Max Planck Encyclopedia on Comparative Constitutional Law (Oxford University Press, 2017)

SECURITY, THE RIGHT TO

Liora Lazarus

A. Definition

The right to security has a variety of manifestations. At the outset, it is important to distinguish the moral, political, theoretical or polemical statements made about the right to security from expressions of the right to security in law. Legally speaking, the right to security has a number of justiciable and non-justiciable iterations. Some initial categorical distinctions relating to the right to security must be made.

1. Individual Subjective Rights

The right to security as an individual subjective right may have a wide range of meanings. The range of protective aspects of the right to security points to both the negative aspect of the right, in the sense of being protected against arbitrary interference from the state, and the positive aspect of the right which entails the State to protect individuals from a range of possible harms.

(a) *Negative Right*

The negative right to security is commonly associated with liberty against the State and the protection against arbitrary interference from the State. It is also connected to physical integrity, and sometimes associated with the protection of privacy and protection of the home. These rights are commonly justiciable in law.

(b) *Positive Right*

The right to security, in its positive and justiciable sense, has now been interpreted to incorporate freedom from private violence, as well as health, financial and social security. An associated non-justiciable concept of 'human security' is expressed as 'freedom from fear and freedom from want'.

(i) Implied positive rights to security

Many of the component aspects of the right to security in its positive sense have also been judicially implied from other rights, in particular the right to life (in particular the Inter-American Court of Human Rights, the European Court of Human Rights, the German Constitutional Court and India). These implied rights are distinguishable in law, and raise questions about the need for a self-defined and express justiciable right to security in law (Lazarus 2007; Lazarus 2012).

2. Meta-right v specific right

Some philosophers and politicians argue that the right to security is a basic or meta-right: the right upon which all other rights rest.   This is to be distinguished from a specific right to

security which is distinct and does not ground (or trump) other rights. The difference has significance for the weight which is assigned to the right to security. This is particularly important when approaching the balance between liberty and security. Critics argue that the right to security is best seen as a specific right in order to avoid overreaching coercive claims by the State (Lazarus 2012, 2015; Granger 2009).

3. Collective or Group Rights

The African Charter on Human and Peoples' Rights (African Charter) (1981) includes, under Article 23, a right of 'all peoples' to 'national and international peace and security'. This is a rare express iteration of the right to security as a collective or group right.

4. Correlative Rights

There are a range of provisions in international and domestic law which relate to the objectives of national security (Constitution of India 1950, Art. 51), and the term 'national security' is also commonly invoked as the basis for rights limitations (eg African Charter Arts 11, 12, 27(2); European Convention on Human Rights (ECHR) (1951) Arts 8(2), 9(2), 10(2) and 11(2), 15; American Convention on Human Rights (1969) Art. 32(2); German Basic Law (1949) Art. 13; Constitution of India Art. 19(2)). Some commentators have argued that these limitations clauses give rise to correlative individual rights to security (Ramsay 2012), though this is not generally expressed as such in law.

5. Distinguishing the Right to Security

It is important to distinguish the right to security from the right of individual or collective self-defence either as an individual right or as a collective right (Charter of the United Nations 1945, Art. 51) or the right to bear arms (United States of America: Constitution 1787, Second Amendment). Self-defence and the right to bear arms, were linked in the work of Blackstone in his conception of the basic right to personal security (see section on Evolution) and politicians also make this connection. However, as a matter of law, these rights are discrete, and should be understood as so.

B. Evolution

Fragments of what is now encompassed by the right to security are present throughout the history of human rights. Habeas corpus was enshrined in the Magna Carta, furthered by great common lawyers such as Edward Coke and incorporated in the English Petition of Right in 1628. Aquinas identified killing without just cause or in self-defence, mutilation and beating, and unlawful imprisonment, as contrary to natural law's protection of the sanctity of life (Davies 2014, 253-254). The term 'security of person' even appears briefly in the work of Grotius where it refers to life and liberty (Neff 2012, 463).

In enlightenment philosophy, the ideal of State security as a public good was central and featured large in the work of Hobbes and Locke amongst others. Nevertheless, Locke did not identify security as one of the natural rights, referring instead to the right to life. (See in general Lazarus 2015, 423). Montesquieu, however, placed security as the centre of his concept of political liberty: 'political liberty consists in security or, at least, in the opinion one

has of one's security' (Cohler et al 1989, 188), and also referred to 'security of person' in juxtaposition to 'security of the state' (Cohler et al 1989, 60).

The 'right to personal security' was most extensively and consistently articulated in Blackstone's Commentaries (1765). These identified a 'right to personal security' as the first of the three absolute and natural rights of man (Blackstone 1765, 124-134). Many of the ideas that Blackstone included in his conception of the right to security resonate today, both in the positive and negative sense. Certainly, the notion that life could not be taken without due process, the regulation of abortion, the right to self-defence, the right to bear arms, the right to physical integrity and a basic minimum standard of living can be found in Blackstone's conception of the right to personal security. Interestingly, Blackstone also included the right to a good reputation as part of this basic right.

The influence of Montesquieu and Blackstone on the US Constitution is well documented (Stoner 1992) but the term 'personal security' does not appear as such, with more explicit reference to the right to life. Nevertheless, the Preamble includes the terms to 'domestic Tranquility' and 'secure the Blessing of Liberty'; the 2nd Amendment refers to the 'security of a free State', while the 6th Amendment of the US Constitution does entitle 'the right of people to be *secure in their persons*, houses, papers, and effects against unreasonable searches and seizures'. The closely associated French Declaration of the Rights of Man (1789) includes the term 'la sûreté' in Article 2 as one of the 'natural and imprescriptible rights of man'. French commentary on the meaning of this term leads to different conclusions. Badinter (2004) argued that political discourse over time constantly reaffirmed that 'security was one of the human rights in the great declaration of 1789', but Luchaire (1989), Moderne (1992), Jourdain (2008) and Granger (2009), argue that this reference relates to 'safety' in the sense of safety of the citizen from arbitrary state action: 'sûreté would then be a French translation of the principle of *habeas corpus*' (Granger 2009).

