worldwide, with linguistic repression at their core in Turkey.¹³ While presented as promoting national unity, these policies significantly threaten Kurdish identity by eradicating language, a crucial element of cultural heritage, while advancing Turkey's 'one nation – one identity' ideology.¹⁴ These forced assimilation policies have prohibited the use of Kurdish literature, music and culture, both in the public and private sphere. This has in turn left many with a diminished sense of identity, depriving both adults and especially children of the cognitive and emotional benefits of learning in their mother tongue.¹⁵ Studies have shown that depriving children of learning in their mother tongue may result in worsened academic outcomes and lower self-esteem.¹⁶

This cycle of repression hinders both intergenerational transmission and cognitive development, with long-term consequences for future generations.¹⁷ This further violates the Convention of the Rights of the Child (CRC) Article 30, which guarantees children in minority groups the right to use their language and enjoy their culture. Article 29 and 17 also mandates that education should respect a child's cultural identity, language and values, and provide access to cultural and linguistic materials. The denial of Kurdish language education and cultural suppression directly contradicts these rights. Turkey ratified the CRC in 1994, but concerns remain over the implementation of these provisions. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities emphasises the importance of language for cultural continuity (Article 1) and protection from discrimination (Article 4). Turkey violates these protections by pressuring Kurds to abandon their language in favour of Turkish, and mandatory use of Turkish has created a divide between Kurdish speakers and the broader Turkish society, fostering exclusion.¹⁸ Kurdish children have experienced trauma resulting from lack of access to their mother tongue,

discrimination, punishment and loss of identity, which underscores the deep psychological impact of linguistic restrictions.¹⁹

Conclusion

In Turkey, laws prohibiting the Kurdish language have led to alienation, loss of cultural heritage and identity, and significant mental harm. Kurdish speakers, particularly children, face identity confusion and psychological distress from being denied access to their native language. Turkey's repression of Kurdish violates ICCPR Article 27 and the right to cultural survival under the UN Declaration on Minorities. Recognising linguistic targeting as genocide in the GC would be a critical step in protecting the survival of the Kurdish people and other minority groups globally. International law has previously acknowledged language suppression in the context of indigenous populations, showing its harmful threat to a group's cultural survival. While linguistic genocide is not yet recognised in the Convention, these precedents reflect growing awareness of the importance of language for cultural survival. Incorporating linguistic targeting in the GC would align international law with frameworks protecting minority rights, offering legal remedies for affected communities, and emphasising language's essential role in preserving both cultural and psychological well-being.

Notes

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The right of return in international law: the case of Palestinian refugees

The right of return is a fundamental principle of international law, affirming that individuals who have been forcibly displaced from their homeland have the right to return to their place of origin. This principle is particularly significant for Palestinian refugees, whose displacement dates back to 1948¹ and 1967.² Despite the legal foundations supporting their right to return, the implementation of this right has been obstructed by political and legal barriers. The case of Palestinian refugees remains one of the most long-standing unresolved refugee issues in modern history, raising questions about the efficacy of international law when faced with political resistance.

The legal foundations of the right of return

The right of return is enshrined in multiple international legal instruments. The Universal Declaration of Human Rights (UDHR), adopted in 1948, asserts in Article 13(2) that ‘everyone has the right to leave any country, including his own, and to return to his country.’³ Although the UDHR is not legally binding, it is considered customary international law and has been cited in numerous legal arguments supporting the Palestinian right of return. A more binding legal foundation is found in the International Covenant on Civil and Political Rights (ICCPR), which was adopted by the United Nations General Assembly in 1966. Article 12(4) states that ‘no one shall be arbitrarily deprived of the right to enter his own country.’⁴ This provision, which is legally binding on state parties, establishes a clear obligation on governments to respect an individual’s right to return home.

Perhaps the most specific and relevant legal foundation for the Palestinian case is UN General Assembly Resolution 194, passed in December 1948. Article 11 of this resolution states that ‘refugees wishing

to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date.’⁵ Furthermore, it calls for compensation for those choosing not to return. Resolution 194 has been reaffirmed multiple times by the UN General Assembly,⁶ demonstrating the continued international consensus on the matter. However, the Resolution remains politically contested, particularly by Israel, which has refused to implement it. Another crucial legal framework is the Fourth Geneva Convention (1949), which specifies the protection of civilians in the event of a war. Article 49 explicitly prohibits forced transfers and deportations,⁷ while Article 147 classifies unlawful deportation or transfer as a ‘grave breach’ of international law.⁸ Given that the Palestinian displacement was caused by both direct expulsions and forced migrations due to conflict, these provisions further strengthen the legal argument for their right to return.

Legal and political obstacles

The legal and moral argument for the right of return is rooted in the principle that displacement caused by war, ethnic cleansing or occupation must be addressed. Many Palestinian refugees were forcibly expelled from their homes in the Nakba (Arabic for ‘the catastrophe’) of 1948, and later in 1967, as part of the broader Arab-Israeli conflict. The continued denial of Palestinians’ right to return has led to protracted refugeehood, where millions remain in limbo, forced to live outside of their homeland in Gaza, Jordan, Lebanon, Syria and the West Bank.⁹ Unlike other displaced populations, they have not been granted the option of returning home, resettling elsewhere with full rights or receiving adequate compensation.¹⁰

Despite its strong legal foundations, the right of return remains politically unimplemented.¹¹ The most significant obstacle is Israel’s refusal to recognise or



implement Resolution 194.¹² Israeli leaders argue that allowing Palestinian refugees to return would alter the demographic composition of the state, potentially threatening its identity as a Jewish-majority state.¹³ Instead of facilitating return, Israel has promoted the Law of Return, which grants automatic citizenship to Jewish people from around the world, while simultaneously denying Palestinians the same right to return to their ancestral homes.¹⁴

Beyond Israel's position, the international community has failed to enforce the right of return. While the UN has reaffirmed the principle repeatedly, its General Assembly resolutions are non-binding.¹⁵ More powerful enforcement mechanisms, such as the UN Security Council, have never imposed legal consequences on Israel for refusing to implement Resolution 194. The United States, a key ally of Israel, has consistently vetoed resolutions that could exert pressure on Israel to address the refugee issue.¹⁶ This has led to a situation where, despite legal precedent and broad international support for the right of return, the Palestinian case remains unresolved.

Conclusion

The case of Palestinian refugees raises fundamental questions about the effectiveness of international law when it comes into conflict with political power. While legal frameworks exist to protect refugees and affirm their right of return, enforcement remains dependent on political will. Until meaningful legal and diplomatic mechanisms are employed to address this issue, Palestinian refugees will continue to live in a state of limbo, their rights acknowledged on paper but denied in practice. The question remains: if international law is meant to protect displaced people, why has it failed to provide justice for Palestinians?

Notes

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