Roosevelt's identification of 'freedom from fear' as one of the Four Freedoms (Roosevelt 1941), predated the Preamble to the Universal Declaration of Human Rights which in turn expresses this ideal as 'the highest aspiration of the common people'. Roosevelt understood this to mean a worldwide reduction in armaments and a prohibition on international aggression, not necessarily as the notion of an individual subjective right to security (or a right to freedom from fear) which took time to develop. The provisions of most of the major international human rights declarations enacted after 1945 thus continued to reflect the wording of Article 2 of the 1789 French Declaration, and in turn influenced a number of domestic rights provisions such as the Canadian Charter (see section List of Express Provision). Conceptions began to shift in the 1980s, however, when the positive right to security underscored the influential work of Anglo-American theorist, whose book *Basic Rights* was first published in 1980. Henry Shue believed that the right to security was basic, in the sense that its enjoyment 'is essential to the enjoyment of all other rights' (Shue 1996, 19). The right to security was also promoted by the German jurisprudential scholar, Joseph Isensee, who argued in 1983 that the development of protective duties our of basic rights amounted to the recognition of a right to security despite it being absent from the text of the German Basic law (Isensee 1983). Similarly, the development of protective duties by the Inter-American Court of Human Rights in *Velasquez Rodriguez* in 1988 as implied rights to security had a strong influence in international law, as did the growing recognition of international duties to protect against gender violence subsequent to the passing of the Convention on the Elimination of Violence Against Women (CEDAW) after 1979.

The emphasis on the positive aspect of the right to security has been stronger however in the last three decades. Firstly, spurred by the fragmentation of international security after the end of the Cold war, the international human security movement, the socio-economic rights movement and the development movement have aligned around an emphasis on 'human security', and the right to be 'free from violence' (see section List of Express Provision). This approach is reflected in the writings of Fredman (2007, 308) who identifies security as an essential prerequisite to the exercise of liberty conceived in the positive sense of 'autonomy and genuine freedom of choice, rather than freedom from interference' (Lazarus 2015, 432). For Fredman, protection against hunger, want and other material deprivations that threaten a person's existence are … as much part of the right to personal security as protection against assaults by the state or others' (Fredman 2007, 309). It is also embodied in the approach of the South African Constitution. Secondly, the war on terror has prompted politicians to invoke the right to security as a 'meta-right' (a right upon which all other rights rest) to legitimate coercive state action and provoke a rebalancing between human rights and liberty on the one hand, and security on the other (see Lazarus 2012; Granger 2009). These rhetorical security references have also found expression in recent French legislation (See List of Express Provisions).

C. List of Express Provision

1. International and Regional Law Provisions

In a number of international human rights documents the notion of 'liberty and security' can be found alongside each other (see eg Universal Declaration of Human Rights (UDHR) (1948) Art. 3, International Covenant on Civil and Political Rights (ICCPR) (1966) Art. 9; American Convention on Human Rights (1969) Art. 7; African Charter Art. 6; ECHR (1951) Art. 5, and Charter of Fundamental Rights of the European Union (2000) Art. 6).

In some international documents you can also find references to the idea of social security (UDHR Art. 22; Charter of Fundamental Rights of the European Union, Art. 34) and the right to security in the context of the right to an adequate standard of living (UDHR Art. 25).

More recently, the human security paradigm has gained increasing influence on the language of international institutions. In the UNDP Human Development Report 1994 the notion of human security was said to encompass threats in the seven areas of: economic security, food security, health security, environmental security, personal security, community security, political security. Likewise, the notion of security gained prominence in the Millennium Development Goals (MDGs) which pledged to 'spare no effort to free our people from the scourge of war' and 'eliminate the dangers posed by weapons of mass destruction' (2000, para. 8). This was reflected also in the conception of 'human security' set out in Article 143 of the United Nations General Assembly 2005 World Summit Outcome Document states:

> 'We stress the right of people to live in freedom and dignity, free from poverty and despair. We recognize that all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential. To this end, we commit ourselves to discussing and defining the notion of human security in the General Assembly' (2005)

Subsequently, the UN System Task Team on the Post-2015 UN Development Agenda (2015) recommended that the weakness of the MDGs was linked to the absence of a more specific

goal of violence reduction. They recommended that the post-2015 framework should include a specific target on violence, which is underpinned by the notion that 'freedom from violence is a human right' (UN System Task Team 2015, 9). The Sustainable Development Goals (*Transforming Our World,* 2015) thus include Goal 16 to 'promote peaceful and inclusive societies for sustainable development' which is measured inter alia by target 16.1 to 'significantly reduce all forms of violence and related death rates everywhere'.

2. Domestic Provisions

(a) *Constitutional Provisions*

In domestic constitutions the references vary. In the Canadian Charter of Rights and Freedoms (1982), section 7 states that everyone has the right to life, liberty and *security* of person'. In the South African Constitution (1996), Section 12(1) protects the '*Freedom and Security of the person*' which includes not only the rights 'not to be deprived of freedom arbitrarily or without just cause' (s. 12(1)(a)), 'not be detained without trial' (s. 12 (1)(c)), or 'not to be tortured in any way' (s. 12 (1)(d)) and 'not to be treated or punished in a cruel, inhuman or degrading way' (s. 12(1)(e), but also the right 'to be free from all forms of violence from either public or private sources' (s. 12 (1) (c)). Under the title of 'Freedom and security of person' in the South African Constitution is also included a general right to 'bodily and psychological integrity' which includes a right to 'make decisions concerning reproduction' (s. 12 (2) (a)), to 'security in an control over their body' (s. 12 (2) (b)) and the right not to be subjected to medical or scientific experiments without their informed consent' (s. 12 (2) (c)). Protection from 'private violence' also finds expression in the proposed Draft Bill of Rights of the Northern Ireland Human Rights Commission (NIHRC 2008, 40).

Other constitutional provisions may include the term security, or variants of the term 'security' in the content of a right. Article 27 of the South African Constitution (1996) includes a right to 'health care, food water and social security'. In the US Constitution (1787) the Fourth Amendment entitles 'the right of people to be *secure in their persons*, houses, papers, and effects against unreasonable searches and seizures'. Article 2 of the French Declaration of the Rights of Man 1789 refers to ''sûreté', but the term does not appear explicitly in the Constitution of 27 October 1946.

(b) *Legislative Provisions*

The preambles of three French Statutes make symbolic reference to the 'fundamental right to security' (ie Article 1 para. 2 of law n°95-73 of 21 January 1995; Article 1 para. 2 of law n°2003-239 of 18 March 2003; Article 1 para. 2 of law n°2001-1062 of 15 November 2001). The 2003 Statute goes as far as asserting that security is a 'meta-right', and states that 'security is a fundamental right and a condition for the exercise of individual and collective liberties' and underline 'the duty of the State in this area' (Article 1 para. 2 of law n°2003-239 of 18 March 2003). However, the Council of State ('Conseil d'Etat') had the opportunity to clearly establish that the right to security is not a fundamental freedom ('liberté fondamentale') pursuant to Article L 521-2 of the French Code of Administrative Justice (Council of State, ordonnance, 20 July 2011, Commune de Mandelieu-la-Napoule, n°236196). (See Granger 2009).

D. Comparative Description

A survey of treaty and judicial body approaches to the right to security show a broad range of conceptions which have been applied. There are two ways in which the right to security manifests. First as interpretations of express provisions safeguarding the right to security. Second, as the development of protective duties on the State to secure individuals against violence, which arise out of the positive aspect of other human rights.

1. International Law

(a) *Human Rights Committee*

The ICCPR enshrines the right to security in its classic form as a right against arbitrary detention. Nevertheless, ever since its key decision in *Degaldo Páez* (para 1.5.) in 1990, the United Nations Human Rights Committee (UNHRC) has been active in developing this right as a positive individual right to State protection. In its General Comment No. 35 on Article 9 ICCPR the United Nations Human Rights Committee (UNHRC) states that :

> 'The right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. … The right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury. … They should also prevent and redress unjustifiable use of force in law enforcement, and protect their populations against abuses by private security forces, and against the risks posed by excessive availability of firearms' (2014, para. 9).

Importantly, the UNHRC holds that the 'right to security of person does not address all risks to physical or mental health and is not implicated in the indirect health impact of being the target of civil or criminal proceedings' (2014, para. 9).

This General Comment synthesises decisions of the UNHRC related to these issues (*Leehong v Jamaica*, para. 9.3; *Marcellana and Gumanoy v Philippines*, para. 7.7; *Obodzinsky v Canada*, para. 8.5) as well as UNHRC observations and reports on particular national jurisdictions (Concluding observations: El Salvador, para. 16; Concluding observations: Norway, para. 10; Concluding observations: Philippines, para. 14).

(b) *Inter-American Court of Human Rights*

While the American Convention on Human Rights contains the traditional 'right to liberty and security', there is no express positive right to security, and the Inter-American Court has not sought to develop an explicit positive right to security. Nevertheless, the most important international jurisprudence to influence the development of State protective duties as a whole lies with the decision of the Inter-American Court of Human Rights in *Velasquez Rodriguez* which dealt with violations of the right to life (*Velasquez Rodriguez,* 1988). Faced with the rise of 'disappearances' across Latin America in the 1980s, and consistent denial of any responsibility by State parties, the Inter-American Court developed the international human rights foundation for protective duties. The Court argued that the inclusion of the phrase 'ensure to all persons subject to their jurisdiction the free and full exercise of those rights and

freedoms' in Article 1(1) of the Inter-American Convention resulted in extensive positive obligations upon States which went beyond the mere 'respect' of human rights protected therein'. Rather,

> 'this obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation' (para 166).

The Court developed a comprehensive list of duties designed to end States absolving themselves of responsibility for 'disappearances' done in their name. Thus, the Court argued that 'any violation of rights … is imputable to the State' including in conditions where there was a 'lack of due diligence to prevent the violation or respond to it as required by the Convention' on the part of the relevant State (para 172), or a 'failure to take 'measures to prevent or punish those responsible' (para 173).

The Court argued that the State has a 'legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation' (para 174). Importantly, and of relevance for future jurisprudence on State liability for the acts of private actors, the court argued that 'if the State apparatus acts in such a way that the violation goes unpunished … the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction … the same is true when the State allows private persons or groups to act freely and with impunity to the detriment of rights recognized by the Convention' (para 176).

The Inter-American Court did recognise some limitations to the duties enumerated. It accepted that that the 'duty to investigate' is not 'breached merely because the investigation does not produce a satisfactory result'. Nevertheless, it argued, that such a duty must be taken 'seriously', 'have an objective and be assumed by the State as its own legal duty' and constitute 'an effective search for the truth by the government'. Moreover, that the duty applies regardless of the status of the actor in question, as 'where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane' (para 177).

The approach in *Velasquez Rodriguez* has continued to apply in the Inter-American Court. The duties were applied in respect of State abuse and murders of street children (*Villagran-Morales et al v Guatemala* 1999); the failure to take adequate steps to prevent the disappearance, abuse and death of three women in the Cotton Field case who were only a tiny percentage of those who had received the same treatment in the same area (*González v. Mexico* 2009); and the failure of the Guatemalan police to adequately investigate cases of suspected violence against women in the first hours of their disappearance in light of the endemic and pervasive violence against women in Guatemala (*Velásquez Paiz et al v Guatemala* 2015).

(c) *European Court of Human Rights (ECtHR)*

The ECtHR has a limited conception of the right to security under Article 5: 'the Court is steadfast in limiting the right to security of person to procedural protections in cases of arbitrary detention' (Powell 2007). Early cases demonstrate that the Court did not wish to read security independently of liberty. In *Adler and Biuvas v Federal Republic of Germany*, the Court noted that the terms 'liberty' and 'security' should be read as a whole (para. 146), while in *Bozano v France*, it stipulated that Article 5 deals with arbitrary deprivation of liberty (see also *X v Ireland*).

More recent cases have accepted arguments that articulate security separately from liberty under Article 5 (*Kurt v Turkey*, paras 122-123; *Tepe v Turkey*; *Öcalan v Turkey*, para. 88) although these cases all relate to examples of arbitrary detention. Tellingly, the ECtHR agreed with the then UK House of Lords rejection of the idea that the broader conception of the right to security as a right to euthanasia could apply under Article 5 (see *Pretty v United Kingdom*, para. 14; *R. (on the application of Pretty) v DPP*, para. 23).

While Strasbourg does not have a highly articulated conception of the right to security under Article 5, it has referred to 'security of person' in the context of respect for the home and private life under Article 8 (*Buckley v United Kingdom*; *Keegan v United Kingdom*, para. 34) and Article 3. The Court has not gone on to develop an explicit positive conception of the right to security, in the sense of protecting individuals from the threat of private violence, under Article 5 ECHR or even used these terms expressly. Instead, protection from private violence has been cast as a consequence of the positive aspect of the right to life and the right against torture under the Convention (*Osman v United Kingdom*). These positive duties relate to the preventative obligations of the State in the policing context as well as strengthening criminal law protections against state sponsored killing of political dissidents (*Mahmut Kaya v Turkey*; *Kiliç v Turkey*; *Akkoç v Turkey*) negligent actions leading to death (*Oneryildiz v Turkey*); parental abuse (*A v United Kingdom*); rape (*MC v Bulgaria)* and domestic violence (*Kontrova v Slovakia*, *Opuz v Turkey*) (See Powell 2007; Lazarus 2014).

(d) CEDAW and protection against gender violence

Ever since the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the UN General Assembly, gender violence has been the subject of extensive international law activity (Lazarus 2010). This includes the 19th General Recommendation of the CEDAW Committee (1992) which notes that states should 'take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act' and 'ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity' (s. 24). Similarly, the General Assembly Declaration on the Elimination of Violence Against Women (DEVW) enshrines a 'due diligence' standard and enjoins states to 'pursue by all appropriate means and without delay a policy of eliminating violence against women' including: exercising 'due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons' (Art 4). The international duty of due diligence with respect to the treatment of violence against women is also supported by the Committee of Ministers of the Council of Europe in their Recommendation (2002) which obliges states to penalize all non-consensual sexual acts, including where the victim does not show resistance.

2. National Jurisdictions

(a) *Canada*

The jurisprudence on section 7 of the Canadian Charter is extensive. Much of this relates to the negative subjective right to security of person in the sense of freedom from arbitrary State interference. In the criminal justice context this is widespread (eg *R v Stillman*; *R v Potvin*, *R v Morin*). But the right to security has been broadly interpreted beyond the criminal justice sphere. It includes a right to physical as well as psychological integrity, and can include protection from private actions where a sufficient 'causal connection' is established between State action or inaction and the prejudice suffered by the individual rights holder (*Blencoe v British Columbia*). Nevertheless, Canadian jurisprudence is clear that the Charter does not impose positive obligations on governments (*Bedford v Canada*, para 88*)*. Moreover, for a breach of the right to security to be established, State action must violate the 'principles of fundamental justice' which apply to all limitations of rights under the Charter. The Canadian Supreme Court has used the right to security as a platform for the creation of a number of rights not expressly included in the Canadian Charter. Some examples are listed below.

(i) *Abortion*

In *Morgentaler (No 2)*, the right to security described as the protection of the health of a woman was the platform upon which restrictions on the right to abortion were declared unconstitutional (*R v Morgentaler (No 2)* 1988). Two judges in this case went as far as to argue that 'state interference with bodily integrity and serious state-imposed psychological stress, at least in the criminal context, constitute a breach of security of the person' (Wilson J and Dickson CJ). But the majority agreed at the very least that the risk to the health of the woman caused by various restrictions on access to abortion constituted a breach of the right to security of the person.

(ii) Child custody proceedings and child care orders

In *New Brunswick v G* the right to security was developed to found a right to legal aid in child custody proceedings. The Court elaborated on the meaning of the right to security:

'For a restriction of security of the person to be made out, the impugned state action must have a serious and profound effect on a person's psychological integrity. The effects of the state interference must be assessed objectively, with a view to their impact on the psychological integrity of a person of reasonable sensibility. This need not rise to the level of nervous shock or psychiatric illness, but must be greater than ordinary stress or anxiety. State removal of a child from parental custody pursuant to the state's *parens patriae* jurisdiction constitutes a serious interference with the psychological integrity of the parent.'

Such a restriction of the right to personal security was held to contradict the principles of fundamental justice where a person is not represented by counsel at a custody hearing.

In *Winnipeg Child and Family Services v K.L.W* the parents right to security was invoked to protect against the apprehension of her child in child care proceedings. The Court accepted that the State could temporarily remove a child at risk of harm without prior judicial authorisation but noted that the parents right to security required that 'the resulting disruption

of the parent-child relationship be minimized as much as possible by a fair and prompt post-apprehension hearing. This is the minimum procedural protection mandated by the principles of fundamental justice in the child protection context'.

(iii) Euthanasia

In *Rodriguez*, the ambit of the right to personal security was extended to protect the right to euthanasia. The majority declared:

'there is no question that personal autonomy, at least with respect to the right to make choices concerning one's own body, control over one's physical and psychological integrity, and basic human dignity are encompassed within security of the person, at least to the extent of freedom from criminal prohibitions which interfere with these'.

Despite acknowledging this, the majority of the Court also held that the deprivation of the right to security in these circumstances were 'not contrary to the principles of fundamental justice' and allowed the blanket prohibition on assisted suicide to stand.

In the *Carter* case (*Carter v Canada*), the Court reaffirmed the basic principle set out in *Rodriguez* that the right to security is engaged by questions of euthanasia. In *Carter* the court was clear that:

'the rights to liberty and security of the person, which deal with concerns about autonomy and quality of life, are also engaged. An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy. The prohibition denies people in this situation the right to make decisions concerning their bodily integrity and medical care and thus trenches on their liberty. And by leaving them to endure intolerable suffering, it impinges on their security of the person'.

The majority in *Carter* then went on to argue that the prohibition was no longer in accordance with 'the fundamental principles of justice' as the prohibition was 'overbroad' in capturing persons beyond the protected 'class of vulnerable persons' who may be 'induced to commit suicide at a time of weakness'.

(iv) *Health care*

In *Chaouilli*, delays and limits in the delivery of public health care, accompanied by a legislative prohibition on access to private health care, were held to be in violation of the right to security under section 7 because they gave rise to psychological or physical distress on the part of the claimants. But the Court was clear that section 7 does not give rise to a free-standing right to health care, arguing that the infringement could not be 'characterized as an infringement of an economic right' (*Chaoulli v Quebec*, para. 34). This was confirmed after extensive dicussion in *Canadian Doctors for Refugee Care* (paras 511 – 571) where it was concluded that 'the current state of the law in Canada is that section 7 of the Charter's guarantees of life, liberty and security of the person do not include the positive right to state funding for health care' (571).

(v) *Prostitution*

In *Bedford* (*Canada v Bedford*) the right to security was engaged by the applicants to argue against provisions criminalizing various activities related to prostitution. The Supreme Court held that the prohibitions included in the criminal law all 'heighten the risks' of undertaking otherwise legal prostitution. The prohibitions did not 'merely impose conditions on how prostitutes operate. They go a critical step further, by imposing *dangerous* conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risks'. Importantly the Court held that the 'causal connection' between the criminalisation of these activities and the risks to legal prostitution were not negated by the actions of private parties, thus holding the State responsible for the dangers posed. The violence of these individuals did not 'diminish the role of the state in making a prostitute more vulnerable to that violence'.

(b) *South Africa*

The breadth of the South African constitutional provision relating to the 'freedom and security of person' (see List of Express Provisions) mirrors much of the aspects interpreted into the right to security by the Canadian Court. The more specific right of interest however is to be found in Section 12(1)(c) which protects 'the right to be free from violence from either public or private sources'.

In *Van Eeden v Minister of Safety and Security* the right was contextualised as follows:

> The fundamental values enshrined in the Constitution include human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism and non-sexism (section 1(a) and (b) of the Constitution). In terms of section 12(1)(c) everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources. . . . Freedom from violence is recognised as fundamental to the equal enjoyment of human rights and fundamental freedoms (*S v Baloyi* ... at para 13). Section 12(1)(c) requires the state to protect individuals, both by refraining from such invasions itself and by taking active steps to prevent violation of the right. The subsection places a positive duty on the state to protect everyone from violent crime.

The South African Constitutional Court has used this right to develop a broad range of protective duties against violence in various spheres, two of which will be explored below. It is widely accepted that the South African Constitution imposes positive obligations on the State, not least because of section 7(2) which states: 'the state must respect, protect, promote and fulfil the rights in the Bill of Rights'. Consequently, rights bearers do not need to fulfil the 'causal connection' test established under Canadian Law. Nevertheless, the South African Court adopts a test of factual causation and reasonableness when assessing whether a positive duty under this right has been breached, this acts as a delimiting factor on the potential scope of the positive duties imposed on the State. However, the recent case of *Dudley Lee*, on the question of a prisoner contracting tuberculosis, was careful to stress that a strict factual causation test would be inappropriately applied in a constitutional rights setting where the State owes individuals duties of protection (*Dudley Lee v Minister of Correctional Services*).

(i) Violence – the archetypal case of Metrorail

The most clearly articulated example of the use of the right to be free from private violence is to be found in the South African Metrorail case (*Rail Commuters Action Group v Transnet Ltd t/a Metrorail*). In this case, the Rail Commuters Action Group (RCAG) brought an action against the public companies providing the rail service, the South African Rail Commuters Corporation, the Minister of Transport and the Minister of Safety and Security in light of the pervasive private violence committed against railway commuters. They sought, *inter alia*, mandatory relief to enjoin all the respondents 'to take steps (including interim steps) as are reasonably necessary to put in place proper and adequate safety and security services on rail commuter facilities used by rail commuters in the Western Cape, in order to protect those rights of rail commuters as are enshrined in the Constitution, to life, to freedom from all forms of violence from private sources and to human dignity'.

Justice Kate O'Regan, who led the Court, asserted that the first two respondents, due to their specific statutory obligations under South African Rail legislation and their monopoly over rail provision, bore a constitutional duty to rail commuters. Their duty was articulated in the socio-economic context of South Africa's apartheid legacy, where the overwhelming majority still live far from work, and are entirely reliant on public transport. Specifically O' Regan accepted that commuters find themselves in 'double bind' in that 'they generally have little choice about using the train, and once on the train they are unable to protect against attack by criminals' (para. 82).

In formulating the public law duty in question, Justice O'Regan emphasized the principle of accountability in enjoining the respondents to 'provide rail commuter services in a way that is consistent with the constitutional rights of commuters' (para. 83). The duty was formulated within certain bounds, namely 'to ensure that reasonable measures are in place' (para. 84). Factors relevant to 'reasonableness' in this context were:

> 'the nature of the duty, the social and economic context in which it arises, the range of factors that are relevant to the performance of the duty, the extent to which the duty is closely related to the core activities of the duty-bearer – the closer they are, the greater the obligation on the duty-bearer, and the extent of any threat to fundamental rights should the duty not be met as well as the intensity of the harm that may result. The more grave is the threat to fundamental rights, the greater is the responsibility on the duty bearer. Thus, an obligation to take measures to discourage pickpocketing may not be as intense as an obligation to take measures to provide protection against serious threats to life and limb.' (para. 88)

In addition, Justice O'Regan argued that resource considerations would have a bearing on the Court's perception of reasonableness. But the principle of accountability made it impossible for the State to avoid its constitutional obligations by making bald assertions as to resource constraints. Rather:

> 'Details of the precise character of the resource constraints, whether human or financial, in the context of the overall resourcing of the organ of State will need to be provided. The standard of reasonableness so understood conforms to the constitutional principles of accountability, on the one hand, in that it requires decision-makers to disclose their reasons for their conduct, and the principle of effectiveness on the other, for it does not unduly hamper the decision-maker's authority to determine what are reasonable and appropriate measures in the overall context of their activities.' (para. 88)

In *Mashongwa v Prasa* the issue of railway violence and the extent of the transport utility's delictual liability was clarified. Here the court extended the public law duty established in

Metrorail to the private law delictual duties of care to its passengers, the breach of which require wrongfulness, negligence and causation to be established. Here the failure to secure the doors to the train through which a victim of an attack was thrown while the train was moving, constituted a breach for these purposes. The existence of private law remedies in this context were seen by the court as a means to strengthen the existing public law duty:

> The State and its organs exist to give practical expression to the constitutional rights of citizens. They bear the obligation to ensure that the aspirations held out by the Bill of Rights are realised. That is an immense responsibility that must be matched by the seriousness with which endeavours to discharge them are undertaken. To this end, the State, its organs and functionaries cannot be allowed to adopt a lackadaisical attitude, at the expense of the interests of the public, without consequences. For this reason, exceptions are at times made to the general rule that a breach of public law obligations will not necessarily give rise to a delictual claim for damages. Absent that flexibility public authorities and functionaries might be tempted and emboldened to disregard their duties to the public. And that could create fertile ground for a culture of impunity. These obligations cannot therefore be ignored without any repercussions, particularly where there is no other effective remedy. This would be especially so in circumstances where an organ of state would have been properly apprised of its constitutional duties many years prior to the incident, as in this case (para 25). … It is in this context that the legal duty that falls on PRASA's shoulders must be understood. That PRASA is under a public law duty to protect its commuters cannot be disputed. This much was declared by this Court in *Metrorail*. But here this Court goes a step further to pronounce that the duty concerned, together with constitutional values, have mutated to a private law duty to prevent harm to commuters (para 29).

(ii) Domestic and sexual violence

In *Baloyi* and *Omar* section 12(1)(c) was pivotal in shaping legal protections against domestic violence. *Baloyi* dealt with the reverse burden of proof in domestic violence cases, while *Omar* dealt with prevention orders relating to domestic violence cases. Justice Albie Sachs stated in *Baloyi* that: … The specific inclusion of private sources emphasises that serious threats to security of the person arise from private sources. Section 12(1) has to be understood as obliging the state directly to protect the right of everyone to be free from private or domestic violence.' (*The State v Baloyi*).

This principle was applied in *Omar* where Justice van der Westhuizen re-emphasised the interrelationship between the right to security and other protected rights:

> Section 12(1)(c) provides that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from public or private sources. This right must be understood in conjunction with the rights to dignity, life, equality (which includes the full and equal enjoyment of all rights and freedoms) and privacy. (*Omar v Government of the Republic of South Africa*)

The duty to protect against sexual violence was also the subject of *F v Minister of Safety and Security* where the Minister was held vicariously liable in delict for the rape of a 13 year old by a police officer working on standby duty. Again, the constitutional duty to protect against private sexual violence led to the development of private law duties of delict.

> The state has a general duty to protect members of the public from violations of their constitutional rights. In grappling with the question of the state's vicarious liability, the constitutional obligations to prevent crime and to protect members of the public, particularly the vulnerable, must enjoy some prominence. These obligations, as well as the constitutional rights of Ms F, are the prism through which this enquiry should be conducted (para 53). Ms F has a constitutional right to freedom and security of the person, provided for in section 12(1) of the

> Constitution. She also has the constitutional right to have her inherent dignity respected and protected. This, and the right to freedom and security of the person, are implicated by the assault and rape which were perpetrated against her person (para 54). … [R]ape of women and children violates a cluster of interlinked fundamental rights treasured by our Constitution (para 55)… It follows without more that the state, through its foremost agency against crime, the police service, bears the primary responsibility to protect women and children against this prevalent plague of violent crimes. Courts, too, are bound by the Bill of Rights. When they perform their functions, it is their duty to ensure that the fundamental rights of women and girl-children in particular are not made hollow by actual or threatened sexual violence. They must acknowledge the policy-drenched nature of the common law rules of vicarious liability, that it is the courts that have in the past fashioned and favoured them, and that now the rules must be applied through the prism of constitutional norms (para 57).

(c) *Germany*

The text of the German Basic Law does not recognize a right to security in express terms. However, over the years the Federal Constitutional Court (FCC) has developed an extensive case law on positive obligations (*Schutzpflichten*) which oblige the state not only to abstain from interfering itself with citizens' fundamental rights, but also to take the necessary measures to protect individuals against threats posed by non-state actors to their fundamental rights, including the right to life and to physical integrity (Article 2 (2) BL). There is some debate as to the grounding of these duties (Alexy 2002, p. 301 f). Some constitutional theorists and decisions associate these protective duties with the idea, established in the *Lüth* decision in 1958 (*BVerfGE* 7, 198), that German constitutional rights constitute a system of 'objective norms and values' which radiate throughout the legal system as a whole. Others see protective duties as correlative duties derived from subjective individual rights to State protection, not least given the wording of Article 1(1) of the Basic law which enjoins the State to 'respect and protect' human dignity (von Kielmansegg, 2009).

Notwithstanding the conceptual debate, protective duties have been a consistent aspect of German constitutional jurisprudence since this time. However, the Constitutional Court has stressed the wide discretion the competent public authorities enjoy in determining what protective measures are necessary and useful to meet the threat at hand, which means that it will normally deny a request to order the authorities to take specific action (*BVerfGE* 46, 160). This approach was also evident in the more recent German Aviation Security decision (*BVerfGE* 1 BvR 357/05, [120]–[121].) Here, the Federal Constitutional Court rejected the idea that the State was required to shoot down a hijacked plane as a consequence of its protective duty to individuals on the ground at risk of losing their lives. Rather, the Court argued that the broad discretion afforded to States in their fulfilment of protective duties had to include the proportionate protection of the rights to life and human dignity of the passengers trapped on a hijacked plane. The decision was a carefully crafted balance between the State's protective duties, and its duties of restraint.

This balance notwithstanding, German commentators have drawn the conclusion that the range of protective duties recognised by the Federal Constitutional Court, and the capacity of individuals to bring these rights to protection before the FCC by means of the constitutional complaints procedure, as a whole constitute an overarching 'right to security' (Isensee 1983, 33).

(d) *India*

The Indian Supreme Court also has no express positive right to security to apply in its jurisprudence, but like Germany it has developed a series of protective duties out of other rights (see Jayakumari 2006; Cooper-Stephenson 2005). The Supreme Court has taken a hard line in a series of cases where it has held the State liable for negligent acts resulting in violations of the right to life. These are referred to in the jurisprudence as 'constitutional torts', and similar considerations of proximity and reasonableness (as found in South Africa) apply in their application to State responsibility for deaths of private citizens (see: *National Human Rights Commission v State of Arunachal Pradesh*; *M Hongray v Union of India*; *Challa Ramkonda Reddy v State of Andhra Pradesh*; *R Gandhi v Union of India*; *M/s Inderpuri General Stores v Union of India*; *Manjit Singh Sawhney v Union of India*). The Indian Supreme Court elaborated on the State duty to protect life in the Chakma case. Here the Indian State attempted to side-step its obligations on the basis that the Chakma settlers were foreigners and without constitutional rights. The Court took little time to reject this argument:

> 'We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus, the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty-bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics' (*National Human Rights Commission v State of Arunachal Pradesh,* para 20).

E. Evaluation

Comparative evaluation demonstrates a wide range of meanings that have been attributed to the right to security, and some may argue the right itself is exceptionally broadly conceived. Comparative and historical analysis shows that the concept has now transformed from a negative right against arbitrary State action, to a positive right to State protection. While this development is welcome to those who suffer the harms of insecurity, there are concerns too. Critics (Lazarus 2012 and 2015; Ramsay 2012; Granger 2009) point to the danger of coercive overreach where State goals receive unfocused legitimation through a broad conception of the right to security. In a climate of global insecurity and the war on terror, the deployment of the politics of insecurity is increasing. In this context, the risk is amplified by describing the right to security as a 'meta right' upon which all other rights rest, notably even in legislative form. A consequence of this claim is that all rights will become understood as a species of security, rather than rights which militate against excessive claims to State coercion (See Lazarus 2012). Given the general development of protective duties to protect against violence from the rights to life and freedom from torture inhuman and degrading treatment, there is a question as to whether the express right to security is ultimately necessary. The language of 'freedom from violence' appears prevalent however in the international development agenda, and the enshrined rights to security in international and domestic law enjoy strong judicial and institutional support. Given this, the clear judicial requirements of causality and

reasonableness, which are present in Canada and South Africa, are a welcome delimitation of the potential coercive overreach of a right to security. So too is the bounded conception of the right to security issued by the UN Human Rights Committee.

Selective Bibliography

Alexy, R, *A Theory of Constitutional Rights* (trans. Julian Rivers OUP Oxford 2002)

Badinter, R, 'Compte Rendu Intégral des Débats du Sénat. Séance du 20 Janvier 2004' (*Senate of France,* 2004) <www.senat.fr/seances/s200401/s20040120/s20040120_mono.html> accessed 21 February 2016

Blackstone, W, *Commentaries on the Laws of England* (Clarendon Press 1765)

Danet, J, and Grunvald, S, 'Le Droit à la Sécurité et Le Risque Au Cœur D'un Nouveau Droit Péna' in Cadeau, E (ed), *Perspectives du Droit Public: Mélanges Offerts à Jean-Claude Helin* (Litec 2004)

Cooper-Stephenson, K, 'The Emergence of Constitutional Torts Worldwide', (Conference on Comparative Constitutionalism, University of Kwazulu-Natal, S Afr, 12 December 2005)

Cohler, A, Miller, B and Stone, H (eds) *Montesquieu: The Spirit of the Laws* (CUP 1989)

Davies, B, *Thomas Aquinas's Summa Theologiae: A Guide and Commentary* (OUP 2014)

Fredman, S, 'The Positive Right to Security' in Goold, BJ and Lazarus, L (eds), *Security and Human Rights* (Hart 2007)

Granger, MA, 'Existe-t-il un 'Droit Fondamental à la Sécurité'?' (2009) 2 Revue de science criminelle et de droit penal comparé 273

Isensee, J, *Das Grundrecht auf Sicherheit – Zu den Schutzpflichten des freiheitlichen Verfassungsstaates* (Walter de Gruyter 1983)

Jayakumari, PK, *Liability of the State in Torts: with Special Reference to Human Rights Violations* (PhD thesis, Mahatma Gandhi University, 2006) <http://www.mgutheses.in/page/titles_view.php?q=T%201351&word=L#54> accessed 28 February 2016

Jourdain, P, 'Existe-t-il un « droit subjectif à la sécurité »?' (2008) 7 Presse Universitaire de Toulouse 78

Lazarus, L, 'Mapping the Right to Security' in Goold, BJ and Lazarus, L (eds), *Security and Human Rights* (Hart 2007)

Lazarus, L, 'The Human Rights Framework Relating to the Handling, Investigation and Prosecution of Rape Complaints', Annex A to *The Stern Review* (London: Home Office, 2010)

Lazarus, L, 'The Right to Security: Securing Rights or Securitizing Rights?' in Dickinson, R (ed), *Examining Critical Perspectives on Human Rights* (CUP 2012)

Lazarus, L, 'Positive Obligations and Criminal Justice: Duties to Protect or Coerce' in Roberts, J and Zedner, L (eds), *Principled Approaches to Criminal Law and Criminal Justice: Essays in Honour of Professor Andrew Ashworth* (OUP 2012)

Lazarus, L, 'The Right to Security' in Cruft, R, Liao, SM and Renzo, M (eds), *Philosophical Foundations of Human Rights* (OUP 2015)

Luchaire, F, 'La sûreté: droit de l'Homme ou sabre de M. Prudhomme?' (1989) 3 RDP 609

Neff, S (ed), *Hugo Grotius on the Law of War and Peace* (CUP 2012)

Moderne, F, 'Sûreté' in Duhamel, O and Meny, Y (eds), *Dictionnaire Constitutionnel* (PUF 1992)

Powell, R, 'The Right to Security of Person in European Court of Human Rights Jurisprudence' (2007) 6 European Human Rights Law Review 649

Ramsay, P, *The Insecurity State: Vulnerable Autonomy and the Right to Security in the Criminal Law* (OUP 2012)

Roosevelt, Franklin Delano *The Four Freedoms*, Speech to the members of the 77th Congress, 6 January 1941 (http://www.americanrhetoric.com/speeches/fdrthefourfreedoms.htm last accessed 8 August 2016)

Shue, H, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (2nd edn, Princeton University Press 1996)

Stoner, J, *Common Law & Liberal Theory* (University Press of Kansas 1992)

von Kielmansegg, G, 'Grundfälle zu de allgemeinen Grundrechtslehren' (2009) *JuS* 216

Selective Cases

A v United Kingdom App No 25599/94 (ECtHR, 23 September 1998) Crim LR 892

Adler and Biuvas v Federal Republic of Germany App No 5573/72 (1977) Yearbook XX, p 102 (Ger)

Akkoç v Turkey App No 22947/93 (ECtHR, 10 October 2000) 34 EHRR 51

BVerfGE 7, 198 (1958)

BVerfGE 46, 160 (1977) (Schleyer Kidnapping Case)

BVerfGE, 1 BvR 357/05 (2006) (German Aviation Security Case)

Blencoe v British Columbia [2000] 2 SCR 307 (Can)

Bozano v France App No 9990/82 (ECtHR, 18 December 1986) 9 EHRR 297

Buckley v United Kingdom App No 20348/92 (ECtHR, 25 September 1996) 23 EHRR 101

Canada (Attorney General) v Bedford [2013] 3 SCR 1101 (Can)

Canadian Doctors for Refugee Care v Canada (2014) FC 651 (Can)

Carter v Canada (Attorney General) [2015] 1 SCR 331 (Can)

Challa Ramkonda Reddy v State of Andhra Pradesh (1990) ACJ 668

Chaoulli v Quebec (Attorney General) [2005] 1 SCR 791 (Can)

F v Minister of Safety and Security (2013) (2) SACR 20 (CC)

González et al. ("Cotton Field") v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 205 ¶ 166 (Nov. 16, 2009)

Keegan v United Kingdom App No 28867/03 (ECtHR, 18 July 2006) 44 EHRR 33

Kiliç v Turkey App No 22492/93 (ECtHR, 28 March 2000) 33 EHRR 58

Kontrova v Slovakia App No 7510/04 (ECtHR, 31 May 2007) Po LR 154

Kurt (Koçeri) v Turkey App No 24276/94 (ECtHR, 25 May 1998) 27 EHRR 373

Lee v Minister of Correctional Services 2013 (1) SACR 213 (CC)

Leehong v Jamaica Comm No 613/1995 (UNHRC, 13 July 1999) UN Doc CCPR/C/66/D/613/1995

M Hongray v Union of India AIR 1984 SC 1026

Manjit Singh Sawhney v Union of India 2005 Indlaw DEL 379

Marcellana and Gumanoy v Philippines Comm No 1560/2007 (UNHRC, 30 October 2008) UN Doc CCPR/C/94/D/1560/2007

Mahmut Kaya v Turkey App No 22535/93 (ECtHR, 28 March 2000)

MC v Bulgaria App No 39278/98 (ECtHR, 04 December 2003) 15 BHRC 627

M/s Inderpuri General Stores v Union of India AIR 1992 J&K 11

Mashongwa v PRASA [2015] ZACC 36

New Brunswick (Minister of Health and Community Services) v G (J) [1999] 3 SCR 46 (Can)
National Human Rights Commission v State of Arunachal Pradesh AIR 1996 SC 1234

Obodzinsky (Deceased) and Obodzinsky v Canada Comm No 1124/2002 (UNHRC, 19 March 2007) UN Doc CCPR/C/89/D/1124/2002

Öcalan v Turkey App No 46221/99 (ECtHR, 12 May 2005) 41 EHRR 985

Oneryildiz v Turkey App No 48939/99 (ECtHR, 30 November 2004) ECHR 657

Omar v Government of the Republic of South Africa and Minister for Justice and Constitutional Development (2005) CCT 47/04 (S Afr)

Opuz v Turkey App No 33401/02 (ECtHR, 9 June 2009) 7 BHRC 159

Osman and Osman v United Kingdom App No 23452/94 (ECtHR, 28 October 1998) 29 EHRR 245

Pretty v United Kingdom App No 2346/02 (ECtHR, 29 April 2002) 35 EHRR 1

R Gandhi v Union of India AIR 1989 Mad 205

R v Morgentaler (No 2) [1988] 1 SCR 30 (Can)

R v Morin [1992] 1 SCR 771 (Can)

R v Potvin [1993] 2 SCR 880 (Can)

R (on the Application of Pretty) v DPP [2001] UKHL 61 (UK)

R v Stillman [1997] 1 SCR 607 (Can)

Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others 2005 (4) BCLR 301 (CC) (S Afr)

Rodriguez v British Columbia (Attorney General) [1993] 3 SCR 519 (Can)

The State v Baloyi (2000) 1 SACR 81 (CC) (S Afr)

Tepe v Turkey App No 27244/95 (ECtHR, 9 May 2003) 39 EHRR 29

X v Ireland App No 6040/73 (ECtHR, 20 July 1973) 16 YB 388

Van Eeden v Minister of Safety and Security (2003) (1) SA 389 (SCA) (S Afr)

Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am. Ct.H.R (Ser.C) No.4 (1988)

Velásquez Paiz et al v Guatemala, Inter-American Court of Human Rights, Judgement of 19 November 2015.

Villagran-Morales et al v Guatemala, Judgment of November 19, 1999

William Eduardo Delgado Páez v Colombia, Communication No. 195/1985, 12 July 1990

Winnipeg Child and Family Services v K.L.W [2000] 2 SCR 519 (Can)

Selective Documents

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58

American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978)

Basic Law for the Federal Republic of Germany: May 23, 1949 (Ger)

Canadian Charter of Rights and Freedoms: April 17, 1982 (Can)

CEDAW Committee General Recommendation 19 of 29 January 1992

Charter of Fundamental Rights of the European Union (adopted 18 December 2000, entered into force 1 December 2009) EU Doc 2012/C 326/02

Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI

Committee of Ministers of the Council of Europe Recommendation no R (2002) 5 adopted by the Committee of Ministers on 30 April 2002 and Explanatory Memorandum, H/Inf (2004)

Constitution of India: January 26, 1950 (India)

Constitution of the Republic of South Africa: May 8, 1996 (S Afr)

Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979

Declaration of the Rights of Man and of the Citizen (August 26, 1789)

General Assembly Resolution 48/104 of 20 December 1993 on the Elimination of Violence Against Women (DEVW) I

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into Force 23 March 1976) UN Doc 999 UNTS 171

Law n°95-73 of 21 January 1995 (France)

Law n°2003-239 of 18 March 2003 (France)

Law n°2001-1062 of 15 November 2001 (France)

Northern Irish Human Rights Commission (NIHRC) *A Bill of Rights for Northern Ireland* (2008) (http://www.nihrc.org/uploads/publications/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf) accessed 28 February 2016

UNHRC Concluding Observations: El Salvador (22 August 2003) UN Doc CCPR/CO/78/SLV

UNHRC Concluding Observations: Norway (18 November 2011) UN Doc CCPR/C/NOR/CO/6

UNHRC Concluding Observations: Philippines. (13 November 2012) UN Doc CCPR/C/PHL/CO/4

UNHRC General Comment No 35: Article 9 (Liberty and Security of Person) (16 December 2014) UN Doc CCPR/C/GC/35

Universal Declaration of Human Rights. Resolution 217 A (III) (adopted 10 December 1948) UN Doc A/810 at 71

United Nations Development Programme, *Human Development Report* (OUP 1994) (http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf) accessed 28 February 2016

United Nations General Assembly. 2005 World Summit Outcome. Resolution 60/1 (24 October 2005) UN Doc A/RES/60/1

United Nations General Assembly. Transforming our World: the 2030 Agenda for Sustainable Development. Resolution 70/1 (21 October 2015) UN Doc A/Res/70/1

United Nations General Assembly. United Nations Millenium Declaration. Resolution 55/2 (18 September 2000) UN Doc A/Res/55/2

United Nations System Task Team on the Post-2015 UN Development Agenda, *Peace and Security : Thematic Think Piece* (2012) (http://www.un.org/en/development/desa/policy/untaskteam_undf/thinkpieces/14_peace_and_security.pdf) accessed 28 February 2016

United States of America: Constitution: September 17, 1787 (US)